

Idaho Commission on Aging (ICOA) Program Manual

July 1,

2019

IC 67-5001. CREATION OF COMMISSION ON AGING -- COMPOSITION -- APPOINTMENT. There is hereby established in the executive office of the governor the Idaho commission on aging, hereafter referred to as the "commission," which shall have the duties, powers, and authorities as provided in this act.

IC 67-5005. LEGISLATIVE INTENT. The legislature hereby finds and recognizes the need to provide basic necessities to its older people in their later years and particularly in providing efficient community services, including access transportation, adequate nutrition, in-home services, and adult day care, designed to permit its older people to remain independent and to be able to avoid institutionalization; and that these services be provided in a coordinated manner and be readily available when needed and accessible to all older people.

This act shall be known as the "Idaho Senior Services Act." (SSA).

IC 67-5003(4). POWERS AND DUTIES OF COMMISSION. Enter into funding agreements as grants and contracts within the limits of appropriated funds to carry out programs and services for older Idahoans;

IC 67-5007. GRANTS TO AND CONTRACTS WITH LOCAL AREA AGENCIES. The commission shall, based on the recommendations of the local area councils on aging, enter into funding agreements as grants or contracts with designated local area agencies, as provided by the Older Americans Act of 1965, as amended, for the purpose of the agencies issuing contracts at the local level to provide the services listed in section [67-5008](#), Idaho Code. Such grants or contracts shall be subject to performance and financial audit by the agency in conformance with state practices and statutes.

Preface

This Idaho Commission on Aging's (ICOA) Program Manual provides official regulations for the operation of all Senior Services Act (SSA) and Administration on Aging (AoA)/ Administration for Community Living (ACL) funded programs.

This manual has been updated as of **July 1, 2019** and supersedes any prior editions, policies, guidance, forms or reports. In case of any discrepancy in this manual and attachments, ICOA should be consulted for clarification/correction.

This manual is subject to change as additional information and/or regulations and guidance are received from the Health and Human Services, the Administration for Community Living, the Administration on Aging, the Idaho Code or the Idaho Administrative Procedures Act (IDAPA).

This Program Manual and all updates will be posted on the ICOA's website at <https://aging.idaho.gov/resources/icoa-administration/>. The Program Manual will be reviewed/updated annually.

Civil Rights: All AAAs and contractors must comply with the following Civil Rights requirements listed in IDAPA (15.01.20.057)

“Neither the AAAs nor their providers shall violate any state or federal law regarding civil rights and shall provide all services and functions funded by the ICOA, affected by rule of the ICOA or provided for by contract with the ICOA without discrimination on the basis of race, color, national origin, age, gender, physical or mental impairment, or on any other basis prohibited by law. (7-1-98)”

CHAPTER 1: STATE AND FEDERAL RESOURCES

- 1.1. **STATE AUTHORIZATION AND STATUTORY REQUIREMENTS.** This Program Manual is based on the following Idaho Code (IC) and Idaho Administrative Procedures Act rules (IDAPA). The web-links below are current as of, but are subject to change. Updates will be incorporated in the ICOA Program Manual that can be accessed online through the ICOA's website:
<https://aging.idaho.gov/resources/icoa-administration/>
1. **IC Title 67 State Government and State Affairs, Chapter 50 Commission on Aging**
<https://legislature.idaho.gov/statutesrules/idstat/Title67/T67CH50/>
 - A. 67-5001 Creation of Commission on Aging -- Composition -- Appointment
 - B. 67-5002 Organization -- Meeting -- Quorum -- Compensation -- Expenses
 - C. 67-5003 Powers and Duties of Commission
 - D. 67-5004 Administrator -- Appointment and Term
 - E. 67-5005 Legislative Intent
 - F. 67-5006 Definitions
 - G. 67-5007 Grants to and Contracts with Local Area Agencies
 - H. 67-5008 Programs for Older Persons
 - I. 67-5009 Office of Ombudsman for the Elderly
 - J. 67-5010 Grants or Contracts for Demonstration Projects
 - K. 67-5011 Adult Protection Services
 2. **IC Title 39 Health and Safety, Chapter 53 Adult Abuse, Neglect and Exploitation Act**
<https://legislature.idaho.gov/statutesrules/idstat/Title39/T39CH53/>
 - A. 39-5301 Short Title
 - B. 39-5301A Declaration of Policy
 - C. 39-5302 Definitions
 - D. 39-5303 Duty to Report Cases of Abuse, Neglect or Exploitation of Vulnerable Adults
 - E. 39-5303A Exemption from Duty to Report -- Limited Application of Exemption
 - F. 39-5304 Reporting Requirements, Investigation, Emergency Access
 - G. 39-5305 Inspections -- Right of Entry
 - H. 39-5306 Supportive Services and Disclosure
 - I. 39-5307 Access to Records
 - J. 39-5308 Interagency Cooperation
 - K. 39-5309 Coordination of Services
 - L. 39-5310 Report to Law Enforcement -- Prosecution
 - M. 39-5311 Effect of Actions Taken Pursuant to the Natural Death Act
 - N. 39-5312 Rules
 3. **IC Title 39 Health and Safety, Chapter 16 Food Establishment Act**
<https://legislature.idaho.gov/statutesrules/idstat/Title39/T39CH16/>
 4. **Rules: ICOA Idaho Administrative Procedures Act (IDAPA)**
<https://adminrules.idaho.gov/rules/current/15/index.html>
 - A. 15.01.01, Rules Governing Senior Services Program
 - B. 15.01.02, Rules Governing Adult Protection Programs
 - C. 15.01.03, Rules Governing Ombudsman for the Elderly Program
 - D. 15.01.20, Rules Governing Area Agency on Aging (AAA) Operations
 - E. 15.01.30, Rules Governing the Senior Community Services Employment Program

5. **Idaho Rules of Administrative Procedure** of the Attorney General
 - A. <https://adminrules.idaho.gov/rules/2011/04/1101.pdf>
 6. **Rules: Department of Health and Welfare, Food Safety**
 - A. <https://adminrules.idaho.gov/rules/2013/16/0219.pdf>
 7. **Idaho Statutes: Title 18: Crimes and Punishment, Chapter 15: Children and Vulnerable Adults**
<https://legislature.idaho.gov/statutesrules/idstat/Title18/T18CH15/>
 - A. 18-1505 Abuse, Exploitation or Neglect of a Vulnerable Adult
 - B. 18-1505A Abandoning a Vulnerable Adult
 - C. 18-1505B Sexual Abuse and Exploitation of a Vulnerable Adult
 8. **Idaho State Purchasing**
 - A. <https://purchasing.idaho.gov/>
- 1.2. **FEDERAL AUTHORIZATION AND STATUTORY REQUIREMENTS.** This Program Manual is based on the following Federal Act, Code, Title and Circular and reporting requirements:
1. **Older Americans Act (OAA) of 1965.** The Older Americans Act is referred by the abbreviation OAA, and was enacted as Public Law 89-73 on July 14, 1965 and reauthorized April 19, 2016 as amended through P.L. 114-144.
 - A. <https://acl.gov/about-acl/authorizing-statutes/older-americans-act>
 2. **42 U.S.C. Chapter 35 Programs for Older Americans (3001 to 3058ff)**
 - A. <http://www.law.cornell.edu/uscode/text/42/chapter-35>
 3. **Title 45—Public Welfare, Code of Federal Regulations (CFR) Subtitle A—Department of Health and Human Services**
 - A. The administrative requirements can be accessed from the following “Parts” of the CFR:

<ol style="list-style-type: none"> 1. Part 74 Uniform administrative requirements for awards and sub-awards to institutions of higher education, hospitals, other nonprofit organizations and commercial organizations 	<ol style="list-style-type: none"> 2. Part 92 Uniform administrative requirements for grants and cooperative agreements to State, local and tribal governments
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 4. **Office of Management and Budget Circulars**
 - A. <https://www.whitehouse.gov/omb/information-for-agencies/circulars/>

<ol style="list-style-type: none"> 1. A-21 Cost Principles for Institutions of Higher Education 2. A-87 Cost Principles for State and Local Governments (for use by state and local governments) 3. A-102 Property Management for State and Local Governments (for use by state and local governments) 	<ol style="list-style-type: none"> 4. A-110 Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations (for use by nonprofit grantees) 5. A-122 Cost Principles for Nonprofit Organizations for use by nonprofit grantees 6. A-128 Single Audit Act 7. A-133 Audit Requirements; Non-Profit Organizations Receiving Federal Awards
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 5. **Administration on Aging (AoA) Reporting Requirements for National Aging Program Information System (NAPIS)**

CHAPTER 2: DEFINITIONS

2.1. SOURCE OF DEFINITIONS.

1. Older Americans Act (OAA) 45 CFR Parts 1321 & 1327b (**OAA Reauthorization Act of 2016**)
2. Idaho Code (IC), Title 67, Chapter 50 and Title 39, Chapter 53
3. Idaho Administrative Procedures Act (IDAPA) (15)
4. National Aging Program Information Systems (NAPIS)
5. ICOA Definition (ICOA)

2.2. DEFINITIONS.

1. **Abuse.** (OAA Section 102(a)(1)) means the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm.
2. **Access Assistance.** (NAPIS) (1 contact) A service that assists caregivers in obtaining access to the services and resources that are available within their communities. To the maximum extent practicable, it ensures that the individuals receive the services needed by establishing adequate follow-up procedures. [Note: Information and assistance to caregivers is an access service, i.e., a service that:
 - (A) Provides individuals with information on services available within the communities;
 - (B) Links individuals to the services and opportunities that are available within the communities;
 - (C) To the maximum extent practicable, establishes adequate follow-up procedures. Internet web site “hits” are to be counted only if information is requested and supplied.]
3. **Access.** (IDAPA Ombudsman 15.01.03.010.01) Right to enter long-term care facility upon notification of person in charge.
4. **Access Services.** (ICOA) Transportation, Outreach, Information and Assistance and Case Management.
5. **Act.** (IDAPA) 15.01.01.009.01: The Idaho Senior Services Act. Programs and services established in Sections 67-5001 through 67-5011, Idaho Code.
6. **Activities of Daily Living (ADL).** (ICOA) Bathing, dressing, toileting, transferring, eating, walking.
7. **Adult child with a disability.** (OAA Section 102(a)(3)) means a child who—
 - A. Is 18 years of age or older;
 - B. Is financially dependent on an older individual who is a parent of the child; and
 - C. Has a disability.
8. **Adult Day Care/Adult Day Health.** (NAPIS) (1 Hour) Personal care for dependent elders in a supervised, protective, and congregate setting during some portion of a day. Services offered in conjunction with adult day care/adult day health typically include social and recreational activities, training, counseling, and services such as rehabilitation, medications assistance and home health aide services for adult day health.

9. **Adult Day Care.** (IC 67-5006(5)) (ICOA) a structured day program which provides individually planned care, supervision, social interaction and supportive services for frail older persons in a protective setting, and provides relief and support for caregivers.
10. **Adult Protective Services.** (IDAPA 15.01.02.010.01) Statutory protections safeguarding vulnerable adults through investigations of reports alleging abuse, neglect, self-neglect or exploitation, and arrangements for the provision of emergency or supportive services necessary to reduce or eliminate risk of harm.
11. **Adult Protective Services.** (OAA Section 102(a)(3)) (OAA Reauthorization Act of 2016) such services provided to adults as the Secretary may specify and includes services such as:
 - A. receiving reports of adult abuse, neglect, or exploitation;
 - B. investigating the reports described in subparagraph (A);
 - C. case planning, monitoring, evaluation, and other casework and services; and
 - D. providing, arranging for, or facilitating the provision of medical, social service, economic, legal, housing, law enforcement, or other protective, emergency, or support services.
12. **AP Supervisor.** (ICOA) AAA employee responsible for overseeing the provision of AP services. The Supervisor's duties include:
 - A. the direct supervision of AP staff,
 - B. case assignments,
 - C. the monitoring of caseloads and documentation,
 - D. and the maintenance of cooperative relationships with other agencies, organizations or groups serving vulnerable "at risk" populations.
 - E. The employee shall be a social worker licensed to practice in Idaho.
13. **AP Worker.** (ICOA) AAA employee providing AP services. The worker's duties include:
 - A. the investigation of AP reports,
 - B. client risk assessment,
 - C. and the development of plans for protective actions, supportive services and/or law enforcement referral.
 - D. The employee shall be any one (1) of the following:
 1. A social worker licensed to practice in Idaho; or
 2. An individual with a Bachelor of Arts (BA) or Bachelor of Science (BS) in a human services field or equivalent and at least two (2) years' experience in direct service delivery to vulnerable adults; or
 3. An individual with an Associate of Arts (AA) or Associate of Science (AS) degree and at least two (2) years' experience in law enforcement.
14. **Advance Directive.** (ICOA) A Living Will or Durable Power of Attorney for Healthcare executed under the Natural Death Act, Section 39-4501, Idaho Code.
15. **Affected Parties.** (IDAPA Ombudsman 15.01.03.010.02) Long-term care facilities, state or county departments or agencies, or others against whom a complaint has been lodged.
16. **Agency Executive/Management Staff.** (NAPIS) Personnel such as SUA director, deputy directors, directors of key divisions and other positions which provide overall leadership and direction for the state or area agency on aging.

17. **Aging and Disability Resource Center.** (IC 67-5006(8)) Aging and disability resource center" means an entity established by a state as part of the state system of long-term care, to provide a coordinated system for providing:
- A. Comprehensive information on the full range of available public and private long-term care programs, options, service providers and resources within a community, including information on the availability of integrated long-term care;
 - B. Personal counseling to assist individuals in assessing their existing or anticipated long-term care needs, and developing and implementing a plan for long-term care designed to meet their specific needs and circumstances; and
 - C. Consumers' access to the range of publicly supported long-term care programs for which consumers may be eligible, by serving as a convenient point of entry for such programs.
18. **Aging and Disability Resource Center.** (OAA Section 102(a)(4) (OAA Reauthorization Act of 2016) means an entity, network, or consortium established by a State as part of the State system of long-term care, to provide a coordinated and integrated system for older individuals and individuals with disabilities (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)), and the caregivers of older individuals and individuals with disabilities, that provides--
- A. comprehensive information on the full range of available public and private long-term care programs, options, service providers, and resources within a community, including information on the availability of integrated long-term care services, and Federal or State programs.
 - B. person-centered counseling to assist individuals in assessing their existing or anticipated long-term care needs and goals, and developing and implementing a person-centered plan for long-term care that is consistent with the desires of such an individual and designed to meet the individual's specific needs, goals, and circumstances;
 - C. access for individuals to the full range of publicly-supported long-term care services and supports for which the individuals may be eligible, including home and community-based service options, by serving as a convenient point of entry for such programs and supports; and
 - D. in cooperation with area agencies on aging, centers for independent living described in part C of title VII of the Rehabilitation Act of 1973 (29 U.S.C.796f et seq.), and other community-based entities, information and referrals regarding available home and community-based services for individuals who are at risk for residing in, or who reside in, institutional settings, so that the individuals have the choice to remain in or to return to the community.";
19. **Aging Network.** (15.01.01.009.02): The ICOA, the AAAs, Focal Points and other providers of direct service to older individuals.
20. **Aging Network.** (OAA Section 102(a)(5)) the network of—
- A. State agencies, area agencies on aging, title VI grantees, and the Administration; and
 - B. organizations that—
 - 1. are providers of direct services to older individuals; or
 - 2. are institutions of higher education; and
 - 3. receive funding under this Act.
21. **Aging Network.** (ICOA) The ICOA, the AAAs, and other providers.

22. Area Agency on Aging (AAA). 15.01.01.009.03: Separate organizational unit within a unit of general purpose local government or public or private non-profit agency or organization 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 specified geographic area.
23. **Area Agency on Aging.** (OAA Section 102(a)(6)) an area agency on aging designated under section 305(a)(2)(A) or a State agency performing the functions of an area agency on aging under section 305(b)(5).
24. **Area I.** (ICOA) Planning and service area made up of: Benewah, Boundary, Bonner, Kootenai, and Shoshone counties.
25. **Area II.** (ICOA) Planning and service area made up of: Clearwater, Idaho, Latah, Lewis, and Nez Perce counties.
26. **Area III.** (ICOA & IDAPA Ombudsman IDAPA 15.01.03.010.03) Planning and service area made up of: Canyon, Valley, Boise, Gem, Elmore, Washington, Ada, Adams, Payette, and Owyhee counties.
27. **Area IV.** (ICOA) Planning and service area made up of: Blaine, Camas, Cassis, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls counties.
28. **Area V.** (ICOA) Planning and service area made up of: Bannock, Bear Lake, Bingham, Caribou, Franklin, Oneida, and Power counties.
29. **Area VI.** (ICOA) Planning and service area made up of: Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison, and Teton counties.
30. **Area Plan.** (ICOA & IDAPA 15.01.20.010.01) Plan describing aging programs and services which an AAA is required to submit to the Idaho Commission on Aging, in accordance with the OAA, in order to receive OAA funding.
31. **Assessment.** (IDAPA 15.01.01.009.04): **An instrument utilizing uniform criteria to assess eligibility.**
32. **Assistive device (includes assistive technology).** (OAA Section 102(a)(8)(B)) assistive technology, assistive technology device, and assistive technology service' have the meanings given such terms in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).
33. **Assisted Transportation.** (NAPIS - 1 Way Trip) Assistance and transportation, including escort, to a person who has difficulties (physical or cognitive) using regular vehicular transportation.
34. **At Risk for Institutional Placement.** (OAA Section 102(a)(9)) with respect to an older individual, that such individual is unable to perform at least 2 activities of daily living without substantial assistance (including verbal reminding, physical cuing, or supervision) and is determined by the State involved to be in need of placement in a long-term care facility.
35. **Board and Care Facility.** (OAA Section 102(a)(10)) an institution regulated by a State pursuant to section 1616(e) of the Social Security Act (42 U.S.C. 1382e(e)).
36. **Caregiver.** (OAA Section 102(a)(18)(B)) means an individual who has the responsibility for the care of an older individual, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an older individual.

37. **Caregiver.** (IDAPA 15.01.01.009.05 & NAPIS) An adult family member or another individual, who is an “informal” provider of in-home and community care to an older individual. “Informal” means that the care is not provided as part of a public or private formal service program.
38. **Caretaker.** (IC 39-5302(2)) means any individual or institution that is responsible by relationship, contract, or court order to provide food, shelter or clothing, medical or other life-sustaining necessities to a vulnerable adult.
39. **Case Manager.** (ICOA) A licensed social worker, licensed professional nurse (RN), or Certified Case Manager, or an individual with a BA or BS in a human services field or equivalent and at least one (1) year experience in service delivery to the service population. (3-30-01)
40. **Case Management.** (NAPIS - 1 Hour) Assistance either in the form of access or care coordination in circumstances where the older person is experiencing diminished functioning capacities, personal conditions or other characteristics which require the provision of services by formal service providers or family caregivers. Activities of case management include such practices as:
- (A) Assessing needs,
 - (B) Developing care plans,
 - (C) Authorizing and coordinating services among providers, and
 - (D) Providing follow-up and reassessment, as required.
41. **Case Management.** (ICOA) Case management is a service provided to older individuals and disabled adults, at the direction of the individual or a family member of the individual, to assess the needs of the person and to arrange, coordinate, and monitor an optimum package of services to meet those needs.
- A. Activities of case management include:
- i. comprehensive assessment of the individual;
 - ii. development and implementation of a service plan with the individual to mobilize formal and informal resources and services;
 - iii. coordination and monitoring of formal and informal service delivery;
 - iv. and periodic reassessment.
42. **Case Management Services.** (IC 67-5006(9) & OAA Section 102(a)(11))
- A. A service provided to an older individual, at the direction of the older individual or a family member of the individual—
- 1. By an individual who is trained or experienced in the case management skills that are required to deliver the services and coordination described in subparagraph (2); and
 - 2. To assess the needs, and to arrange, coordinate, and monitor an optimum package of services to meet the needs, of the older individual; and
- B. Includes services and coordination such as—
- 1. Comprehensive assessment of the older individual (including the physical, psychological, and social needs of the individual);
 - 2. Development and implementation of a service plan with the older individual to mobilize the formal and informal resources and services identified in the assessment to meet the needs of the older individual, including coordination of the resources and services—
 - a. With any other plans that exist for various formal services, such as hospital discharge plans; and
 - b. With the information and assistance services provided under this Act;

3. Coordination and monitoring of formal and informal service delivery, including coordination and monitoring to ensure that services specified in the plan are being provided;
 4. Periodic reassessment and revision of the status of the older individual with—
 - a. The older individual; or
 - b. If necessary, a primary caregiver or family member of the older individual
 5. In accordance with the wishes of the older individual, advocacy on behalf of the older individual for needed services or resources.
43. **Case Management Supervisor.** (ICOA) An individual who has at least a BA or BS degree and is a licensed social worker, psychologist or licensed professional nurse (registered nurse/RN) with at least two (2) years' experience in service delivery to the service population.
44. **Cash and Counseling.** (NAPIS - People Served, Title III Expenditures, Total Expenditures) This covers the range of services provided or paid for through allowance, vouchers, or cash which are provided to the client so that the client can obtain the supportive services which are needed. Since service units could be so diverse they would not provide meaningful results they are not included.
45. **Certified Case Manager.** (ICOA) A Case Manager who has met the requirements for certification as established by the National Academy of Care/Case Managers or other professional association recognized by the Idaho Commission on Aging. (5-3-03)
46. **Child.** (NAPIS) An individual who is not more than 18 years of age or an individual 19 – 59 years of age who has a severe disability. The term relates to a grandparent or other older relative who is a caregiver of a child.
47. **Child.** (OAA Section 372(a)(1)) means an individual who is not more than 18 years of age or who is an individual with a disability.
48. **Chore.** (NAPIS - 1 Hour) Assistance such as heavy housework, yard work or sidewalk maintenance for a person.
49. **Chore Services.** (ICOA) Providing assistance with routine yard work, sidewalk maintenance, heavy cleaning, or minor household maintenance to persons who have functional limitations that prohibit them from performing these tasks. (5-3-03)
50. **Civic Engagement.** (OAA Section 102(a)(12)) an individual or collective action designed to address a public concern or an unmet human, educational, health care, environmental, or public safety need.
51. **Client.** (IDAPA 15.01.01.009.06) Person who has met service eligibility requirements addressed in this chapter.
52. **Cognitive Impairment.** (ICOA) A disability or condition due to mental impairment.
53. **Commission.** (IC 39-5302(3)) means the Idaho Commission on Aging (ICOA), established pursuant to [chapter 50, title 67](#), Idaho Code.
54. **Complainant.** (IDAPA Ombudsman 15.01.03.010.04) The substate ombudsman or any individual or organization who registers a complaint with the substate ombudsman.
55. **Complaints.** (IDAPA Ombudsman 15.01.03.010.06) Allegations made by or on behalf of eligible clients, whether living in long-term care facilities or in the community.
56. **Comprehensive and coordinated system.** (OAA Section 302(1)) means a system for providing all necessary supportive services, including nutrition services, in a manner designed to

- A. Facilitate accessibility to, and utilization of, all supportive services and nutrition services provided within the geographic area served by such system by any public or private agency or organization;
 - B. Develop and make the most efficient use of supportive services and nutrition services in meeting the needs of older individuals;
 - C. Use available resources efficiently and with a minimum of duplication; and
 - D. Encourage and assist public and private entities that have unrealized potential for meeting the service needs of older individuals to assist the older individuals on a voluntary basis.
57. **Congregate Meals.** (IC 67-5006(3)) meals prepared and served in a congregate setting which provide older persons with assistance in maintaining a well-balanced diet, including diet counseling and nutrition education.
58. **Congregate Meals.** (ICOA) Meals that meet the requirements of the OAA, as amended, served in a group setting.
59. **Congregate Meals.** (NAPIS - 1 Meal) A meal provided to a qualified individual in a congregate or group setting. The meal as served meets all of the requirements of the Older Americans Act and State/Local laws. Meals provided to individuals through means-tested programs such as Medicaid Title XIX waiver meals or other programs such as state-funded means-tested programs are excluded from the NSIP meals figure.
60. **Contract.** (IDAPA 15.01.20.010.02) A legally binding, written agreement between two (2) or more parties which outlines the terms and provisions to which both parties agree.
61. **Contractor.** (IC 39-5302(4)) means an Area Agency on Aging (AAA) and its duly authorized agents and employees providing adult protection services pursuant to a contract with the commission in accordance with section 67-5011 Idaho Code. The commission designates area agencies on aging pursuant to 42 U.S.C.A. 3025(a)(2)(A) and may establish by rule when duties or obligations under this chapter may be fulfilled by an area agency on aging.
62. **Cost Sharing Payment.** (IDAPA 15.01.01.009.07) An established payment required from individuals receiving services under this chapter. The cost sharing payment varies by regulation and according to client's current annual household or individual income.
63. **Counseling.** (NAPIS - 1 session per participant) Counseling to caregivers to assist them in making decisions and solving problems relating to their caregiver roles. This includes counseling to individuals, support groups, and caregiver training (of individual caregivers and families).
64. **Department.** (IDAPA 15.01.01.009.08 & IC 39-5302) Idaho Department of Health and Welfare.
65. **Designation.** (IDAPA Ombudsman 15.01.03.010.07) Process by which the Office approves the location of substate ombudsman programs within AAAs and delegates to such programs the authority to carry out the purposes of the program.
66. **Direct Costs.** (ICOA) Costs incurred from the provision of direct services. These costs include, but are not limited to, salaries, fringe benefits, travel, equipment, and supplies directly involved in the provision of services. Salaries of program coordinators and first line supervisors are considered direct costs.
67. **Disability.** (OAA Section 102(a)(13)) (except when such term is used in the phrase "severe disability", "developmental disability- "physical or mental disability", "physical and mental disabilities", or "physical disabilities") a disability attributable to mental or physical impairment, or

a combination of mental and physical impairments, that results in substantial functional limitations in 1 or more of the following areas of major life activity:

- A. Self-care,
- B. Receptive and expressive language,
- C. Learning,
- D. Mobility,
- E. Self-direction,
- F. Capacity for independent living,
- G. Economic self-sufficiency,
- H. Cognitive functioning, and
- I. Emotional adjustment.

68. Disease Prevention and Health Promotion Services. (OAA Section 102(a)(14))

- A. Health risk assessments;
- B. Routine health screening, which may include hypertension, glaucoma, cholesterol, cancer, vision, hearing, diabetes, bone density, oral health and nutrition screening;
- C. Nutritional counseling and educational services for individuals and their primary caregivers;
- D. Evidence-based health promotion programs, including programs related to the prevention and mitigation of the effects of chronic disease (including osteoporosis, hypertension, obesity, diabetes, and cardiovascular disease), alcohol and substance abuse reduction, smoking cessation, weight loss and control, stress management, falls prevention, physical activity and improved nutrition;
- E. Programs regarding physical fitness, group exercise, and music therapy, art therapy, and dance-movement therapy, including programs for multigenerational participation that are provided by—
 - 1. an institution of higher education;
 - 2. a local educational agency, as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801); or
 - 3. a community-based organization;
- F. Home injury control services, including screening of high-risk home environments and provision of educational programs on injury prevention (including fall and fracture prevention) in the home environment;
- G. Screening for the prevention of depression, coordination of community mental and behavioral health services, provision of educational activities, and referral to psychiatric and psychological services;
- H. Educational programs on the availability, benefits, and appropriate use of preventive health services covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);
- I. Medication management screening and education to prevent incorrect medication and adverse drug reactions;
- J. Information concerning diagnosis, prevention, treatment, and rehabilitation concerning age-related diseases and chronic disabling conditions, including osteoporosis, cardiovascular diseases, diabetes, and Alzheimer's disease and related disorders with neurological and organic brain dysfunction;
- K. Gerontological counseling; and
- L. Counseling regarding social services and follow up health services based on any of the services described in subparagraphs (A) through (K). The term shall not include services for which payment may be made under titles XVIII and XIX of the Social Security Act.

69. **Education and Training Service.** (OAA Section 302(2)) means a supportive service designed to assist older individuals to better cope with their economic, health, and personal needs through services such as consumer education, continuing education, health education, pre-retirement education, financial planning, and other education and training services which will advance the objectives of this Act.
70. **Elder Abuse.** (OAA Section 102(a)(15)) abuse of an older individual.
71. **Elder Abuse, Neglect and Exploitation.** (OAA Section 102(a)(16)) abuse, neglect, and exploitation, of an older individual.
72. **Elder Justice.** (OAA Section 102(a)(17))
- A. From a societal perspective, efforts to—
 - i. Prevent, detect, treat, intervene in, and prosecute elder abuse, neglect, and exploitation; and
 - ii. Protect older individuals with diminished capacity while maximizing their autonomy; and
 - B. From an individual perspective, the recognition of an older individual's rights, including the right to be free of abuse, neglect, and exploitation.; and
73. **Elder Rights.** (OAA Section 761(1)) means a right of an older individual.
74. **Elderly Client.** (NAPIS) An eligible (60 years of age or older or who is less than 60 and has a diagnosis of early onset dementia) elderly individual who receives OAA services.
75. **Eligible Clients.** (ICOA) Residents of the state of Idaho who are sixty (60) years or older.
76. **Eligibility Entity.** (OAA Section 422(a)(1))
- A. Means a nonprofit health or social service organization, a community-based nonprofit organization, an area agency on aging or other local government agency, a tribal organization, or another entity that—
 - 1. The Assistant Secretary determines to be appropriate to carry out a project under this part; and
 - 2. Demonstrates a record of, and experience in, providing or administering group and individual health and social services for older individuals; and
 - B. Does not include an entity providing housing under the congregate housing services program carried out under section 802 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8011) or the multifamily service coordinator program carried out under section 202(g) of the Housing Act of 1959 (12 U.S.C. 1701q(g)).
77. **Emergency.** (IC 39-5302(6)) means an exigent circumstance in which a vulnerable adult's health and safety is placed in imminent danger. Imminent danger is when death or severe bodily injury could reasonably be expected to occur without intervention.
78. **Exploitation and financial exploitation.** (OAA Section 102(a)(18)(a))
- 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.
 - B. In subparagraph (1), the term 'caregiver' means an individual who has the responsibility for the care of an older individual, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an older individual.

79. **Exploitation and Financial Exploitation.** (IC 39-5302(7)) 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.
80. **Family Caregiver.** (OAA Section 302(3)) means an adult family member, or another individual, who is an informal provider of in-home and community care to an older individual or to an individual with Alzheimer's disease or a related disorder with neurological and organic brain dysfunction.
81. **Family Violence.** (OAA Section 102(a)(19)) same meaning given the term in the Family Violence Prevention and Services Act (42 U.S.C. 10408).
82. **Fiscal Effectiveness.** (ICOA) A financial record of the cost of all formal services provided to insure that maintenance of an individual at home is more cost effective than placement of that individual in an institutional long-term care setting.
83. **Fiduciary.** (OAA Section 102(a)(20))
- A. Person or entity with the legal responsibility –
 1. to make decisions on behalf of and for the benefit of another person; and
 2. to act in good faith and with fairness; and
 - B. Includes a trustee, a guardian, a conservator, an executor, an agent under a financial power of attorney or health care power of attorney, or a representative payee.
84. **Focal Point.** (OAA Section 102(a)(21)) and (15.01.01.009.09)a facility established to encourage the maximum collocation and coordination of services for older individuals.
85. **Formal Services.** (ICOA) Services provided to clients by a formally organized entity, including, but not limited to, Medicaid HCBS.
86. **Formal Supports.** (IDAPA 15.01.01.009.10) Services provided to clients by a formally organized entity, including, but not limited to, Medicaid HCBS.
87. **Frail.** (OAA Section 102(a)(22))
- A. With respect to an older individual in a State, that the older individual is determined to be functionally impaired because the individual—
 1. is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision; or
 2. at the option of the State, is unable to perform at least three such activities without such assistance; or
 - B. Due to a cognitive or other mental impairment, requires substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or to another individual.
88. **Functional Impairment.** (ICOA) A condition that limits an individual's ability to perform ADLs and IADLs.
89. **Grandparent or other older relative caregiver of a child.** (NAPIS) A grandparent, step grandparent or other relative of a child by blood or marriage, who is 55 years of age or older and
- (A) Lives with the child;
 - (B) Is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and
 - (C) Has a legal relationship to the child, as such legal custody or guardianship, or is raising the child informally.
90. **Grandparent or Older Individual Who is a Relative Caregiver.** (OAA Section 372(2)) The term "grandparent or older individual who is a relative caregiver" means a grandparent or step-

grandparent of a child, or a relative of a child by blood, marriage, or adoption who is 55 years of age or older and—

- A. Lives with the child;
 - B. Is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and
 - C. Has a legal relationship to the child, as such legal custody or guardianship, or is raising the child informally.
91. **Greatest Economic Need.** (OAA Section 102(a)(23)) the need resulting from an income level at or below the poverty line.
92. **Greatest Social Need.** (OAA Section 102(a)(24)) the need caused by non-economic factors, which include—
- A. Physical and mental disabilities;
 - B. Language barriers; and
 - C. Cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that—
 1. restricts the ability of an individual to perform normal daily tasks; or
 2. threatens the capacity of the individual to live independently.
93. **Health Promotions.** (NAPIS) Services which include health screenings and assessments; organized physical fitness activities; evidence-based health promotion programs; medication management; home injury control services; and/or information, education, and prevention strategies for chronic disease and other health conditions that would reduce the length or quality of life of the person 60 or older. Since service units could be so diverse they would not provide meaningful results they are not included.
94. **High Nutritional Risk Person.** (ICOA & Federal Survey) An individual who scores six (6) or higher on the DETERMINE Your Nutritional Risk checklist published by the Nutrition Screening Initiative.
95. **Hispanic-serving institutions.** (OAA Section 102(a)(25))Section 502 of the Higher Education Act of 1965 (20 U.S.C. 1101a) defines the term as an institution of higher education that –
- A. Is an eligible institution;
 - B. At the time of application, has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students; and
 - C. Provides assurances that not less than 50 percent of the institution’s Hispanic students are low-income individuals, which assurances –
 1. May employ statistical extrapolation using appropriate data from the Bureau of the Census or other appropriate Federal or State sources; and
 2. The Secretary shall consider as meeting the requirements of this subparagraph, unless the Secretary determines, based on a preponderance of the evidence, that the assurances do not meet the requirements.
96. **Home-Delivered Meals.** (ICOA) Meals delivered to eligible clients in private homes. These meals shall meet the requirements of the OAA.
97. **Home-Delivered Meals.** (NAPIS - 1 Meal) A meal provided to a qualified individual in his/her place of residence. The meal is served in a program administered by SUAs and/or AAAs and meets all of the requirements of the Older Americans Act and State/Local laws. Meals provided to individuals through means-tested programs such as Medicaid Title XIX waiver meals or other programs such as

state-funded means-tested programs are excluded from the NSIP meals figure. Certain Title III-E funded home delivered meals may also be included – see the definition of NSIP meals below.

98. **Homemaker.** (NAPIS - 1 Hour) Assistance such as preparing meals, shopping for personal items, managing money, using the telephone or doing light housework.
99. **Homemaker.** (ICOA) A person who has successfully completed a basic prescribed training, who, under the supervision of a provider, supplies homemaker services.
100. **Homemaker Service.** (ICOA) Assistance with housekeeping, meal planning and preparation, essential shopping and personal errands, banking and bill paying, medication management, and, with restrictions, bathing and washing hair.
101. **Household.** (IDAPA 15.01.01.009.11) For sliding fee purposes, a “household” includes a client and any other permanent resident in the same dwelling who share accommodations and expenses with the client.
102. **ICOA.** (IDAPA 15.01.01.009.12) Idaho Commission on Aging (ICOA).
103. **ICOA Program Manual.** (IDAPA 15.01.01.009.13) Operational guidance for services and programs.
104. **Immediate family.** (OAA 1327.1 Ombudsman Definitions) pertaining to conflicts of interest as used in section 712 of the Act, means a member of the household or a relative with whom there is a close personal or significant financial relationship.”
Additional Information: Limited to “conflict of interest” context (not regarding services to residents and their families)
105. **Impairments in Activities of Daily Living (ADL).** (IDAPA 15.01.01.009.14 & NAPIS) The inability to perform one or more of the following six activities of daily living without personal assistance, stand-by assistance, supervision or cues: eating, dressing, bathing, toileting, transferring in and out of bed/chair, and walking.
106. **Impairment in Instrumental Activities of Daily Living (IADL).** (IDAPA 15.01.01.009.15 & NAPIS) The inability to perform one or more of the following eight instrumental activities of daily living without personal assistance, or stand-by assistance, supervision or cues: preparing meals, shopping for personal items, medication management, managing money, using telephone, doing heavy housework, doing light housework, and transportation ability (transportation ability refers to the individual’s ability to make use of available transportation without assistance).
107. **In-home Services.** (OAA Section 102(a)(30)) Includes—
 - A. Services of homemakers and home health aides;
 - B. Visiting and telephone reassurance;
 - C. Chore maintenance;
 - D. In-home respite care for families, and adult day care as a respite service for families;
 - E. Minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home and that is not available under another program (other than a program carried out under this Act);
 - F. Personal care services; and
 - G. Other in-home services as defined—
 1. by the State agency in the State plan submitted in accordance with section 307; and
 2. by the area agency on aging in the area plan submitted in accordance with section 306.
108. **In-home Services.** (IC 67-5006(2)) Provide care for older persons in their own homes and help them maintain, strengthen, and safeguard their personal functioning in their own homes. These

services shall include, but not be limited to case management, homemakers, chores, telephone reassurance, home delivered meals, friendly visiting and shopping assistance, and in-home respite care.

109. **Indian.** (OAA Section 102(a)(26)) Means a person who is a member of an Indian tribe.
110. **Indian Tribe.** (OAA Section 102(a)(27)) Means any tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Public Law 92–203; 85 Stat. 688) which (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (B) is located on, or in proximity to, a Federal or State reservation or rancheria.
111. **Information Services.** (NAPIS - 1 activity) A service for caregivers that provides the public and individuals with information on resources and services available to the individuals within their communities. [Note: service units for information services are for activities directed to large audiences of current or potential caregivers such as disseminating publications, conducting media campaigns, and other similar activities.]
112. **Information and Assistance.** (NAPIS - 1 contact) A service that:
- A. Provides individuals with information on services available within the communities;
 - B. Links individuals to the services and opportunities that are available within the communities;
 - C. To the maximum extent practicable, establishes adequate follow-up procedures. Internet web site “hits” are to be counted only if information is requested and supplied.
 - D. Note. The service units for information and assistance and for outreach are individual, one-on-one contacts between a service provider and an elderly client or caregiver. An activity that involves contact with multiple current or potential clients or caregivers (e.g., publications, publicity campaigns, and other mass media activities) should not be counted as a unit of service. Such services might be termed public information and reported on the public information category. They may also be reported in “Section II.E.-Utilization and Expenditures Profiles, Other Services Profile.
113. **Information and Assistance Service.** (IC 67-5006(6) & OAA Section 102(a)(28)) Means a service for older individuals that—
- A. Provides the individuals with current information on opportunities and services available to the individuals within their communities, including information relating to assistive technology;
 - B. Assesses the problems and capacities of the individuals;
 - C. Links the individuals to the opportunities and services that are available;
 - D. To the maximum extent practicable, ensures that the individuals receive the services needed by the individuals, and are aware of the opportunities available to the individuals, by establishing adequate follow-up procedures; and
 - E. Serves the entire community of older individuals, particularly—
 - 1. Older individuals with greatest social need;
 - 2. Older individuals with greatest economic need; and
 - 3. Older individuals at risk for institutional placement.
114. **Information and Assistance (I&A)** (ICOA) Information and Assistance Services initiated by an older person or their representative that:
- A. Provides current information about services available within the community, including information about assistive technology;
 - B. Assesses the problem, determines the appropriate available service, and makes the referral;

- C. To the maximum extent practicable, by establishing adequate follow-up procedures, ensures that the client receives the needed service and is made aware of other available services.
115. **Information and Referral.** (IC 67-5006(7) & OAA Section 102(a)(29)) includes information relating to assistive technology.
116. **Informal Supports.** (IDAPA 15.01.01.009.16) Supports provided by church, family, friends, and neighbors, usually at no cost to the client.
117. **Institution of Higher Education.** (OAA Section 102(a)(31)) has the meaning given the term in section 101 of the Higher Education Act of 1965.
118. **Instrumental Activities of Daily Living (IADL).** (ICOA) Meal preparation, money management, transportation, shopping, using the telephone, medication management, heavy housework, light housework.
119. **Integrated Long-term Care.** (OAA Section 102(a)(32))
- A. Means items and services that consist of –
 - 1. With respect to long-term care –
 - a. Long-term care items or services provided under a State plan for medical assistance under the Medicaid program established under Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), including nursing facility services, home and community-based services, personal care services, and case management services provided under the plan; and
 - b. Any other supports, items, or services that are available under any federally funded long-term care program; and
 - 2. with respect to other health care, items and services covered under –
 - a. The Medicare program established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);
 - b. The State plan for medical assistance under the Medicaid program; or
 - c. Any other federally funded health care program; and
 - B. Includes items or services described in subparagraph (A) that are provided under a public or private managed care plan or through any other service provider.
120. **Legal Assistance.** (OAA Section 102(a)(33))
- A. Means legal advice and representation provided by an attorney to older individuals with economic or social needs; and
 - B. Includes—
 - 1. To the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney; and
 - 2. Counseling or representation by a nonlawyer where permitted by law.
121. **Legal Assistance.** (ICOA) Advice, counseling, or representation by an attorney or by a paralegal under the supervision of an attorney.
122. **Legal Assistance Development.** (NAPIS) Activities carried out by the state “Legal Assistance Developer” that are designed to coordinate and enhance state and local legal services and elder rights programs.

123. **Legal Representative.** (IDAPA 15.01.02.010.02) A person with documented legal authority to act on behalf of another individual.
124. **Legal Representative.** (ICOA) A person who carries a Power of Attorney or who is appointed Guardian or Conservator with legal authority to speak for a client.
125. **Living alone.** (NAPIS) A one-person household (using the Census definition of household) where the householder lives by his or herself in an owned or rented place of residence in a non-institutional setting, including board and care facilities, assisted living units and group homes.
126. **Long-Term Care.** (OAA Section 102(a)(34)) means any service, care, or item (including an assistive device), including a disease prevention and health promotion service, an in-home service, and a case management service –
- A. Intended to assist individuals in coping with, and to the extent practicable compensate for, a functional impairment in carrying out activities of daily living;
 - B. Furnished at home, in a community care setting (including a small community care setting as defined in subsection (g)(1), and a large community care setting as defined in subsection (h)(1), of section 1929 of the Social Security Act (42 U.S.C. 1396t)), or in a long-term care facility; and
 - C. Not furnished to prevent, diagnose, treat, or cure a medical disease or condition.
127. **Long-Term Care Facility.** (OAA Section 102(a)(35)) means—
- A. Any skilled nursing facility, as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i–3(a));
 - B. Any nursing facility, as defined in section 1919(a) of the Social Security Act (42 U.S.C. 1396r(a));
 - C. For purposes of sections OAA 307(a)(12) and 712, a board and care facility; and
 - D. Any other adult care home, including an assisted living facility, similar to a facility or institution described in subparagraphs (1) through (3).
128. **Long-Term Care Facility.** (IDAPA Ombudsman 15.01.03.010.10) Skilled nursing facilities as defined in IDAPA 16.03.02, Subsection 002.33, “Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities,” and residential care facilities as defined in IDAPA 16.03.22, “Rules for Licensed Residential and Assisted Living Facilities in Idaho.”
129. **Meal Site.** (ICOA) A facility or location where eligible persons (and spouses) assemble for a meal, either site prepared or catered.
130. **Medicaid HCBS.** (IDAPA 15.01.01.009.17) Services approved under the Medicaid Waiver for the aged and disabled.
131. **Minority Provider.** (NAPIS) A provider of services to clients which meets any one of the following criteria:
- A. A not for profit organization with a controlling board comprised at least 51% of individuals in the racial and ethnic categories listed below.
 - B. A private business concern that is at least 51 percent owned by individuals in the racial and ethnic categories listed below.
 - C. A publicly owned business having at least 51 percent of its stock owned by one or more individuals and having its management and daily business controlled by one or more individuals in the racial and ethnic categories listed below. The applicable racial and ethnic categories include: American Indian or Alaskan Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic.
132. **Multipurpose Senior Center.** (OAA Section 102(a)(36)) Means a community facility for the organization and provision of a broad spectrum of services, which shall include provision of health

(including mental health), social, nutritional, and educational services and the provision of facilities for recreational activities for older individuals.

133. **National Aging Program Information System.** (NAPIS & ICOA) Standardized nationwide reporting system that tracks:

- A. Service levels by individual service, identifies client characteristics, State and AAA staffing profiles, and identifies major program accomplishments; and
- B. Complaints received against long term care facilities and family members or complaints related to rights, benefits and entitlements.

134. **Native American.** (OAA Section 102(a)(37)) Means—

- A. An Indian as defined in paragraph (5); and
- B. A Native Hawaiian, as defined in section 625.

135. **Naturally Occurring Retirement Community.** (OAA Section 422(a)(2)) Means a community with a concentrated population of older individuals, which may include a residential building, a housing complex, an area (including a rural area) of single-family residences, or a neighborhood composed of age-integrated housing—

- A. Where—
 - 1. 40 percent of the heads of households are older individuals; or
 - 2. A critical mass of older individuals exists, based on local factors that, taken in total, allow an organization to achieve efficiencies in the provision of health and social services to older individuals living in the community; and
- B. That is not an institutional care or assisted living setting.

136. **Neglect.** (OAA Section 102(a)(38)) Means-

- A. The failure of a caregiver (as defined in paragraph (27) or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an older individual; or
- B. self-neglect.

137. **Neglect.** (IC 39-5302(8)) Means 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.

138. **NSIP Meals.** (NAPIS - 1 meal) A Nutrition Services Incentive Program (NSIP) Meal is a meal served in compliance with all the requirements of the OAA, which means at a minimum that:

- (A) It has been served to a participant who is eligible under the OAA and has NOT been means-tested for participation;
- (B) It is compliant with the nutrition requirements;
- (C) It is served by an eligible agency; and
- (D) It is served to an individual who has an opportunity to contribute. Meal counts include all OAA eligible meals including those served to persons under age 60 where authorized by the OAA. NSIP Meals also include home delivered meals provided as Supplemental Services under the National Family Caregiver Support Program (Title III-E) to persons aged 60 and over who are either care recipients (as well as their spouses of any age) or caregivers.

139. **Non-Institutional.** (ICOA) Living arrangements which do not provide medical oversight or organized supervision of residents' activities of daily living. Non-institutional residences include:

- A. Congregate housing units,
- B. Board and room facilities,

- C. Private residential houses,
- D. Apartments,
- E. Condominiums,
- F. Duplexes and multiplexes,
- G. Hotel/ motel rooms, and
- H. Group homes in which residents are typically unrelated to individuals.

Non-institutional does not include:

- A. skilled nursing homes,
- B. residential care facilities,
- C. homes providing adult foster care,
- D. hospitals,
- E. or residential schools/hospitals for the severely developmentally disabled or the chronically mentally ill.

140. **Non-Jurisdictional Complaints.** (IDAPA Ombudsman 15.01.03.010.08) Complaints made by or on behalf of residents of long-term care facilities who are under the age of sixty (60) or complaints concerning persons outside the statutory jurisdiction of an ombudsman.

141. **Nonprofit.** (OAA Section 102(a)(39)) As applied to any agency, institution, or organization means an agency, institution, or organization which is, or is owned and operated by, one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

142. **Nutrition Counseling.** (NAPIS - 1 session per participant) Individualized guidance to individuals who are at nutritional risk because of their health or nutrition history, dietary intake, chronic illnesses, or medications use, or to caregivers. Counseling is provided one-on-one by a registered dietician, and addresses the options and methods for improving nutrition status.

143. **Nutrition Education.** (NAPIS - 1 session per participant) A program to promote better health by providing accurate and culturally sensitive nutrition, physical fitness, or health (as it relates to nutrition) information and instruction to participants, caregivers, or participants and caregivers in a group or individual setting overseen by a dietician or individual of comparable expertise.

144. **Office.** (OAA 712(a)(2)) For purposes of Long-Term Care Ombudsman only, "Office" is defined as: the individual described in section 712(a)(2) Ombudsman – the Office shall be headed by an individual, to be known as the State Long Term Care Ombudsman, who shall be selected from among individuals with expertise and experience in the fields of long term care and advocacy.

145. **Office.** (IDAPA Ombudsman 15.01.03.010.09) Office of the State Ombudsman for the Elderly pursuant to Title 67, Chapter 50, Idaho Code, Section 67-5009.

***Need to check to see if there needs to be changes to IDAPA)**

Office of the State Long-Term Care Ombudsman (OAA 1327.1 Ombudsman Definitions): as used in sections 711 and 712 of the Act, means the organizational unit in a State or territory which is headed by a State Long-Term Care Ombudsman."

Additional information:

- Clarifies that the "Office" is the unit headed by the Ombudsman (as opposed to the SUA or other host agency).
- Significance: the OAA indicates a number of determinations are to be made by the "Office."

- In a State with a decentralized structure, “Office” refers to the State-level unit (i.e. State Ombudsman and his/her direct reports), as opposed to “Ombudsman program,” which includes the State Office as well as local Ombudsman entities.
146. **Older Americans Act.** (ICOA & IDAPA 15.01.01.009.18) Federal law which authorizes funding to states to provide home and community-based services for older persons.
 147. **Older Individual.** (OAA Section 102(a)(40)) means an individual who is 60 years of age or older.
 148. **Older Persons.** (IC 67-5006(4)) individuals sixty (60) years of age or older.
 149. **Ombudsman.** (ICOA) An individual or program providing a mechanism to receive, investigate, and resolve complaints made by, or on behalf of, residents of long-term care facilities.
 150. **Other Paid Professional Staff.** (NAPIS) Personnel who are considered professional staff who are not responsible for overall agency management or direction setting but carry out key responsibilities or tasks associated with the state or area agency the following areas:
 - A. **Planning**—Includes such responsibilities as needs assessment, plan development, budgeting/resource analysis, inventory, standards development and policy analysis.
 - B. **Development**—Includes such responsibilities as public education, resource development, training and education, research and development and legislative activities.
 - C. **Administration**—Includes such responsibilities as bidding, contract negotiation, reporting, reimbursement, accounting, auditing, monitoring, and quality assurance.
 - D. **Access/Care Coordination**—Includes such responsibilities as outreach, screening, assessment, case management, information and referral.
 - E. **Clerical/Support Staff**—All paid personnel who provide support to the management and professional staff.
 151. **Outreach Service.** (ICOA) A service which actively seeks out older persons, identifies their service needs, and provides them with information and assistance to link them with appropriate services.
 152. **Outreach.** (NAPIS- 1 contact) Intervention with individuals initiated by an agency or organization for the purpose of identifying potential clients (or their care givers) and encouraging their use of existing services and benefits. The service units for information and assistance and for outreach are individual, one-on-one contacts between a service provider and an elderly client or caregiver. An activity that involves contact with multiple current or potential clients or caregivers (e.g., publications, publicity campaigns, and other mass media activities) should not be counted as a unit of service. Such services might be termed public information and reported on the public information category. They may also be reported in “Section II.E. – Utilization and Expenditures Profiles, Other Services Profile.
 153. **Pension and Other Retirement Benefits.** (OAA Section 215(a)(1)) means private, civil service, and other public pensions and retirement benefits, including benefits provided under—
 - A. The Social Security program under title II of the Social Security Act (42 U.S.C. 401 et seq.);
 - B. The railroad retirement program under the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.);
 - C. The government retirement benefits programs under the Civil Service Retirement System set forth in chapter 83 of title 5, United States Code, the Federal Employees Retirement System set forth in chapter 84 of title 5, United States Code, or other Federal retirement systems; or
 - D. Employee pension benefit plans as defined in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)).
 154. **Personal Care.** (NAPIS - 1 Hour) Personal assistance, stand-by assistance, supervision or cues.
 155. **Physical Harm.** (OAA Section 102(a)(41)) means bodily injury, impairment, or disease.

156. **Planning and Service Area (PSA)**. (ICOA) ICOA designated geographical area within Idaho for which an AAA is responsible.
157. **Planning and Service Area**. (OAA Section 102(a)(42)) means an area designated by a State agency under section 305(a)(1)(E), including a single planning and service area described in section 305(b)(5)(A).
158. **Poverty Line**. (OAA Section 102(a)(43)) means the official poverty line (as defined by the Office of Management and Budget, and adjusted by the Secretary in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).
159. **Poverty**. (NAPIS) Persons considered to be in poverty are those whose income is below the official poverty guideline (as defined each year by the Office of Management and Budget, and adjusted by the Secretary, DHHS) in accordance with subsection 673 (2) of the Community Services Block Grant Act (42 U.S.C. 9902 (2)). The annual HHS Poverty Guidelines provide dollar thresholds representing poverty levels for households of various sizes.
160. **Program**. (IDAPA 15.01.01.009.19) The Idaho Senior Services and Older Americans Act programs as administered by the ICOA.
161. **Program Regulations**. (IDAPA 15.01.01.009.20) Applicable Federal statutes and regulations, the act, and these rules.
162. **Protective Action Plan (PAP)**. (IDAPA 15.01.02.010.03) An individual plan addressing the remedial, social, legal, medical, educational, mental health or other services available to reduce or eliminate the risk of harm to a vulnerable adult.
163. **Provider**. (IDAPA 15.01.01.009.21) An AAA or a person or entity capable of providing services to clients under a formal contractual arrangement including duly authorized agents and employees.
164. **Provider**. (IDAPA 15.01.02.010.04) An Area Agency on Aging or a person or entity capable of providing APS under a formal contractual arrangement including duly authorized agents and employees.
- Provider**. (NAPIS) An organization or person which provides services to clients under a formal contractual arrangement with an AAA or SUA.
165. **Race/Ethnicity Status**. (NAPIS) The following reflects the requirements of the Office of Management and Budget (OMB) for obtaining information from individuals regarding race and ethnicity. It constitutes what OMB classifies as the “two-question format.” When questions on race and ethnicity are administered, respondents are to be asked about their ethnicity and race as two separate questions. Respondents should ideally be given the opportunity for self-identification, and are to be allowed to designate all categories that apply to them. Consistent with OMB requirements, the following are the race and ethnicity categories to be used for information collection purposes:
- A. Ethnicity:
 - 1. Hispanic or Latino
 - 2. Not Hispanic or Latino
 - B. Race:
 - 1. American Indian or Alaskan Native
 - 2. Asian
 - 3. Black or African American
 - 4. Native Hawaiian or Other Pacific Islander
 - 5. White

166. **Registered Client.** (NAPIS) A registered client is an individual who received at least one unit of the following specified services within the reported fiscal year. The services include:

- (A) Congregate meals,
- (B) Nutrition counseling,
- (C) Assisted transportation,
- (D) Personal care,
- (E) Homemaker,
- (F) Chore,
- (G) Home delivered meals,
- (H) Adult day care/health, or
- (I) Case management
- (J) Services for Caregivers- Case Management and Respite

167. **Representatives of the Office of State Long-Term Care Ombudsman** (OAA 1327.1 Ombudsman Definitions) as used in sections 711 and 712 of the Act, means the employees or volunteers designated by the Ombudsman to fulfill the duties set forth in §1327.19(a), whether personnel supervision is provided by the Ombudsman or his or her designees or by an agency hosting a local Ombudsman entity designated by the Ombudsman pursuant to section 712(a)(5) of the Act.”

Additional information:

- Clarifies the relationship between the Ombudsman and the staff and volunteers who are designated by the Ombudsman to carry out the duties of the Office.
- Uses the OAA term “representatives of the Office” to describe designated staff and/or volunteers who perform LTC Ombudsman program duties, as opposed to common use of the term “ombudsman” to describe these individuals.

168. **Representative Payee.** (OAA Section 102(a)(44)) means a person who is appointed by a governmental entity to receive, on behalf of an older individual who is unable to manage funds by reason of a physical or mental incapacity, any funds owed to such individual by such entity.

169. **Resident.** (OAA Section 711(6)) The term “resident” means an older individual who resides in a long-term care facility.

170. **Resident.** (IDAPA Ombudsman 15.01.03.010.11) Resident as defined in IDAPA 16.03.22, “Rules for Licensed Residential and Assisted Living Facilities in Idaho.”

171. **Resident representative:** (OAA 1327.1 Ombudsman Definitions): means any of the following:

- an individual chosen by the resident 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;
- 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;
- legal representative, as used in section 712 of the Act; or
- the court-appointed guardian or conservator of a resident.

Additional information:

- Uses a resident-centered term
- Provides consistency lacking in the OAA

172. **Respite.** (ICOA) Short-term, intermittent relief provided to caregivers (individuals or families) of a functionally-impaired relative or custodial charge.
173. **Respite Care.** (NAPIS - 1 hour) Services which offer temporary, substitute supports or living arrangements for care recipients in order to provide a brief period of relief or rest for caregivers. Respite Care includes:
- A. In-home respite (personal care, homemaker, and other in-home respite);
 - B. Respite provided by attendance of the care recipient at a senior center or other nonresidential program;
 - C. Institutional respite provided by placing the care recipient in an institutional setting such as a nursing home for a short period of time as a respite service to the caregiver; and (for grandparents caring for children) summer camps. If the specific service units purchased via a direct payment (cash or voucher) can be tracked or estimated, report those service unit hours. If not, a unit of service in a direct payment is one payment.
174. **Rural.** (ICOA) Communities having a population of fewer than twenty thousand (20,000) persons.
175. **Rural.** (NAPIS) A rural area is: any area that is not defined as urban. Urban areas comprise (1) urbanized areas (a central place and its adjacent densely settled territories with a combined minimum population of 50,000) and (2) an incorporated place or a census designated place with 20,000 or more inhabitants.
176. **Rural Provider.** (NAPIS) Providers of services to clients who live in rural areas. Rural providers are not necessarily providers of services only to rural clients. They may also be providers of services to clients in urban areas. [See definition of rural].
177. **Secretary.** (OAA Section 102(a)(45)) means the Secretary of Health and Human Services, except that for purposes of title V such term means the Secretary of Labor.
178. **Self-directed Care.** (OAA Section 102(a)(46)) means an approach to providing services (including programs, benefits, supports, and technology) under this Act intended to assist an individual with activities of daily living, in which –
- A. Such services (including the amount, duration, scope, provider, and location of such services) are planned, budgeted, and purchased under the direction and control of such individual;
 - B. Such individual is provided with such information and assistance as are necessary and appropriate to enable such individual to make informed decisions about the individual's care options;
 - C. The needs, capabilities, and preferences of such individual with respect to such services, and such individual's ability to direct and control the individual's receipt of such services, are assessed by the area agency on aging (or other agency designated by the area agency on aging) involved;
 - D. Based on the assessment made under subparagraph (3), the area agency on aging (or other agency designated by the area agency on aging) develops together with such individual and the individual's family, caregiver (as defined in paragraph (27)), or legal representative –
 1. A plan of services for such individual that specifies which services such individual will be responsible for directing;
 2. A determination of the role of family members (and others whose participation is sought by such individual) in providing services under such plan; and
 3. A budget for such services; and
 4. The area agency on aging or State agency provides for oversight of such individual's self-directed receipt of services, including steps to ensure the quality of services provided and the appropriate use of funds under this Act.

179. **Self-neglect.** (OAA Section 102(a)(47)) means an adult's inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including –
- A. Obtaining essential food, clothing, shelter, and medical care;
 - B. Obtaining goods and services necessary to maintain physical health, mental health, or general safety; or
 - C. Managing one's own financial affairs.
180. **Serious Injury or Serious Imposition of Rights.** (ICOA) A situation of substantiated abuse or neglect involving serious mental or physical injury, or exploitation.
181. **Serious Physical Injury.** (ICOA) Includes, but is not limited to:
- A. Severe skin bruising;
 - B. Burns;
 - C. Bone fractures;
 - D. Decubitus ulcers;
 - E. Internal injuries;
 - F. Lacerations;
 - G. Malnutrition resulting in serious medical consequences;
 - H. Subdural hematoma; or i. Soft tissue swelling.
182. **Severe Disability.** (OAA Section 102(a)(48)) means a severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that—
- A. Is likely to continue indefinitely; and
 - B. Results in substantial functional limitation in 3 or more of the major life activities specified in subparagraphs.
183. **Services.** (IDAPA 15.01.01.009.22) Long-term services and supports that assist clients to remain in their home and community including but not limited to: Transportation, congregate meals, in-home services, adult day care and information and assistance.
184. **Service Delivery.** (NAPIS) Includes those activities associated with the direct provision of a service that meets the needs of an individual older person and/or caregiver.
185. **Sexual Assault.** (OAA Section 102(a)(49)) has the meaning given the term in section 2003 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg–2).
186. **Shopping Assistance.** (ICOA) Accompaniment and provision of assistance to an elderly individual for the purpose of purchasing food, medicine and other necessities for an elderly individual who is disabled or homebound.
187. **Sliding Fee Scale.** (ICOA) A fee scale ranging from zero percent (0%) to one hundred percent (100%) of the cost of services. Cost of services shall be based on the contractor's or provider's actual unit costs. A client's percentage (payment) shall be determined by ranking the client's annual household income against the federally determined poverty guidelines for that year.
188. **State Long-Term Care Ombudsman, or Ombudsman:** (OAA 1327.1 Ombudsman Definitions): as used in sections 711 and 712 of the Act, means the individual who heads the Office and is responsible to personally, or through representatives of the Office, fulfill the functions, responsibilities and duties set forth in §§1327.13 and 1327.19 of this rule." Additional information:

- For consistency with the OAA, Rule uses the term “Ombudsman” to specifically refer to one individual: the State LTC Ombudsman.
- Rule does not use following terms: “local ombudsman” or “volunteer ombudsman.”
- Many States and other stakeholders commonly use the word “ombudsman” to describe staff and volunteers at every level of the program. This Rule does not require a change in the usage of those terms.

189. **State Long-Term Care Ombudsman, Ombudsman program, or program:** (OAA 1327.1 Ombudsman Definitions) as used in sections 711 and 712 of the Act, means the program through which the functions and duties of the Office are carried out, consisting of the Ombudsman, the Office headed by the Ombudsman, and the representatives of the Office.
Additional information:
- Clarifies the use of the term “Ombudsman program” to incorporate all levels of the program, including representatives of the Office and, where applicable, local Ombudsman entities.
190. **State System of Long-term Care.** (OAA Section 102(a)(52)) Means the Federal, State, and local programs and activities administered by a State that provide, support, or facilitate access to long-term care for individuals in such State.
191. **Substate Ombudsman.** (IDAPA Ombudsman 15.01.03.010.12) An individual associated with a designated local Ombudsman for the Elderly Program, who performs the duties of ombudsman.
192. **Supplemental Services.** (NAPIS - 1 hour) Services provided on a limited basis to complement the care provided by caregivers. Examples of supplemental services include, but are not limited to, home modifications, assistive technologies, emergency response systems, and incontinence supplies.
193. **Supportive Service.** (OAA Section 102(a)(53)) means a service described in section 321(a).
194. **Supportive Service.** (IC 39-5302(9)) means non-investigatory remedial, social, legal, health, educational, mental health and referral services provided to a vulnerable adult.
195. **Supportive Service Plan (SSP).** (ICOA) An individual support plan outlining an array of services or the components of an individual service required to maintain a client at home or to reduce risks and meet the care needs of a vulnerable adult.
196. **Supportive Services Technician.** (ICOA) AAA employee working under the supervision of a licensed social worker or case manager assisting with investigation of Adult Protection reports, completion of the ICOA approved assessment instrument for services of clients of ICOA funded in-home services, or development and initiation of SSPs. The employee shall have a High School diploma and at least two (2) years’ experience delivering services to the elderly or at-risk populations.
197. **Transportation.** (IC 67-5006(1)) services designed to transport older persons to and from community facilities and resources for the purpose of applying for and receiving services, reducing isolation, or otherwise promoting independent living, but not including a direct subsidy for an overall transit system or a general reduced fare program for a public or private transit system.
198. **Transportation Services.** (ICOA) Services designed to transport eligible clients to and from community facilities/resources for the purposes of applying for and receiving services, reducing isolation, or otherwise promoting independence.

199. **Unit of General Purpose Local Government.** (OAA Section 302(4)) means—

1. A political subdivision of the State whose authority is general and not limited to only one function or combination of related functions; or
2. An Indian tribal organization.

200. **USDA One Hundred Percent (100%) Cash-in-Lieu Community Program.** (ICOA) Federal program in which the participating AAA receives one hundred percent (100%) cash reimbursement in lieu of commodities.

201. **Volunteer.** (NAPIS) An uncompensated individual who provides services or support on behalf of older individuals.

202. **Vulnerable adult.** (IC 39-5302(10)) means a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person.

203. **Vulnerable Elder Rights Protection Activity.** (OAA Section 761(2)) means an activity funded under subtitle A. (42 U.S.C. 3058bb)

204. **Willful interference** (OAA 1327.1 Ombudsman Definitions) means actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman from performing any of the functions or responsibilities set forth in §1327.13, or the Ombudsman or a representative of the Office from performing any of the duties set forth in §1327.19.”

Additional information:

- Responds to comments indicating a need for a definition in order to clarify and support the requirement in the OAA that the Office and its representatives are free from interference in the course of performing required functions.

- The Rule also contains new provisions regarding interference, retaliation, and reprisals at §1327.15(i).

CHAPTER 3: PROGRAM OUTCOMES & KEY DATES

3.1. **PROGRAM OUTCOMES** (ICOA) State Senior Services are designed to provide older individuals with assistance they need to compensate for functional or cognitive limitations. Individuals qualifying for these services are those who require personal assistance, stand-by assistance, supervision or cueing to accomplish ADLs, IADLs, or both. The program aims to help clients:

1. **Avoid Inappropriate or Premature Institutional Placement.** Avoid inappropriate institutionalization of a client; facilitate timely discharge of an institutionalized client; or prevent inappropriate or premature re-institutionalization of a formerly discharged client.
2. **Enhance Ability to Accomplish Short-Term Rehabilitation.** Facilitate rehabilitation at home by providing supportive services to those who are temporarily incapacitated due to short-term illness or injury.
3. **Assist in Crisis Intervention.** Maintain older individuals in their own homes, on a short-term basis, during a crisis when the primary caregiver is incapacitated or absent.
4. **Provide Protection.** Enable individuals to remain in their own homes during a crisis through coordination with Adult Protection Services.

3.2. **ELIGIBILITY** (ICOA) Persons eligible to receive services under the Act shall be sixty (60) years of age or older and residents of the state of Idaho. Functionally- or cognitively-impaired adults under age sixty (60) living in the home of a caregiver who is age sixty (60) or older are exempted from this requirement. In those instances, the caregiver is considered to be the client.

3.3. **KEY DATES**

1. **Invoicing**

- A. Title III, VII and Adult Protective Services: The AAAs will submit the Invoice, in-kind and program income to ICOA no later than the 25th of each month.
- B. The AAAs will submit other program invoices (Discretionary Grant Programs: e.g. SMP & MIPPA etc.) separately according to the respective contract.

2. **Reporting**

- A. Title III:
 1. The AAAs will enter all Title III, Title VII and Adult Protective Services data by the 25th following the end of the month.
 2. The AAAs will submit an annual Developmental Accomplishment and Staff Profile Report by October 25th of each year. ([ICOA Website: RP.AD.02 Developmental Accomplishment Annual Report](#)).
 3. Annually, by July 1st/first business day in July, ICOA will submit the Strategic Plan to Department of Financial Management.
 4. Annually, by September 1st/first business day of September, ICOA will submit the Performance Report to Department of Financial Management.
 5. Annually, by December 1st, ICOA will submit the annual report (including Ombudsman and Adult Protective Services reports) to the Governor's office.
 6. Annually, by January 31st, ICOA will submit the Federal National Aging Program Information System (NAPIS) to the Administration on Community Living.
- B. Title VII: Ombudsman

1. Local Ombudsman will enter and verified all data by the 25th following the end of the month.
 2. Annually, by January 31st, ICOA will submit Federal National Ombudsman Reporting System (NORS).
- C. Adult Protective Services
1. The AAAs will submit the Substantiated Case report to the ICOA no later than the 10th of each month ([ICOA Website: RP.AP.02. AAA Substantiated Case Report](#))

3. Area Plan

- A. AAAs will develop their local Area Plans every four years. The next Area Plan is due June 30, 2021.
- B. ICOA will update the following:
 1. Intrastate Funding Formula
 2. Sliding Fee Scale
 3. Poverty Guidelines
- C. Annually, by August 15th, ICOA will provide unit and financial data to AAAs for verification. The AAAs will verify data and provide the following local plan updates by October 15th.
 1. Update any changes to service providers/contractors, goals and objectives identified in focus areas A, B, C and D.
 2. Update “Coordination” accomplished during previous year and identify new activities for upcoming year.
 3. Provide ICOA with unit data for Legal Assistance, SMP and MIPPA.
 4. Update Organization Chart **(only if there are changes)**
 5. Update Advisory Council **(only if there are changes)**
 6. Update Emergency Preparedness Plan **(only if there are changes)**
 7. Update Nutrition Meal Site Worksheet **(specifically coordinators)**
 8. Incorporate Service Improvement Plans at a minimum for the registered services that are below Census At Risk baselines.

4. Nutrition Services Incentive Program (NSIP)

- A. AAAs must enter all NSIP meal count data into the approved Management Information System (MIS) by the 25th following the end of the month.
- B. The ICOA will include NSIP data in the annual report to the Governor’s office by December 1st.
- C. The ICOA will submit the State Progress Report to AoA/ACL by January 31st.
- D. Annually, ICOA sends the AAAs a year-end distribution report to verify NSIP meal counts from the prior year. This report is used to calculate funding distribution for the upcoming year. AAAs must verify those counts and submit to ICOA by January 25th.
- E. AAAs will use (100%) Cash-In-Lieu Commodity for each provider site.
- F. Annually, by May 15th, ICOA submits the Commodity dollar report to USDA and Department of Education.
- G. Within 30 days of receiving NSIP funds from ICOA, each AAA must distribute those funds to the participating meal sites for purchasing domestically produced foods for their nutrition projects. (OAA Section 311(d)(4).

CHAPTER 4: AAA DESIGNATION AND RESPONSIBILITIES

- 4.1. **PLANNING AND SERVICE AREA (PSA) DESIGNATION.** (ICOA) The ICOA has divided the state into PSAs in accordance with Section 305 of the OAA, as amended. ([PO.AD.02 Designation of PSA](#))
- 4.2. **AREA AGENCY ON AGING (AAA).** (IDAPA 15.01.20.021) ([PO.AD.03 Area Agency on Aging Designation](#))
 1. **AAA Designation.** The ICOA shall accept applications for AAA designation in accordance with Section 305 of the OAA.
 2. **Revocation of AAA Designation.** The ICOA may revoke the designation of an AAA as specified in OAA and the federal regulations thereunder. ([PO.AD.04 Withdrawal of AAA Designation](#))
 3. **Denial of AAA Designation.** Any organization denied AAA designation through a competitive bidding process may appeal the decision to the Administrator of ICOA.
 4. **Limit on the Number of Area Agencies and PSA's.** In order to maximize funding for services that directly benefit the elderly, the number of PSAs and AAAs is limited to six (6).
- 4.3. **AAA RESPONSIBILITIES.** (IDAPA 15.01.20.041) On behalf of all older persons in the PSA, the AAA shall assume the lead role relative to aging issues. In accordance with the OAA and all pertinent federal regulations, the AAA shall serve as the public advocate for the development and enhancement of comprehensive, coordinated community-based service systems within each community throughout the PSA.
- 4.4. **AREA ADVISORY COUNCILS ON AGING.** (IDAPA 15.01.20.051)
 1. **Establishment of Council.** The AAA shall establish an advisory council in accordance with the requirements of the OAA, as amended, and all pertinent federal regulations.
 2. **Council Meetings.** Each advisory council shall meet at least two (2) times each year.
 3. **Conflict of Interest.** AAA employees, or members of the immediate families of AAA employees, shall not serve on the advisory council.
 4. **By-Laws.** The advisory council shall adopt and operate according to by-laws.
- 4.5. **GRANTS TO AND CONTRACTS WITH LOCAL AREA AGENCIES.** (IC 67-5007) The commission shall, based on the recommendations of the local area councils on aging, enter into funding agreements as grants or contracts with designated local area agencies, as provided by the Older Americans Act of 1965, as amended, for the purpose of the agencies issuing contracts at the local level to provide the services listed in section 67-5008, Idaho Code. Such grants or contracts shall be subject to performance and financial audit by the agency in conformance with state practices and statutes.
- 4.6. **ADMINISTRATIVE APPEALS.** ([PO.AD.01 Appeals Process](#))
 1. **Rules Governing Senior Services Program** (IDAPA 15.01.01.003, 15.01.02.003, 15.01.03.003 and 15.01.20.003) The ICOA shall provide AAAs with opportunity to appeal administrative decisions related to these rules in accordance with IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General."
- 4.7. **AAA BUDGET FORMS AND REVISIONS.** (IDAPA 15.01.20.022)
 1. **Budget Forms.** Each AAA shall submit, on forms provided by the ICOA, a budget for agency operations. The AAA shall maintain sufficiently detailed budget and expenditure records to

respond to requests for information from the ICOA, U.S. Administration for Community Living, legislators, or the general public.

2. **Budget Revisions.** Requests for approval of budget revisions shall be made in writing to the ICOA:
 - A. In order to process transfers between Title III programs;
 - B. To reflect holdbacks or midyear increases in state or federal spending; or
 - C. If there is a change in spending which exceeds ten percent (10%) of any line item in the comprehensive budget summary.

4.8. **REPORTING REQUIREMENTS.** (IDAPA 15.01.20.056)

1. **Reporting Forms.** Each AAA shall submit to the ICOA such reports as are specified by the ICOA, in such format and on such schedule as is established by the ICOA, in fulfillment of all federal and state requirements.
2. **Verification of Service Provider Reports.** The AAAs shall conduct ongoing verification of service provider reports.
3. **Reporting Deficiencies.** If reports are late, incorrect, or incomplete, the ICOA shall withhold funds from the AAA, in accordance with terms of the contract between the ICOA and the AAA, until a correct report is received by the ICOA.

4.9. **SERVICE PRIORITY AND APPEALS.** (IDAPA 15.01.20.053)

1. **Service Priority.** Pursuant to the OAA, each AAA shall ensure that all service providers prioritize service delivery to those older individuals having the greatest economic and social need, with particular attention to low-income minority individuals and individuals residing in rural areas.
2. **Denial or Termination of Service.** AAAs shall develop fair and impartial hearing procedures and shall provide an opportunity for a hearing for any individual who is denied or terminated from a service.

4.10. **CONTRACT MANAGEMENT REQUIREMENTS.** (IDAPA 15.01.20.042) AAAs shall adhere to all applicable federal contracting and procurement requirements in awarding subcontracts. ([FO.AD.10 Contract Approval Form](#))

1. **Non-Profit Agency Contractors.** AAAs may subcontract with private, non-profit agencies that are incorporated as 501(c)(3) organizations.
2. **AAA Provider Subcontracts.** All subcontracts between the AAA and service providers shall contain sufficient program and financial information to ensure all activities comply with the Area Plan, the OAA, federal regulations, the SS Act, and the rules of the ICOA.
3. **Contracts Term.** Each AAA may award multi-year subcontracts not to exceed four (4) years.
 - A. Each AAA shall maintain documentation satisfactory to ICOA that justifies the reason(s) a multi-year subcontract was awarded. Justification for a multi-year subcontract may include, but is not limited to, the following:
 1. More than one (1) year is necessary to complete the project or service;
 2. More than one (1) year is necessary to justify substantial cost savings; or
 3. A multi-year subcontract award is necessary to allow a provider the opportunity to increase and demonstrate capacity to operate a particular service.
 - B. No AAA shall continue a multi-year subcontract unless the results of evaluation justify continuance of the subcontract.
4. **AAA Provider Appeals.** AAAs shall develop fair and impartial hearing procedures and shall provide an opportunity for a hearing for any organization denied a subcontract with the AAA.

4.11. **CONTRACTING AND GRANT AUTHORITY; PRIVATE PAY RELATIONSHIPS; APPROPRIATE USE OF FUNDS.** OAA Section. 212(b)1

1. **Ensuring Appropriate Use of Funds.** An agreement may not be made without the prior approval of the State agency (or, in the case of a grantee under title VI, without the prior recommendation of the Director of the Office for American Indian, Alaska Native, and Native Hawaiian Aging and the prior approval of the Assistant Secretary), after timely submission of all relevant documents related to the agreement including information on all costs incurred; ([FO.AD.10 Contract Approval Form](#))

4.12. **FEDERAL PROCUREMENT REQUIREMENTS.** (CRF 45.Part 74 and 92)

http://www.access.gpo.gov/nara/cfr/waisidx_10/45cfrv1_10.html

1. **Title 45 Part 74:** Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations and Commercial Organizations:

Subsection	Description
Part 74.13	Debarment and suspension
Part 74.27	Allowable costs
Part 74.40	Purpose of procurement standards
Part 74.41	Recipient responsibilities
Part 74.42	Code of conduct
Part 74.43	Competition
Part 74.44	Procurement procedures
Part 74.45	Cost and price analysis
Part 74.46	Procurement Records
Part 74.47	Contract administration
Part 74.48	Contract provisions
Part 74.51	Monitoring and reporting program performance
Appendix A	Contract Provisions

2. **Title 45 Part 92:** Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and tribal Governments:

Subsection	Description
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Part 92.22	Allowable costs
Part 92.35	Sub-awards to debarred and suspended parties
Part 92.36	Procurement

- 4.13. **AAA ASSESSMENTS OF PROVIDERS.** (IDAPA 15.01.20.055) Every other year each AAA shall conduct, at a minimum, one (1) on-site assessment of each of its providers that receives fifty thousand dollars (\$50,000) or more in combined federal and state funds during a contract year. Such assessments shall comply with the terms of the AAA contract with the ICOA. Such reviews shall be on file for ICOA review.
- 4.14. **FINANCIAL MANAGEMENT.** (IDAPA 15.01.20.066)
1. **Regulations.** Area agencies and service providers shall meet the financial management requirements of 45 CFR, 74 and 92.
 2. **Allowable Costs.** Allowable costs are delineated in the OAA, and 45 CFR Part 75. These cost principles shall apply to the expenditure of federal funds, as well as any state or local funds which are reported as match for federal funds. In-kind contributions shall benefit the program for which they are reported as match. No expenditure shall be used as match if it has been or will be counted as match for another award of federal or state funds.
 3. **Audits.** All AAAs and service providers shall be audited in accordance with the Single Audit Act of 1996 and OMB Circular A-133 as amended.
- 4.15. **CLIENT ASSESSMENT.** (ICOA) Applicants for services under this chapter shall be assessed utilizing the ICOA approved assessment instrument.
- 4.16. **FAMILY AND CAREGIVER SUPPORTS.** (ICOA)
1. **Intent of ICOA.** It is the intent of ICOA to support efforts of family caregivers to maintain functionally or cognitively-impaired elderly relatives in the household.
 2. **Eligibility.** Based on eligibility and cost sharing requirements, AAAs shall support family caregiver efforts by making program services available to such families.
- 4.17. **ACCOMMODATIONS.** (ICOA)
1. **Accommodations for Geographic Inaccessibility.** All providers shall make and document efforts to locate and hire a part-time worker or generate a volunteer to meet the client service need.
 2. **Accommodations for Language.** All providers shall make reasonable accommodations to work with persons who speak a language other than English.
 3. **Cultural Accommodations.** All providers shall make reasonable accommodations for cultural differences and take them into account when delivering services.
 4. **Accommodations for Disabilities.** All providers shall make reasonable accommodations to work with persons who have vision or hearing impairments or other disabilities.
- 4.18. **COST SHARING PAYMENTS AND CLIENT CONTRIBUTIONS.** (ICOA)
1. **Poverty Guidelines.** Clients whose income exceeds one hundred percent (100%) of poverty (as established by the United States Department of Health and Human Services) shall be required to

make a cost sharing payment for services according to a variable fee schedule established by the ICOA.

2. **Income Declaration.** Income shall be determined by an annual client self-declaration. When a client's income increases or decreases, the client shall notify the provider (AAA) for a redetermination of income.
 3. **Determining Income.** For this purpose, income means gross household income from all sources, less the cost of medical insurance and expenditures for non-covered medical services and prescription drugs. Payments the client receives from owned property currently being leased shall be counted as income after expenses are deducted if paid by the client, i.e., insurance, taxes, water, sewer, and trash collection.
 4. **Cost Sharing Payment Based on Actual Cost.** Assessed cost sharing payment shall be a percentage of the provider's actual unit cost.
 5. **Cost Sharing Payment Required.** Cost sharing payments are required from clients receiving either Chore or Homemaker Services.
 6. **Cost Sharing Payment Waived.** The cost sharing payment may be waived for clients who refuse to make such payment if there is documented evidence that not providing the service would increase risk or harm to the client.
 7. **Client Contributions.** All clients from whom a cost sharing payment is not required shall be given the opportunity to make voluntary contributions.
 8. **Use of Cost Sharing Payments and Contributions.** Providers shall maintain accounting records of all cost sharing payments and contributions collected and of all monies expended from these sources. All monies derived from cost sharing payments, contributions, or both, shall be used to offset the costs of providing the service for which they were collected.
- 4.19. **DISCLOSURE OF INFORMATION.** (ICOA) Providers' disclosure of information about clients is limited by law. All information obtained from a client, whether verbal or written, and any records created from that information, shall be treated as confidential. The OAA requires that confidentiality regarding clients shall be followed thus: ([FO.AD.03 Release of Information Form](#))
1. **Disclosure.** A provider may disclose to anyone the content of a client's communication only with the client's prior, informed consent. Without the client's prior, informed consent, the provider may:
 - A. Only disclose information for purposes directly related to the administration of the program under which the client is applying for or receiving benefits; or
 - B. Disclose client information to auditors and to persons conducting research within certain defined circumstances as approved in writing by the ICOA.
 2. **Client's Expectation of Privacy.** Disclosure of information to others does not abrogate a client's expectation of privacy as protected by law. Those to whom disclosure is made have a duty to maintain the confidentiality of the disclosure.
 3. **Disclosure Required.** The disclosure of information required for a coordinated assessment of a client and for coordinating delivery of services to a client is allowed between aging network providers and, if required, the Department. Disclosure to individuals outside that group shall not be authorized without prior written approval from the ICOA.
- 4.20. **DENIAL OF SERVICE.** (ICOA) An applicant shall be notified in writing of a denial of service and the right to appeal. The request for services may be denied for any of the following reasons listed below, or at the discretion of the AAA director:

1. **Applicant Not in Need of Service.** The applicant’s functional or cognitive deficits are not severe enough to require services.
2. **Family or Other Supports Adequate.** Family, or other available formal or informal supports are adequate to meet applicant’s current needs.
3. **Other Care Required.** The applicant’s needs are of such magnitude that more intensive supports, such as Medicaid HCBS, attendant care, or referral for residential or nursing home placement are indicated. In such instances, alternatives shall be explored with the applicant and the applicant’s legal representative and family, if available. Referrals shall be made by the provider, as appropriate.
4. **Barriers to Service Delivery Exist.** The applicant’s home is hazardous to the health or safety of service workers.
5. **Geographical Inaccessibility.** The AAA determines that the applicant’s home is geographically inaccessible from the nearest point of service provision of home-delivered meals, homemaker, chore, or respite and the provider can document efforts to locate a worker or volunteer to fill the service need have been unsuccessful.
6. **Lack of Personnel or Funding.** Services are unavailable based on a lack of available service personnel or funding. When an eligible applicant is denied service based on a lack of available service personnel or funding, the applicant shall be placed on a waiting list. For services other than Case Management, the applicant shall receive an in-home assessment prior to placement on a waiting list. Applicants on a waiting list for services shall be prioritized according to IDAPA 15.01.20, “Rules Governing Area Agency on Aging Operations,” Section 053. All applicants placed on a waiting list shall be notified of this action in writing.

4.21. **TERMINATION OF SERVICE.** (ICOA)

1. **Documentation.** Documentation of notice of termination shall be placed in the client’s case record, signed, and dated by the provider.
2. **Appeals Process.** The client shall be informed of the appeals process, in accordance with IDAPA 15.01.20, “Rules Governing Area Agency on Aging Operations,” Section 053.
3. **AAA Services.** AAA authorized services may be discontinued by the provider for any of the reasons listed below, or at the discretion of the AAA director:
 - A. Services proved ineffective, insufficient, or inappropriate to meet client needs.
 - B. Other resources, including, but not limited to, formal and informal supports, became available.
 - C. Client withdrew from the program or moved.
 - D. Family or other available formal or informal support to client increased.
 - E. Client placed in a long-term care facility.
 - F. Client died (no notification of termination required).
 - G. Client’s functioning improved.
 - H. Client refused service.
 - I. Client’s home is hazardous to the service provider (requires prior notification of the AAA Director with final approval being at the discretion of the AAA Director).
 - J. Client’s home is not reasonably accessible.
 - K. Client’s behavior is a threat to the safety of the provider (requires prior notification of the AAA Director with final approval being at the discretion of the AAA Director.)
 - L. Client verbally abuses or sexually harasses service provider.
 - M. Client refuses to pay fee determined for service.
 - N. Service provider is not available in locale.

O. Services are no longer cost effective.

4. **Notification of Termination and Right to Appeal.** At least two (2) weeks prior to termination, the client shall be informed in writing of the reasons for provider initiated service termination and the right to appeal in accordance with IDAPA 15.01.20, "Rules Governing Area Agency on Aging Operations," Section 053. Exceptions to the two (2) week advance notification of termination will be justified to the AAA Director with final approval being at the discretion of the AAA Director. Appeal actions are the responsibility of the AAA. The client shall be referred to other services as appropriate.

4.22. **SERVICE WORKERS.** (ICOA)

1. **Training and Supervision.** All service workers shall receive an employee orientation from the provider before performing any services. Orientation shall include:
 - A. The purpose and philosophy of the services,
 - B. Review of pertinent skills,
 - C. Program regulations,
 - D. Policies and procedures,
 - E. Proper conduct in relating to clients, and
 - F. Handling of confidential and emergency situations involving a client.
 1. CPR. Service workers shall complete CPR training within three (3) months of hire and shall maintain certification thereafter.
 2. In-Service Training. Providers shall annually provide service workers with a minimum of ten (10) hours training, including CPR, for the purpose of upgrading their skills and knowledge.
 3. Providers shall assure that service workers who assist clients with bathing or hair washing receive specific training in performing these services prior to being assigned to a client.
 4. Supervision. All providers shall maintain written job descriptions for service workers and shall have written personnel policies. All service workers shall receive an annual performance evaluation. Supervisors of service workers shall be available to service workers during work hours to discuss changes in client's circumstances, to resolve problems with schedules, or to respond to emergencies.
2. **Medical Emergencies.** In case of medical emergency, the service worker shall immediately call 911 or the available local emergency medical service and, if appropriate, shall initiate CPR.
3. **Restrictions.** Providers shall ensure, through personnel policies, orientation procedures, signed service workers' agreements, and supervision, that the service worker's conduct is governed by the following restrictions. A copy of these restrictions, signed by the service worker, shall be placed in each service worker's personnel file.
 - A. Service workers shall not accept money or a loan, in any form, from a client.
 - B. Service workers shall not solicit the purchase of goods, materials or services.
 - C. Service workers shall not provide a personal telephone number or home address to clients.
 - D. Service workers shall not work privately for a client.
 - E. Service workers shall not enter a client's residence in the absence of the client unless the client has given permission to enter to accomplish scheduled work and the permission is documented in the client file.
 - F. Service workers shall not engage in religious proselytizing during the course of employment.

- G. Service workers shall not administer medications. A service worker may remind a client to take medications, assist with removing the cap from a multi-dose or bubble pack container, and may observe the client taking medications.
- H. Service workers shall regard all client communications and information about clients' circumstances as confidential.
- I. Service workers shall not smoke in the home of a client.

CHAPTER 5: AAA PLANNING SERVICE AREA (PSA)

REQUIREMENTS

5.1. **AREA PLANS.** (IDAPA 15.01.20.052) Each AAA shall submit a four (4) year area plan to the ICOA by close of business January 1, 2002, and by October 15 every four (4) years thereafter. Annual updates shall be submitted by October 15 of each year. The area plan and annual updates shall be submitted in a uniform format prescribed by the ICOA to meet the requirements of the OAA and all pertinent federal regulations.

5.2. **OLDER AMERICANS ACT (OAA) PLANNING AND SERVICE AREA REQUIRMENTS.** (OAA Section 306)

(a) Each area agency on aging designated under section 305(a)(2)(A) shall, in order to be approved by the State agency, prepare and develop an area plan for a planning and service area for a two-, three-, or four-year period determined by the State agency, with such annual adjustments as may be necessary. Each such plan shall be based upon a uniform format for area plans within the State prepared in accordance with section 307(a)(1). Each such plan shall—

(1) provide, through a comprehensive and coordinated system, for supportive services, nutrition services, and, where appropriate, for the establishment, maintenance, modernization, or construction of multipurpose senior centers (including a plan to use the skills and services of older individuals in paid and unpaid work, including multigenerational and older individual to older individual work), within the planning and service area covered by the plan, including determining the extent of need for supportive services, nutrition services, and multipurpose senior centers in such area (taking into consideration, among other things, the number of older individuals with low incomes residing in such area, the number of older individuals who have greatest economic need (with particular attention to low income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas) residing in such area, the number of older individuals who have greatest social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas) residing in such area, and the number of older individuals who are Indians residing in such area, and the efforts of voluntary organizations in the community), evaluating the effectiveness of the use of resources in meeting such need, and entering into agreements with providers of supportive services, nutrition services, or multipurpose senior centers in such area, for the provision of such services or centers to meet such need;

(2) provide assurances that an adequate proportion, as required under section 307(a)(2), of the amount allotted for part B to the planning and service area will be expended for the delivery of each of the following categories of services—

(A) services associated with access to services (transportation, health services (including mental and behavioral health services), outreach, information and assistance (which

may include information and assistance to consumers on availability of services under part B and how to receive benefits under and participate in publicly supported programs for which the consumer may be eligible), and case management services);

(B) in-home services, including supportive services for families of older individuals who are victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction; and

(C) legal assistance; and assurances that the area agency on aging will report annually to the State agency in detail the amount of funds expended for each such category during the fiscal year most recently concluded;

(3)(A) designate, where feasible, a focal point for comprehensive service delivery in each community, giving special consideration to designating multipurpose senior centers (including multipurpose senior centers operated by organizations referred to in paragraph (6)(C)) as such focal point; and

(B) specify, in grants, contracts, and agreements implementing the plan, the identity of each focal point so designated;

(4)(A)(i)(I) provide assurances that the area agency on aging will—

(aa) set specific objectives, consistent with State policy, for providing services to older individuals with greatest economic need, older individuals with greatest social need, and older individuals at risk for institutional placement;

(bb) include specific objectives for providing services to low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas; and (II) include proposed methods to achieve the objectives described in items (aa) and (bb) of subclause (I);

(ii) provide assurances that the area agency on aging will include in each agreement made with a provider of any service under this title, a requirement that such provider will—

(I) specify how the provider intends to satisfy the service needs of low-income minority individuals, older individuals with limited English proficiency, and older individuals residing in rural areas in the area served by the provider;

(II) to the maximum extent feasible, provide services to low-income minority individuals, older individuals with limited English proficiency, and older individuals residing in rural areas in accordance with their need for such services; and

(III) meet specific objectives established by the area agency on aging, for providing services to low-income minority individuals, older individuals

with limited English proficiency, and older individuals residing in rural areas within the planning and service area; and

(iii) with respect to the fiscal year preceding the fiscal year for which such plan is prepared—

(I) identify the number of low-income minority older individuals in the planning and service area;

(II) describe the methods used to satisfy the service needs of such minority older individuals; and

(III) provide information on the extent to which the area agency on aging met the objectives described in clause (i);

(B) provide assurances that the area agency on aging will use outreach efforts that will—

(i) identify individuals eligible for assistance under this Act, with special emphasis on—

(I) older individuals residing in rural areas;

(II) older individuals with greatest economic need (with particular attention to low-income minority individuals and older individuals residing in rural areas);

(III) older individuals with greatest social need (with particular attention to low-income minority individuals and older individuals residing in rural areas);

(IV) older individuals with severe disabilities;

(V) older individuals with limited English proficiency;

(VI) older individuals with Alzheimer's disease and related disorders with neurological and organic brain dysfunction (and the caretakers of such individuals); and

(VII) older individuals at risk for institutional placement; and

(ii) inform the older individuals referred to in subclauses (I) through (VI) of clause (i), and the caretakers of such individuals, of the availability of such assistance; and

(C) contain an assurance that the area agency on aging will ensure that each activity undertaken by the agency, including planning, advocacy, and systems development, will include a focus on the needs of low-income minority older individuals and older individuals residing in rural areas;

(5) provide assurances that the area agency on aging will coordinate planning, identification, assessment of needs, and provision of services for older individuals with disabilities, with particular attention to individuals with severe disabilities and individuals at risk for institutional placement, with agencies that develop or provide services for individuals with disabilities;

(6) provide that the area agency on aging will—

(A) take into account in connection with matters of general policy arising in the development and administration of the area plan, the views of recipients of services under such plan;

(B) serve as the advocate and focal point for older individuals within the community by (in cooperation with agencies, organizations, and individuals participating in activities under the plan) monitoring, evaluating, and commenting upon all policies, programs, hearings, levies, and community actions which will affect older individuals;

(C) (i) where possible, enter into arrangements with organizations providing day care services for children, assistance to older individuals caring for relatives who are children, and respite for families, so as to provide opportunities for older individuals to aid or assist on a voluntary basis in the delivery of such services to children, adults, and families;

(ii) if possible regarding the provision of services under this title, enter into arrangements and coordinate with organizations that have a proven record of providing services to older individuals, that—

(I) were officially designated as community action agencies or community action programs under section 210 of the Economic Opportunity Act of 1964 (42 U.S.C. 2790) for fiscal year 1981, and did not lose the designation as a result of failure to comply with such Act; or

(II) came into existence during fiscal year 1982 as direct successors in interest to such community action agencies or community action programs; and that meet the requirements under section 676B of the Community Services Block Grant Act; and

(iii) make use of trained volunteers in providing direct services delivered to older individuals and individuals with disabilities needing such services and, if possible, work in coordination with organizations that have experience in providing training, placement, and stipends for volunteers or participants (such as organizations carrying out Federal service programs administered by the

Corporation for National and Community Service), in community service settings;

(D) establish an advisory council consisting of older individuals (including minority individuals and older individuals residing in rural areas) who are participants or who are eligible to participate in programs assisted under this Act, family caregivers of such individuals, representatives of older individuals, service providers, representatives of the business community, local elected officials, providers of veterans' health care (if appropriate), and the general public, to advise continuously the area agency on aging on all matters relating to the development of the area plan, the administration of the plan and operations conducted under the plan;

(E) establish effective and efficient procedures for coordination of— (i) entities conducting programs that receive assistance under this Act within the planning and service area served by the agency; and (ii) entities conducting other Federal programs for older individuals at the local level, with particular emphasis on entities conducting programs described in section 203(b), within the area;

(F) in coordination with the State agency and with the State agency responsible for mental and behavioral health services, increase public awareness of mental health disorders, remove barriers to diagnosis and treatment, and coordinate mental and behavioral health services (including mental health screenings) provided with funds expended by the area agency on aging with mental and behavioral health services provided by community health centers and by other public agencies and nonprofit private organizations;

(G) if there is a significant population of older individuals who are Indians in the planning and service area of the area agency on aging, the area agency on aging shall conduct outreach activities to identify such individuals in such area and shall inform such individuals of the availability of assistance under this Act; and

(H) in coordination with the State agency and with the State agency responsible for elder abuse prevention services, increase public awareness of elder abuse, neglect, and exploitation, and remove barriers to education, prevention, investigation, and treatment of elder abuse, neglect, and exploitation, as appropriate;

(7) provide that the area agency on aging shall, consistent with this section, facilitate the area-wide development and implementation of a comprehensive, coordinated system for providing long-term care in home and community-based settings, in a manner responsive to the needs and preferences of older individuals and their family caregivers, by—

(A) collaborating, coordinating activities, and consulting with other local public and private agencies and organizations responsible for administering programs, benefits, and services related to providing long-term care;

(B) conducting analyses and making recommendations with respect to strategies for modifying the local system of long-term care to better—

(i) respond to the needs and preferences of older individuals and family caregivers;

(ii) facilitate the provision, by service providers, of long-term care in home and community-based settings; and

(iii) target services to older individuals at risk for institutional placement, to permit such individuals to remain in home and community-based settings;

(C) implementing, through the agency or service providers, evidence-based programs to assist older individuals and their family caregivers in learning about and making behavioral changes intended to reduce the risk of injury, disease, and disability among older individuals; and

(D) providing for the availability and distribution (through public education campaigns, Aging and Disability Resource Centers, the area agency on aging itself, and other appropriate means) of information relating to—

(i) the need to plan in advance for long-term care; and

(ii) the full range of available public and private long-term care (including integrated long-term care) programs, options, service providers, and resources;

(8) provide that case management services provided under this title through the area agency on aging will—

(A) not duplicate case management services provided through other Federal and State programs;

(B) be coordinated with services described in subparagraph (A); and

(C) be provided by a public agency or a nonprofit private agency that—

(i) gives each older individual seeking services under this title a list of agencies that provide similar services within the jurisdiction of the area agency on aging;

(ii) gives each individual described in clause (i) a statement specifying that the individual has a right to make an independent choice of service providers and documents receipt by such individual of such statement;

(iii) has case managers acting as agents for the individuals receiving the services and not as promoters for the agency providing such services; or

(iv) is located in a rural area and obtains a waiver of the requirements described in clauses (i) through (iii);

(9) provide assurances that the area agency on aging, in carrying out the State Long-Term Care Ombudsman program under section 307(a)(9), will expend not less than the total amount of

funds appropriated under this Act and expended by the agency in fiscal year 2000 in carrying out such a program under this title;

(10) provide a grievance procedure for older individuals who are dissatisfied with or denied services under this title;

(11) provide information and assurances concerning services to older individuals who are Native Americans (referred to in this paragraph as “older Native Americans”), including—

(A) information concerning whether there is a significant population of older Native Americans in the planning and service area and if so, an assurance that the area agency on aging will pursue activities, including outreach, to increase access of those older Native Americans to programs and benefits provided under this title;

(B) an assurance that the area agency on aging will, to the maximum extent practicable, coordinate the services the agency provides under this title with services provided under title VI; and

(C) an assurance that the area agency on aging will make services under the area plan available, to the same extent as such services are available to older individuals within the planning and service area, to older Native Americans; and

(12) provide that the area agency on aging will establish procedures for coordination of services with entities conducting other Federal or federally assisted programs for older individuals at the local level, with particular emphasis on entities conducting programs described in section 203(b) within the planning and service area.

(13) provide assurances that the area agency on aging will—

(A) maintain the integrity and public purpose of services provided, and service providers, under this title in all contractual and commercial relationships;

(B) disclose to the Assistant Secretary and the State agency—

(i) the identity of each nongovernmental entity with which such agency has a contract or commercial relationship relating to providing any service to older individuals; and

(ii) the nature of such contract or such relationship;

(C) demonstrate that a loss or diminution in the quantity or quality of the services provided, or to be provided, under this title by such agency has not resulted and will not result from such contract or such relationship;

(D) demonstrate that the quantity or quality of the services to be provided under this title by such agency will be enhanced as a result of such contract or such relationship; and

(E) on the request of the Assistant Secretary or the State, for the purpose of monitoring compliance with this Act (including conducting an audit), disclose all sources and expenditures of funds such agency receives or expends to provide services to older individuals;

(14) provide assurances that preference in receiving services under this title will not be given by the area agency on aging to particular older individuals as a result of a contract or commercial relationship that is not carried out to implement this title;

(15) provide assurances that funds received under this title will be used—

(A) to provide benefits and services to older individuals, giving priority to older individuals identified in paragraph (4)(A)(i); and

(B) in compliance with the assurances specified in paragraph (13) and the limitations specified in section 212;

(16) provide, to the extent feasible, for the furnishing of services under this Act, consistent with self-directed care; and

(17) include information detailing how the area agency on aging will coordinate activities, and develop long-range emergency preparedness plans, with local and State emergency response agencies, relief organizations, local and State governments, and any other institutions that have responsibility for disaster relief service delivery.

(b)(1) An area agency on aging may include in the area plan an assessment of how prepared the area agency on aging and service providers in the planning and service area are for any anticipated change in the number of older individuals during the 10-year period following the fiscal year for which the plan is submitted.

(2) Such assessment may include—

(A) the projected change in the number of older individuals in the planning and service area;

(B) an analysis of how such change may affect such individuals, including individuals with low incomes, individuals with greatest economic need, minority older individuals, older individuals residing in rural areas, and older individuals with limited English proficiency;

(C) an analysis of how the programs, policies, and services provided by such area agency can be improved, and how resource levels can be adjusted to meet the needs of the changing population of older individuals in the planning and service area; and

(D) an analysis of how the change in the number of individuals age 85 and older in the planning and service area is expected to affect the need for supportive services.

(3) An area agency on aging, in cooperation with government officials, State agencies, tribal organizations, or local entities, may make recommendations to government officials in the planning and service area and the State, on actions determined by the area agency to build the capacity in the planning and service area to meet the needs of older individuals for—

- (A) health and human services;
- (B) land use;
- (C) housing;
- (D) transportation;
- (E) public safety;
- (F) workforce and economic development;
- (G) recreation;
- (H) education;
- (I) civic engagement;
- (J) emergency preparedness;
- (K) 11 protection from elder abuse, neglect, and exploitation; and
- (L) any other service as determined by such agency.

(c) Each State, in approving area agency on aging plans under this section, shall waive the requirement described in paragraph (2) of subsection (a) for any category of services described in such paragraph if the area agency on aging demonstrates to the State agency that services being furnished for such category in the area are sufficient to meet the need for such services in such area and had conducted a timely public hearing upon request.

(d)(1) Subject to regulations prescribed by the Assistant Secretary, an area agency on aging designated under section 305(a)(2)(A) or, in areas of a State where no such agency has been designated, the State agency, may enter into agreement with agencies administering programs under the Rehabilitation Act of 1973, and titles XIX and XX of the Social Security Act for the purpose of developing and implementing plans for meeting the common need for transportation services of individuals receiving benefits under such Acts and older individuals participating in programs authorized by this title.

(2) In accordance with an agreement entered into under paragraph (1), funds appropriated under this title may be used to purchase transportation services for older individuals and may be pooled with funds made available for the provision of transportation services under the Rehabilitation Act of 1973, and titles XIX and XX of the Social Security Act.

(e) An area agency on aging may not require any provider of legal assistance under this title to reveal any information that is protected by the attorney-client privilege.

(f)(1) If the head of a State agency finds that an area agency on aging has failed to comply with Federal or State laws, including the area plan requirements of this section, regulations, or policies, 11 Margin of subparagraph (K) (as added by section 4(d)(2)(C) of Public Law 114–144) is so in law. Such subparagraph should align 2 ems to the left to align with other subparagraphs in paragraph (3). the State may withhold a portion of the funds to the area agency on aging available under this title.

(2)(A) The head of a State agency shall not make a final determination withholding funds under paragraph (1) without first affording the area agency on aging due process in accordance with procedures established by the State agency.

(B) At a minimum, such procedures shall include procedures for—

(i) providing notice of an action to withhold funds;

(ii) providing documentation of the need for such action; and

(iii) at the request of the area agency on aging, conducting a public hearing concerning the action.

(3)(A) If a State agency withholds the funds, the State agency may use the funds withheld to directly administer programs under this title in the planning and service area served by the area agency on aging for a period not to exceed 180 days, except as provided in subparagraph (B).

(B) If the State agency determines that the area agency on aging has not taken corrective action, or if the State agency does not approve the corrective action, during the 180-day period described in subparagraph (A), the State agency may extend the period for not more than 90 days.

CHAPTER 6: SUMMARY OF AUTHORIZED PROGRAMS

6.1. **ELIGIBILITY.** (ICOA) Persons eligible to receive services under the Act shall be sixty (60) years of age or older and residents of the state of Idaho. Functionally- or cognitively-impaired adults under age sixty (60) living in the home of a caregiver who is age sixty (60) or older are exempted from this requirement. In those instances the caregiver is considered to be the client.

6.2. **Older Americans Act Part E National Family Caregiver Support Program** (OAA SEC. 371)

(a) IN GENERAL.—In this part:

(1) CHILD.—The term “child” means an individual who is not more than 18 years of age.

(2) INDIVIDUAL WITH A DISABILITY.—The term “individual with a disability” means an individual with a disability, as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102), who is not less than age 18 and not more than age 59.

(3) OLDER RELATIVE CAREGIVER.—The term “older relative caregiver” means a caregiver who—

(A)(i) is age 55 or older; and

(ii) lives with, is the informal provider of in-home and community care to, and is the primary caregiver for, a child or an individual with a disability;

(B) in the case of a caregiver for a child—

(i) is the grandparent, step-grandparent, or other relative (other than the parent) by blood, marriage, or adoption, of the child;

(ii) is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregivers of the child; and

(iii) has a legal relationship to the child, such as legal custody, adoption, or guardianship, or is raising the child informally; and

(C) in the case of a caregiver for an individual with a disability, is the parent, grandparent, or other relative by blood, marriage, or adoption, of the individual with a disability.

(b) RULE.—In providing services under this part, for family caregivers who provide care for individuals with Alzheimer’s disease and related disorders with neurological and organic brain dysfunction, the State involved shall give priority to caregivers who provide care for older individuals with such disease or disorder.

6.3. **PROGRAMS FOR OLDER PERSONS.** (IC 67-5008) The commission shall upon reviewing recommendations from local area councils on aging, as required by the Older Americans Act of

1965, as amended, allocate to local designated area agencies grants or contracts for the following purposes:

1. **Transportation** -- For operating expenses only.
2. **Congregate meals** -- For direct costs to provide nutritionally balanced meals to older persons at congregate meal sites.
3. **In-home services** -- For direct provision of:
 - A. Case management,
 - B. Homemaker,
 - C. Chore,
 - D. Telephone reassurance,
 - E. Home delivered meals,
 - F. Friendly visiting,
 - G. Shopping assistance,
 - H. In-home respite and other in-home services to older persons living in noninstitutional circumstances. Fees for specific services shall be based upon a variable schedule, according to rules established by the Idaho commission on aging, based upon ability to pay for such services.
4. **Adult day care** -- For direct services to older persons and their caregivers.
5. **Ombudsman** -- For provision of ombudsman services as described in section [67-5009](#), Idaho Code.
6. **Disease Prevention and Health Promotion Services** (OAA 361 a-c)

6.4. **ADDITIONAL PROGRAMS.**

1. **Adult Protection Services.** (IC 67-5011) Adult protection services for vulnerable adults shall be administered through the commission as described in [chapter 53, title 39](#), Idaho Code, entitled "Adult Abuse, Neglect and Exploitation Act."
2. **Grants or Contracts for Demonstration Projects.** (IC 67-5010) The commission may, based on needs identified in Idaho's community based service system for the elderly through its state planning process and at its discretion, enter into grants or contracts with area agencies or service providers to demonstrate new or more effective methods of delivering the services listed in section [67-5008](#), Idaho Code. These one (1) time demonstration grants or contracts will not adversely affect the grants or contracts provided to local area agencies on aging described in section [67-5007](#), Idaho Code.

CHAPTER 7: INFORMATION AND ASSISTANCE

7.1 INFORMATION AND ASSISTANCE. (ICOA)

1. **Client Screening.** I&A shall provide client screening and appropriate referrals.
2. **Client Assessment.** All screened clients requiring assessment shall be referred to case management or adult protection as appropriate.
3. **Reporting Requirements.** Each AAA shall maintain records as required by the ICOA. Such records shall include information about the purpose and date of incoming calls, referrals of callers to other service providers, and any follow-up information regarding the outcome of referrals. The AAA shall report to the ICOA the units of service attributable to the I&A services provided.
4. **Provider. (IDAPA 15.01.01.009.22)** An AAA or a person or entity capable of providing services to clients under a formal contractual arrangement including duly authorized agents and employees.

7.2 OLDER AMERICANS ACT DEFINITIONS FOR INFORMATION AND ASSISTANCE SERVICES. (OAA Section 102(a)(28)) (IC 67-5006(6)) Means a service for older individuals that—

1. Provides the individuals with current information on opportunities and services available to the individuals within their communities, including information relating to assistive technology;
2. Assesses the problems and capacities of the individuals;
3. Links the individuals to the opportunities and services that are available;
4. To the maximum extent practicable, ensures that the individuals receive the services needed by the individuals, and are aware of the opportunities available to the individuals, by establishing adequate follow-up procedures; and
5. Serves the entire community of older individuals, particularly—
 - A. Older individuals with greatest social need;
 - B. Older individuals with greatest economic need; and
 - C. Older individuals at risk for institutional placement.

CHAPTER 8: CASE MANAGEMENT

- 8.1. **POLICY.** (ICOA) Case management is a consumer-driven, social model case management service that empowers individuals and their families to make choices concerning in-home, community-based or institutional long-term care services.
- 8.2. **QUALIFICATIONS.** (ICOA) Any person hired to fill the position of case manager or case management supervisor on or after July 1, 1998, shall have the qualifications identified in Subsections 010.09 and 010.11 of these rules.
- 8.3. **SERVICE PRIORITY.** (ICOA) Service priority is based on the following criteria:
1. Require minimal assistance with one or more ADLs or IADLs;
 2. Require services from multiple health/social services providers; and
 3. Are unable to obtain the required health/social services for themselves; or
 4. Lack available formal or informal supports that can provide the needed assistance.
- 8.4. **SCREENING AND REFERRAL.** (ICOA)
1. The purpose of screening is to determine whether an older person needs service referral, assistance and client advocacy, or is a potential case management client who should receive a home visit and a comprehensive assessment.
 2. Screening shall be provided over the telephone. Screening may also be provided in the field, if appropriate.
 3. Screening shall usually be accomplished by the Information and Assistance component, Adult Protection, provider, or by a community agency. However, case management may receive a direct referral of a potential client who has not been screened. In such cases, case management shall conduct screening or refer the potential client to the Information and Assistance component for screening.
 4. Pre-referral screening shall be performed to determine if a potential client meets the criteria for receipt of case management services. If the potential client meets the criteria and agrees to the referral, the client shall be referred for a comprehensive assessment utilizing the ICOA approved assessment instrument.
 5. Referrals who do not meet the criteria for Case Management Services shall be referred for other appropriate services.
 6. If notification was requested, the referral source shall be notified of case disposition following the screening.
- 8.5. **REFERRAL FOR CASE MANAGEMENT.** (ICOA) Referrals shall be accepted from any source and may include eligible clients who are seeking or already receiving other services.
- 8.6. **WORKING AGREEMENTS.** (ICOA)
1. The Case Management Program is encouraged to enter into working agreements with primary community resources utilized by older persons. These resources may include AAA service providers, mental health centers, hospitals, home health agencies, legal services providers, and others.
 2. Working agreements should address at least the following:
 - A. How long each party will take to respond to a request for service;
 - B. Release of information procedures;
 - C. Referral and follow-up procedures;

- D. How each party will notify the other of program changes and non-availability of service; and
- E. Procedures for working out problems between the two (2) parties.

8.7. **CORE SERVICES.** (ICOA) Case management provides responsible utilization of available informal (unpaid) supports before arranging for formal (paid) services. The case manager and client, or client's legal representative, shall work together in developing an SSP to establish the frequency and duration of needed services. Services shall be arranged subsequent to approval by the client or legal representative. Services provided shall be recorded and monitored to ensure cost effectiveness and compliance with the SSP.

8.8. **PROGRAM INTAKE.** (ICOA)

1. **Normal Intake.** Except under circumstances where a case management waiting list exists, client contact shall be initiated within five (5) days of receipt of the referral, and an assessment shall be conducted within two (2) weeks of referral.
2. **Emergency Intake.** Referrals indicating a crisis or potential crisis such as a marked decline in health or functional status, hospital discharge, or adult protection referral require a home visit be conducted to assess service need within two (2) working days of receipt of referral. If appropriate and available, a homemaker shall be assigned and service shall be initiated immediately. Referrals assessed to need emergency service shall take precedence over applicants carried on a waiting list.
3. **Client Assessment.** To determine the level of need and the type of service needed, an AAA Case Manager or SST shall conduct an in-home assessment using the ICOA approved assessment instrument. Service alternatives shall be discussed and referrals initiated as appropriate.
4. **Assessment Coordination.** A client need not be re-assessed if an assessment completed within the past ninety (90) days by the Department provides the same information as the ICOA approved assessment instrument and the client signs a Release of Information form. A client assessment shall be completed if no current assessment from another agency is available. In either case, a home visit shall be included in the process of developing the client's individual SSP. ([F.O.AD.03. Release of Information](#))

8.9. **INDIVIDUAL SUPPORTIVE SERVICE PLAN (SSP).** (ICOA) A supportive service plan shall be signed by the client or legal representative prior to initiation of services.

1. **An approved plan.** Shall reflect needed services to be provided by available family or others.
2. **Revision of the SSP.** After services have been in place for one (1) month, the provider shall inform the AAA of any modifications it suggests be made to the SSP, such as changes in hours of service or tasks to be performed.
3. **Reassessments of SSP.** Case Management shall update the SSP at least annually. Any revisions to an SSP shall be initiated by the client prior to being put into effect. An SSP may be updated more often than annually if changes in a client's circumstances (i.e., functional or cognitive ability, living conditions, availability of supports) indicate a necessity for re-assessment.
4. **Client assessment** shall be conducted during a home visit and shall utilize the ICOA approved assessment instrument.
5. **SSP.** Based on the information obtained during the client assessment and input obtained from family or professionals familiar with the client, the case manager shall develop a written SSP which shall include at least the following:
 - A. Problems identified during the assessment;
 - B. Exploration of opportunities for family and other informal support involvement to be included in development of the SSP;

- C. Overall goals to be achieved;
 - D. Reference to all services and contributions provided by informal supports including the actions, if any, taken by the case manager to develop the informal support services;
 - E. Documentation of all those involved in the service planning, including the client's involvement;
 - F. Schedules for case management monitoring and reassessment;
 - G. Documentation of unmet need and service gaps; and
 - H. References to any formal services arranged, including fees, specific providers, schedules of service initiation, and frequency or anticipated dates of delivery.
6. A copy of the current SSP shall be provided to the client or legal representative.
 7. Case files shall be maintained for three (3) years following service termination.
- 8.10. **OTHER SUPPORTIVE SERVICES.** (ICOA)
1. Necessary Services. Case managers shall assist clients to obtain available benefits, services, medically related devices, assistive technology, necessary home modifications, or other services required to fulfill unmet needs.
 2. Social-Emotional Support. Case managers shall link clients and their families with available services which facilitate life adjustments and bolster informal supports.
 3. Unmet Needs. To assist the AAA in future planning, case managers shall identify and document unmet client needs.
 4. Other Resources. In all cases, other available formal and informal supports shall be explored prior to utilization of formal Aging Network services.
- 8.11. **STRUCTURE AND ROLE.** (ICOA) Case management is a centralized evaluator and arranger of services.
1. Case managers shall coordinate service delivery between multiple agencies, individuals, and others.
 2. Each Provider shall carry insurance covering case management services in the types and amounts which meet acceptable business and professional standards.
 3. Each Provider shall conduct an orientation program for all new case management employees which covers, at least, local resources available, case management service delivery, confidentiality of information, and client rights.
 4. In addition to the development and maintenance of the SSP, program and client records shall be maintained to provide an information system which assures accountability to clients, the Case Management Program, and funding agencies, and which supplies data for AAA planning efforts. The information system established shall comply with the following the ICOA requirements:
 - A. NAPIS Registration Form;
 - B. Completed the ICOA approved assessment instrument;
 - C. Pertinent correspondence relating specifically to the client;
 - D. A narrative record of client and community contacts, including problems encountered and SSP modifications developed in response;
 - E. Completed SSP, signed by the client;
 - F. Written consent and acceptance of Case Management Services and release of information forms; (4-5-00) ([FO.AD.03. Release of Information](#))
 - G. Any other documentation necessary for systematic case management and SSP continuity.

5. Provider. (15.01.01.009.21) An AAA or a person or entity capable of providing services to clients under a formal contractual arrangement including duly authorized agents and employees.
- 8.12. **AREA PLANS.** (OAA, Section 306(a)(8)) Case management services provided under this title through the area agency on aging will—
 1. (A) not duplicate case management services provided through other Federal and State programs;
 2. (B) be coordinated with services described in subparagraph (A); and
 3. (C) be provided by a public agency or a nonprofit private agency that—
 - A. (i) gives each older individual seeking services under this title a list of agencies that provide similar services within the jurisdiction of the area agency on aging;
 - B. (ii) gives each individual described in clause (i) a statement specifying that the individual has a right to make an independent choice of service providers and documents receipt by such individual of such statement;
 - C. (iii) has case managers acting as agents for the individuals receiving the services and not as promoters for the agency providing such services; or
 - D. (iv) is located in a rural area and obtains a waiver of the requirements described in clauses (i) through (iii);
- 8.13. **EVALUATION.** (ICOA) Evaluation is required to assure quality control. The AAA is responsible for monitoring case management activities for quality control and assurance. The AAA shall review client records to determine:
 1. Services are being provided as outlined in the SSP;
 2. Services are meeting the goals established in the SSP;
 3. The client is satisfied with the service being provided;
 4. Changes in service have been authorized;
 5. The SSP continues to be cost-effective;
 6. Providers are noting observations and relating information about informal caregivers, additional actions required by the case manager, re-evaluations, amendments to the SSP, and client contacts.

IDAHO LONG-TERM CARE OMBUDSMAN
PROGRAM MANUAL

CHAPTER 9

TABLE OF CONTENTS

9.1.GENERAL

1. Purpose	6
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
12. Designation Criteria For Local Ombudsman Program Entities (AAA)	23-24
13. Designation Criteria For Local Ombudsman (LTCO)	24-25
14. De-Designation Of Ombudsman Program Entity (AAA)	25-26
15. De-Designation Of Local Ombudsman (LTCO)	26-27
16. Grievance Procedure For Appeal Of De-Designation/De-Certification	27-28
17. Grievance Procedure For Complaints Against An Ombudsman	28-29
Local Ombudsman (LTCO)	28-29
State Long-Term Care Ombudsman (SLTCO)	29
18. Independence Of Long-Term Care Ombudsman Program	29
Independent Determinations	29

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

1. Functions of the State Long-Term Care Ombudsman (SLTCO)	30-31
Serving All Residents	30
Complaint and Non Complaint Visits	31
General Complaint Response Time	31
Residents Transitioning from Long Term Care	31
Technical Assistance, Consultation, Training	31
Represent Resident Interests	31
Analyze Laws and Regulations	31
Leadership	32
Recommendations	32
Lobbying	32
2. Responsibilities For Local Ombudsman	32
Qualifications	32-33
Conflict of Interest	33
Training/Testing of Local Ombudsman/Waiver	33
3. Designation of Local Ombudsman	33-34
4. Training	33-34
Curriculum and Resources	34
Training Requirements	34
Responsibility	35
5. Ombudsman Program Information Management	
6. Fiscal Management	35
7. Reporting	35-56
State	35-36
Federal	36
8. State Level Coordination	36-37

9.5. STATE AGENCY RESPONSIBILITIES FOR THE OMBUDSMAN PROGRAM

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

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

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

9.7. DUTIES OF REPRESENTATIVES OF THE OFFICE

1. Functions of Local Ombudsman	47-48
2. Visits	48
Non Complaint Related Visits	48
Complaint Related Visits	48
3. Investigation	48-49
Focus of Investigation	49
Complaint Response/Priorities	49-50
Case	50-51
4. Complaint Intake and Response	51
Resident Participation	51
Information Gathering	51
5. Complaint Verification and Plan of Action	52
Verification vs. Validation	52

Immediate Action	52
Resident Notification	52
6. Source of Complaint	52-53
7. Consent/Confidentiality	53-54
Resident Consent	53
Resident Inability to Consent	54
8. Referrals	54
General	54
Regulatory Agencies	54-55
9. Abuse Allegations Witnessed by Ombudsman	55-56
Resident Consent	55
Resident Inability to Consent	55
10. Community Education/Facility Training	56
11. Media	56
12. Volunteer Ombudsmen	56-57
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	
1. Identifying Conflict	58
2. Organizational Conflicts	58-59
3. Individual Ombudsman Conflicts	59-60
4. Conflict of Interest Standards	60-61
Responsibility	61
5. Conflict of Interest Remedies	61
Organizational Conflict Remedy	61
Individual Conflict Remedy	62-63
6. Ombudsman/AP Conflict Remedy	63-64
Written Agreement between Ombudsman/AP	64
7. Commissioner or Advisory Council Conflict Remedy	64
8. ICOA Responsibility	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 15.01.01, 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.
4. **3. Area Agency on Aging. (AAA).** (IDAPA 15.01.03 & 15.01.01.009.03) Separate organizational unit within a unit of general purpose local government or public or private non-profit agency or organization 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 specified geographic area.
- 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 (OAA 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 re-dacted. (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"> • Contact the SLTCO for approval • 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;
A complainant if not the resident	<ul style="list-style-type: none"> • The request will be submitted in writing in accordance with section 9.3 Establishment of the Office • The Local Ombudsman will notify the SLTCO; • The SLTCO and Local Ombudsman will determine that the release is not in conflict with the wishes or interests of the relevant resident; and • The identity of other residents or complainants will be redacted. • The request will be made in writing in accordance with section 9.3; • The Local Ombudsman will notify the SLTCO;
Another agency or program	<p>Records will be released only if:</p> <ul style="list-style-type: none"> • 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; • 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; • The identities of residents or complainants who have not provided consent (outlined above) for the release of their names are not revealed or; • The disclosure is required by court order.

GUIDE FOR RELEASE OF OMBUDSMAN RECORDS (cont.)	
The request for LTCO records is made by...	THEN the LTCO or designee shall....
	NOTE: Where federal requirements conflict with Idaho State law, the federal requirement takes precedence.
A judge	<ul style="list-style-type: none"> • Contact the SLTCO for approval; • Release any records directly; responsive to a court order; and • 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.
Any other party	<p>Contact the SLTCO for approval and release the records only if:</p> <ul style="list-style-type: none"> • 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; • 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 • The identities of residents or complainants who have not provided consent outlined above (for the release of their names) are not revealed. • The disclosure is required by court order.

- 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;
 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 31st 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 31st 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:
 - o 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

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 years' 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

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

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

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

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

Federal	36
8. State Level Coordination	36-37

9.5. STATE AGENCY RESPONSIBILITIES FOR THE OMBUDSMAN PROGRAM

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

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

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

9.7. DUTIES OF REPRESENTATIVES OF THE OFFICE

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

Information Gathering	51
5. Complaint Verification and Plan of Action	52
Verification vs. Validation	52
Immediate Action	52
Resident Notification	52
6. Source of Complaint	52-53
7. Consent/Confidentiality	53-54
Resident Consent	53
Resident Inability to Consent	54
8. Referrals	54
General	54
Regulatory Agencies	54-55
9. Abuse Allegations Witnessed by Ombudsman	55-56
Resident Consent	55
Resident Inability to Consent	55
10. Community Education/Facility Training	56
11. Media	56
12. Volunteer Ombudsmen	56-57
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

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

	Written Agreement between Ombudsman/AP	64
7.	Commissioner or Advisory Council Conflict Remedy	64
8.	ICOA Responsibility	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"> • Contact the SLTCO for approval • 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;
A complainant if not the resident	<ul style="list-style-type: none"> • The request will be submitted in writing in accordance with section 9.3 <u>Establishment of the Office</u> • The Local Ombudsman will notify the SLTCO; • The SLTCO and Local Ombudsman will determine that the release is not in conflict with the wishes or interests of the relevant resident; and • The identity of other residents or complainants will be redacted. • The request will be made in writing in accordance with section 9.3; • The Local Ombudsman will notify the SLTCO;
Another agency or program	<p>Records will be released only if:</p> <ul style="list-style-type: none"> • 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; • 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; • The identities of residents or complainants who have not provided consent (outlined above) for the release of their names are not revealed or; • The disclosure is required by court order.

GUIDE FOR RELEASE OF OMBUDSMAN RECORDS (cont.)	
The request for LTCO records is made by...	THEN the LTCO or designee shall....
	NOTE: Where federal requirements conflict with Idaho State law, the federal requirement takes precedence.
A judge	<ul style="list-style-type: none"> • Contact the SLTCO for approval; • Release any records directly; responsive to a court order; and • 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.
Any other party	<p>Contact the SLTCO for approval and release the records only if:</p> <ul style="list-style-type: none"> • 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; • 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 • The identities of residents or complainants who have not provided consent outlined above (for the release of their names) are not revealed. • The disclosure is required by court order.

- 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 31st 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 31st 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

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

CHAPTER 10: ADULT PROTECTIVE SERVICES

10.1. **POLICY STATEMENT.** (IDAPA 15.01.02.020)(7-1-98)

1. The ICOA is charged by statute to provide APS services to ensure:
 - A. The vulnerable adult population in Idaho is protected from abuse, neglect, and exploitation.
 - B. Protective services shall be provided that are the least restrictive to personal freedom and ensure the maximum independence of individuals served.
 - C. In protecting the vulnerable adult population, APS IS also intended to provide assistance to care giving families experiencing difficulties in maintaining functionally impaired relatives in the household.

10.2. **ADULT PROTECTION SERVICES.** (IC 67-5011) Adult protection services for vulnerable adults shall be administered through the commission. Adult protection services are specialized social services directed toward assisting vulnerable adults who are unable to manage their own affairs, carry out the activities of daily living or protect themselves from abuse, neglect or exploitation. Provision of services may be accomplished by contracting with each of the commission's local area agencies on aging. For the purposes of implementing the provisions of this section, the commission (AAAs) shall assume all responsibilities cited in chapter 53, title 39, Idaho Code, entitled "Adult Abuse, Neglect and Exploitation Act."

10.3. **ADMINISTRATIVE REQUIREMENTS.** (IDAPA 15.01.02.021)

1. In accordance with Section 67-5011, Idaho Code, the ICOA shall administer APS through contracts with Area Agencies on Aging.
 - A. **Staffing.** (ICOA) Each Provider shall provide sufficient staffing to respond to APS complaints within the statutory time frames set forth in Section 39-5304 (2), Idaho Code.
 - B. **Employee Qualifications.** (ICOA) Each Provider shall adhere to standards set forth in rule for the education and licensing of AP program employees, including requirements for the AP Supervisor, AP Worker and Supportive Services Technician.
 - C. **Program Reporting and Records.** (ICOA) All Provider APS programs shall comply with the ICOA's requirements for reporting and investigative documentation, and shall utilize standardized forms provided by the ICOA.
 - D. **Conflict of Interest.** (ICOA) APS program employees and their immediate families shall not hold a financial interest in agencies, organizations and entities providing care for vulnerable adults.
 - E. **Program Reviews.** (ICOA) The ICOA shall conduct on site program reviews of the AAA APS programs upon prior notice, and at reasonable intervals determined by the ICOA.

10.4. **PROVISION OF SERVICE REQUIREMENTS.** (IDAPA 15.01.02.022) In accordance with Section 67-5011, Idaho Code, each Provider shall assume all responsibilities cited in Title 39, Chapter 53, Idaho Code.

1. **Direct Provision of Service.** Area Agencies on Aging shall administer APS as a direct service or may sub-contract the service to another Provider at the sole discretion of the Administrator.
 - A. **Contracts.** Each Provider shall administer APS pursuant to contracts delineating the duties and obligations of each APS program.
 - B. **Court Visitors.** APS staff shall not serve as a court appointed visitor in a guardianship or conservatorship proceeding involving a proposed ward who is or has been the alleged victim in an APS investigation. (4-6-05)

10.5. **DECLARATION OF POLICY.** (IC 39-5301A)

1. It is the intent of the Adult Abuse, Neglect and Exploitation Act to:
 - A. Authorize the fewest possible restrictions on the exercise of personal freedom and religious beliefs consistent with a vulnerable adult's need for services and
 - B. Empower vulnerable adults to protect themselves.
2. The legislature recognizes that vulnerable adults:
 - A. Sometimes experience difficulties managing their own affairs.
 - B. Are unable to protect themselves from abuse, neglect or exploitation.
 - C. Often, cannot find others who are able or willing to provide assistance.
3. The commission is directed:
 - A. To investigate allegations of abuse, neglect, self-neglect or exploitation involving a vulnerable adult,
 - B. To make appropriate referrals to law enforcement, and
 - C. To arrange for the provision of necessary services.
 - D. Further the commission shall honor a vulnerable adult's freedom of choice and right to self-determination.
 - E. When it becomes necessary for the commission to assist a vulnerable adult:
 1. Actions shall be tempered by the requirements of due process and must place the fewest possible restrictions on personal freedom.
 - F. Services provided under this act are also intended to provide assistance to caregiving families experiencing difficulties in maintaining functionally impaired relatives in the household.
4. In the process of carrying out its adult protection responsibilities, the commission is directed to make effective use of multidisciplinary services available through any and all public agencies, community-based organizations, and informal resources.

10.6. **ADULT PROTECTION PROCEDURES.** (OAA Section 721 (b)(3)) ensuring the coordination of services provided by area agencies on aging with services instituted under the State adult protection service program, State and local law enforcement systems, and courts of competent jurisdiction;

1. **Duty to Report Cases of Abuse, Neglect or Exploitation of Vulnerable Adults.** (IC 39-5303)

- A. Any physician, nurse, employee of a public or private health facility, or a state licensed or certified residential facility serving vulnerable adults, medical examiner, dentist, ombudsman for the elderly, osteopath, optometrist, chiropractor, podiatrist, social worker, police officer, pharmacist, physical therapist, or home care worker who has reasonable cause to believe that a vulnerable adult is being or has been abused, neglected or exploited shall immediately report such information to the commission or contractors.

Provided however, that nursing facilities defined in section [39-1301\(b\)](#), Idaho Code, and employees of such facilities shall make reports required under this chapter to the department.

When there is reasonable cause to believe that abuse or sexual assault has resulted in death or serious physical injury jeopardizing the life, health or safety of a vulnerable adult, any person required to report under this section shall also report such information within four (4) hours to the appropriate law enforcement agency.

- B. Failure to report as provided under this section is a misdemeanor subject to punishment as provided in section [18-113](#), Idaho Code. If an employee at a state licensed or certified residential facility fails to report abuse or sexual assault that has resulted in death or serious physical injury jeopardizing the life, health or safety of a vulnerable adult as provided under this section, the department shall also have the authority to:
1. Revoke the facility's license and/or contract with the state to provide services;
 2. Deny payment;
 3. Assess and collect a civil monetary penalty with interest from the facility owner and/or facility administrator;
 4. Appoint temporary management;
 5. Close the facility and/or transfer residents to another certified facility;
 6. Direct a plan of correction;
 7. Ban admission of persons with certain diagnoses or requiring specialized care;
 8. Ban all admissions to the facility;
 9. Assign monitors to the facility; or
 10. Reduce the licensed bed capacity.
- Any action taken by the department pursuant to this subsection shall be appealable as provided in [chapter 52, title 67](#), Idaho Code.
- C. Any person, including any officer or employee of a financial institution, who has reasonable cause to believe that a vulnerable adult is being abused, neglected or exploited may report such information to the commission or its contractors.
- D. The commission and its contractors shall make training available to officers and employees of financial institutions in identifying and reporting instances of abuse, neglect or exploitation involving vulnerable adults.
- E. Any person who makes any report pursuant to this chapter, or who testifies in any administrative or judicial proceeding arising from such report, or who is authorized to provide supportive or emergency services pursuant to the provisions of this chapter, shall be immune from any civil or criminal liability on account of such report, testimony or services provided in good faith, except that such immunity shall not extend to perjury, reports made in bad faith or with malicious purpose nor, in the case of provision of services, in the presence of gross negligence under the existing circumstances.
- F. Any person who makes a report or allegation in bad faith, with malice or knowing it to be false, shall be liable to the party against whom the report was made for the amount of actual damages sustained or statutory damages in the amount of five hundred dollars (\$500), whichever is greater, plus attorney's fees and costs of suit. If the court finds that the defendant acted with malice or oppression, the court may award treble actual damages or treble statutory damages, whichever is greater.
2. **Exemption from Duty to Report – Limited Application of Exemption.** (IC 39-5303A)
- A. The requirements set forth in section [39-5303](#), Idaho Code, pertaining to the reporting of instances of abuse, neglect or exploitation of a vulnerable adult to the commission or the department shall not apply to situations involving resident-to-resident contact within public or private health facilities or state licensed or certified facilities which serve vulnerable adults, except in those cases involving sex abuse, death or serious physical injury that jeopardizes the life, health or safety of a vulnerable adult or repeated resident-to-resident physical or verbal altercations, not resulting in observable physical or mental injury, but

constituting an ongoing pattern of resident behavior that a facility's staff are unable to remedy through reasonable efforts.

- B. This exemption applies only to reports involving resident-to-resident abuse that are to be directed to the commission or the department pursuant to section [39-5303](#), Idaho Code. This exemption shall not limit any other reporting obligation or requirement whether statutory or otherwise.

3. **Reporting Requirements, Investigation, Emergency Access.** (IC 39-5304(1))

- A. When a report is required pursuant to this chapter, such report shall be made immediately to the commission or appropriate contractor.

Provided however, that nursing facilities defined in section [39-1301\(b\)](#), Idaho Code, and employees of such facilities shall make reports required under this chapter to the department.

If known, the report shall contain:

- 1. The name and address of the vulnerable adult; the caretaker; the alleged perpetrator;
- 2. The nature and extent of suspected abuse, neglect or exploitation; and
- 3. Any other information that will be of assistance in the investigation.

4. **Investigative Requirements.** (IDAPA 15.01.02.031)

- A. **Review of Allegations.** Upon receipt of a report of abuse, neglect, or exploitation the AP Provider shall conduct a review of the allegations of such report to determine whether:

- 1. The report was required to be made to the ICOA or its contractors pursuant to Section [39-5303](#), Idaho Code; (3-30-01)
- 2. An emergency exists; and (3-30-01)
- 3. In cases involving resident-to-resident contact reported pursuant to Section [39-5303\(A\)](#), Idaho Code, determine whether the case involves the sexual abuse, death, or serious physical injury jeopardizing the life, health, or safety of a vulnerable adult, or involves repeated physical or verbal altercations between residents, not resulting in observable physical or mental injury, but constituting an ongoing pattern of resident behavior that a facility's staff is unable to remedy through reasonable efforts. (4-6-05)

- B. **Need for Investigation.** If, based on its review, the Provider determines that a report involves a nursing facility defined in Section [39-1301\(b\)](#), Idaho Code, and was required to be made to the department pursuant to Section [39-5303](#), Idaho Code, the Provider shall immediately refer the report to the department.

- 1. If, based on its review, the Provider determines that a report involving resident-to-resident contact was exempted from reporting by Section [39-5303A](#), Idaho Code, no further investigation need be conducted on such report. The Provider shall investigate all other reports.

- C. **Vulnerability Determination.** Upon investigating a report, each Provider shall determine whether an alleged victim is vulnerable as defined in Section [39-5302](#), Idaho Code.

- 1. If the alleged victim is determined to be vulnerable as defined in Section [39-5302](#), Idaho Code, the Provider shall continue the investigation.
- 2. If the alleged victim is not vulnerable as defined in Section [39-5302](#), Idaho Code, the case shall be closed; however, the Provider may refer the complaint to:
 - a. Information and Assistance,
 - b. Case Management,
 - c. The Ombudsman,

- d. Law enforcement
 - e. Or other appropriate entity for investigation and resolution. (5-3-03)
- D. **Assessment of Alleged Victim.** An alleged victim's vulnerability and associated risk factors shall be determined through the ICOA approved standardized assessment forms. Initial interviews and assessments of an alleged victim shall be conducted by the Provider.
- E. **Investigative Determinations.** The Provider shall make one (1) of two (2) investigative determinations upon completion of an APS investigation:
1. Substantiated. A report of abuse, neglect, or exploitation of a vulnerable adult by another individual is deemed substantiated when:
 - a. Based upon limited investigation and review, the Provider perceives the report to be credible.
 1. A substantiated report shall be referred immediately to law enforcement for further investigation and action.
 2. Additionally, the name of the individual against whom a substantiated report was filed shall be forwarded to the department pursuant to Sections 39-5304(5) and 39-5308(2), Idaho Code, for further investigation.
 3. In substantiated cases of self-neglect, the Provider shall initiate appropriate referrals for supportive services with the consent of the vulnerable adult or his legal representative.
 2. Unsubstantiated. The Provider shall close the case if a report of abuse, neglect, or exploitation is not substantiated. If a report is unsubstantiated, but the Provider determines that the vulnerable adult has unmet service needs, the Provider shall initiate appropriate referrals for supportive services with consent of the vulnerable adult or their legal representative.
- F. **Protective Action Plan.** Upon substantiating a report of abuse, neglect or exploitation of a vulnerable adult, the Provider shall develop and implement a Protective Action Plan.
- G. **Caretaker Neglect.** In investigating a report of caretaker neglect, the Provider shall:
1. Take into account any deterioration of the mental or physical health of the caregiver resulting from the pressures associated with care giving responsibilities that may have contributed to the neglect of the vulnerable adult.
 - a. In such cases, the Provider shall make every effort to assist the primary caregiver in accessing program services necessary to reduce the risk to the vulnerable adult.
 - b. In APS cases in which family members are experiencing difficulties in providing twenty-four (24) hour care for a functionally impaired relative, the Provider shall make appropriate referrals to available community services to provide needed assistance.
- H. **Adult Protective Services and Ombudsman Coordination.** The Providers shall ensure that APS staff and the Ombudsman program maintain a written agreement establishing local cooperative protocols in the investigation of complaints.
- I. **Confidentiality.** All records relating to a vulnerable adult and held by a Provider are confidential and shall only be divulged as permitted pursuant to Sections 39-5307, 39-5304(5), and 39-5308, Idaho Code.
5. **Reporting Requirements, Investigation, Emergency Access.** (IC 39-5304(2-5))
- A. If the allegations in the report indicate that an emergency exists, the commission or contractor must initiate:
 1. An investigation immediately, and

2. Initiate contact with the alleged vulnerable adult within twenty-four (24) hours from the time the report is received.
 3. All other investigations must be initiated within seventy-two (72) hours from the time the report is received.
- B. The investigation shall include:
1. A determination of the nature, extent and cause of the abuse, neglect, or exploitation,
 2. Examination of evidence and
 3. Consultation with persons thought to have knowledge of the circumstances and identification, if possible, of the person alleged to be responsible for the abuse, neglect or exploitation of the vulnerable adult.
- C. Where no emergency exists, the commission or contractor may determine, based on the review of the report and any initial inquiries, that an interview with the vulnerable adult is not necessary to the investigation.
1. If the commission or contractor determines that an interview is necessary,
 - a. The preferred method of interviewing is by means of a personal visit with the vulnerable adult in the adult's dwelling.
 - b. Alternatively, the interview may occur in the local office of the commission or contractor, or by telephone conversation, or by any other means available to the commission or contractor.
 - c. Decisions regarding the method of conducting any interview will be within the discretion of the commission or contractor.
- D. Upon completion of an investigation, the commission or contractor shall prepare a written report of the investigation.
1. The name of the person making the original report or any person mentioned in the report shall not be disclosed unless those persons specifically request such disclosure or unless the disclosure is made pursuant to the commission's duty to notify law enforcement as required in section [39-5310](#), Idaho Code, to a request to law enforcement for emergency access, a court order or hearing.
 2. If the abuse, neglect, or exploitation is substantiated to have occurred in a state certified or licensed facility, a copy of the findings shall be sent to the licensing and certification office of the department.
 3. If the commission or contractor determines that a report is unsubstantiated and that no other law has been violated, all records related to the report shall be expunged no later than three (3) years following the completion of the investigation.
- 6. Inspections – Right of Entry. (IC 39-5305)**
- A. Upon receiving information that a vulnerable adult is alleged to be abused, neglected, or exploited, the commission or contractor shall cause such investigation to be made in accordance with the provisions of this chapter as is appropriate.
1. In making the investigation, the commission or contractor shall use its own resources and may enlist the cooperation of peace officers.
 2. In an emergency any authorized commission employee or contractor shall enlist the cooperation of a peace officer to ensure the safety of the vulnerable adult, and they shall receive the peace officer's assistance.
 3. Assistance in an emergency may include entry on private or public property where a vulnerable adult is allegedly subject to abuse, neglect or exploitation, and the removal and transportation of the vulnerable adult to a medical facility, care-providing facility, or other appropriate and safe environment.

- B. In a nonemergency, any peace officer may cooperate with an authorized commission employee or contractor in ensuring the safety of a vulnerable adult who has been abused, neglected or exploited, including a vulnerable adult living in a condition of self-neglect. Assistance shall only be provided with the consent of the vulnerable adult or his legal representative.
 - C. For the purposes of implementing or enforcing any provision of this chapter or any rule authorized under the provisions of this chapter, any duly authorized commission employee or contractor may, upon presentation of appropriate credentials at any reasonable time, with consent or in an emergency, enter upon any private or public property where a vulnerable adult allegedly is subject to abuse, neglect, or exploitation.
 - D. All inspections and searches conducted under the provisions of this chapter shall be performed in conformity with the prohibitions against unreasonable searches and seizures contained in the fourth amendment to the constitution of the United States and article I, section 17, of the constitution of the state of Idaho. The state shall not, under the authority granted in this chapter, conduct warrantless administrative searches of private property except with consent, or in an emergency.
 - E. If consent to entry is not given, a commission employee or contractor with the assistance of the county prosecutor may obtain, and any magistrate or district judge is authorized to issue a search warrant upon showing that probable cause exists to believe a vulnerable adult is subject to abuse, neglect or exploitation. Upon request of a commission employee or contractor, a peace officer shall serve the search warrant.
7. **Supportive Services and Disclosure.** (IC 39-5306)
- A. If there is substantiated abuse, neglect, or exploitation of a vulnerable adult, the commission or contractor has the responsibility to assist the adult in obtaining available services.
 - 1. **Supportive Services Plan.** (ICOA) If determined necessary to reduce risk to a vulnerable adult, in substantiated cases and as part of a PAP, the AP worker shall refer the case to Case Management for the development and implementation of an SSP with the consent of the vulnerable adult or his legal representative.
 - B. If the commission or contractor develops a plan of supportive services for the vulnerable adult, the plan shall provide for appropriate supportive services available to the vulnerable adult that are least restrictive to personal freedom and shall provide encouragement for client self-determination and continuity of care.
 - C. If the vulnerable adult does not consent to the receipt of reasonable and necessary supportive services, or if the vulnerable adult withdraws consent, services shall not be provided or continued.
 - 1. **Documentation of Client Consent.** (ICOA) A vulnerable adult's consent, refusal to grant consent, or withdrawal of consent to an SSP shall be documented in the client case record.
 - D. If the commission or contractor determines that a vulnerable adult is an incapacitated person, as defined in section [15-5-101\(a\)](#), Idaho Code, mentally ill as defined in section [66-317](#), Idaho Code, or developmentally disabled as defined in section [66-402](#), Idaho Code, the commission or contractor may petition the court for protective proceedings, appointment of a guardian or conservator and such other relief as may be provided by [chapter 5, title 15](#), Idaho Code, and chapters 3 and 4, [title 66](#), Idaho Code.
 - E. An employee or contractor of the commission shall not be appointed the guardian or conservator of a vulnerable adult unless the commission employee or contractor has a spousal or familial relationship with the vulnerable adult.

8. **Case Closure.** (IDAPA 15.01.02.032.01)
 - A. Case Closure. The Provider shall close a case under the following circumstances:
 1. The Provider shall close a substantiated case upon a determination that an initiated PAP, or law enforcement involvement has successfully reduced the risk to the vulnerable adult.
 2. The Provider may close a substantiated case when the vulnerable adult refuses or withdraws consent to receive services, or upon a determination that the Provider has implemented all measures available to reduce risk but has been unable to reduce risk.
 3. A case shall be closed if the Provider determines that an allegation has been made in bad faith or for a malicious purpose.
9. **Suspense File.** (IDAPA 15.01.02.032.02)
 - A. Suspense File. Closed cases shall be maintained in a suspense file until formal action is completed by law enforcement and/or the courts in the following instances:
 1. Cases referred by the Provider to law enforcement for criminal investigation and prosecution as determined necessary by the law enforcement agency. (5-3-03)
 2. Cases referred by the Provider for guardianship/conservatorship proceedings. (5-3-03)
10. **Access to Records.** (IC 39-5307)
 - A. Any person, department, agency or commission authorized to carry out the duties enumerated in this chapter shall have access to all relevant records, which shall be subject to disclosure according to [chapter 3, title 9](#), Idaho Code, and shall only be divulged with the written consent of the vulnerable adult or his legal representative. No medical records of any vulnerable adult may be divulged for any purpose without the express written consent of such person or his legal representative, or pursuant to other proper judicial process. (Forms Packet: FO.AD.03. Release of Information)
11. **Interagency Cooperation.** (IC 39-5308)
 - A. In performing the duties set forth in this chapter, the commission or contractor may request the assistance of the staffs and resources of all appropriate state departments, agencies and commissions and local health directors, and may utilize any other public or private agencies, groups or individuals who are appropriate and who may be available. Interagency cooperation shall include the involvement, when appropriate, of law enforcement personnel, department personnel, medical personnel, and any other person or entity deemed necessary due to their specialized training in providing services to vulnerable adults. Interagency cooperation may also include access to client information necessary for the provision of services to vulnerable adults.
 - B. The commission shall provide to the department on at least a quarterly basis a listing of all alleged perpetrators against whom an allegation of adult abuse, neglect or exploitation has been substantiated. Upon request, all available supportive information shall be provided to enable the department to conduct criminal background checks and other required investigations. (Forms Packet: RP.AP.02. AAA Substantiated Case Report)
 - C. The department shall provide to the commission or contractor any report received under this chapter from a nursing facility defined in section [39-1301\(b\)](#), Idaho Code, or an employee of such facility.
 - D. The commission or contractor shall provide the department with any report received under this chapter involving allegations of abuse, neglect or exploitation occurring in a nursing facility as defined in section [39-1301\(b\)](#), Idaho Code.

- E. The commission, contractors and the department shall use interagency staffing when necessary and share client and facility information necessary to provide services to vulnerable adults.
12. **Coordination of Services.** (IC 39-5309) Subsequent to the authorization for the provision of reasonable and necessary emergency and support services, the commission or contractor shall initiate a review of each case at reasonable intervals over a reasonable period of time as the commission or contractor deems necessary based upon the circumstances in each individual case to determine whether continuation or modification of the services provided is warranted. A decision to continue the provision of such services should be made in concert with appropriate personnel from state agencies, departments, service providers and others, and shall comply with the consent provisions of this chapter.
13. **Effect of Actions Taken Pursuant to the Natural Death Act.** (IC 39-5311) Any action taken by a physician or health facility pursuant to an agreement with a vulnerable adult in accordance with the provisions of [chapter 45, title 39](#), Idaho Code, shall not be construed to constitute abuse, exploitation, or neglect, so long as it is consistent with the withholding or withdrawal of artificial life-sustaining procedures from a qualified patient.
14. **Rules.** (IC 39-5312) The director of the Commission shall have the authority to adopt, promulgate and enforce such rules as he deems necessary in carrying out the provisions of this chapter subject to the provisions of [chapter 52, title 67](#), Idaho Code.

CHAPTER 11: NUTRITION

11.1. RULES GOVERNING OLDER AMERICANS ACT SERVICES.

1. **Nutrition Services.** (ICOA) The ICOA incorporates, by reference, all federal and state statutes and requirements governing the administration, operation and management of the congregate and home-delivered meal programs.

11.2. SENSE OF CONGRESS RECOGNIZING THE CONTRIBUTION OF NUTRITION TO THE HEALTH OF OLDER ADULTS. (OAA Subpart 3, General Provisions, Section 339 Nutrition)

1. **(a) Findings.**—Congress finds that-
 - A. (1) good nutrition is vital to good health, and a diet based on the Dietary Guidelines for Americans may reduce the risk of chronic diseases such as cardiovascular disease, osteoporosis, diabetes, macular degeneration, and cancer;
 - B. (2) the American Dietetic Association and the American Academy of Family Physicians have estimated that the percentage of older adults who are malnourished is estimated at 20 to 60 percent for those who are in home care and at 40 to 85 percent for those who are in nursing homes;
 - C. (3) the Institute of Medicine of the National Academy of Sciences has estimated that approximately 40 percent of community-residing persons age 65 and older have inadequate nutrient intakes;
 - D. (4) older adults are susceptible to nutrient deficiencies for a number of reasons, including a reduced capacity to absorb and utilize nutrients, difficulty chewing, and loss of appetite;
 - E. (5) while diet is the preferred source of nutrition, evidence suggests that the use of a single daily multivitamin-mineral supplement may be an effective way to address nutritional gaps that exist among the elderly population, especially the poor; and
 - F. (6) the Dietary Guidelines for Americans state that multivitamin-mineral supplements may be useful when they fill a specific identified nutrient gap that cannot be or is not otherwise being met by the individual's intake of food.
2. **(b) Sense of Congress.** It is the sense of Congress that—
 - A. (1) meal programs funded by the Older Americans Act of 1965 contribute to the nutritional health of older adults;
 - B. (2) when the nutritional needs of older adults are not fully met by diet, use of a single, daily multivitamin-mineral supplement may help prevent nutrition deficiencies common in many older adults;
 - C. (3) use of a single, daily multivitamin-mineral supplement can be a safe and inexpensive strategy to help ensure the nutritional health of older adults; and
 - D. (4) nutrition service providers under the Older Americans Act of 1965 should consider whether individuals participating in congregate and home-delivered meal programs would benefit from a single, daily multivitamin-mineral supplement that is in compliance with all applicable government quality standards and provides at least 2/ 3 of the essential vitamins and minerals at 100 percent of the daily value levels as determined by the Commissioner of Food and Drugs.

11.3. **SUBPART 3 GENERAL PROVISIONS, NUTRITION.** (OAA Section 339) A State that establishes and operates a nutrition project under this chapter shall—

(1) utilize the expertise of a dietitian or other individual with equivalent education and training in nutrition science, or if such an individual is not available, an individual with comparable expertise in the planning of nutritional services, and

(2) ensure that the project—

(A) provides meals that—

(i) comply with the most recent Dietary Guidelines for Americans, published by the Secretary and the Secretary of Agriculture, and

(ii) provide to each participating older individual—

(I) a minimum of 33¹/₃ percent of the dietary reference intakes established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences, if the project provides one meal per day,

(II) a minimum of 66²/₃ percent of the allowances if the project provides two meals per day, and

(III) 100 percent of the allowances if the project provides three meals per day, and

(iii) to the maximum extent practicable, are adjusted to meet any special dietary needs of program participants,

(B) provides flexibility to local nutrition providers in designing meals that are appealing to program participants,

(C) encourages providers to enter into contracts that limit the amount of time meals must spend in transit before they are consumed,

(D) where feasible, encourages joint arrangements with schools and other facilities serving meals to children in order to promote intergenerational meal programs,

(E) provides that meals, other than in-home meals, are provided in settings in as close proximity to the majority of eligible older individuals' residences as feasible,

(F) comply with applicable provisions of State or local laws regarding the safe and sanitary handling of food, equipment, and supplies used in the storage, preparation, service, and delivery of meals to an older individual,

(G) ensures that meal providers solicit the advice and expertise of—

(i) a dietitian or other individual described in paragraph (1),

(ii) meal participants, and

(iii) other individuals knowledgeable with regard to the needs of older individuals,

(H) ensures that each participating area agency on aging establishes procedures that allow nutrition project administrators the option to offer a meal, on the same basis as meals provided to participating older individuals, to individuals providing volunteer services during the meal hours, and to individuals with disabilities who reside at home with older individuals eligible under this chapter,

(I) ensures that nutrition services will be available to older individuals and to their spouses, and may be made available to individuals with disabilities who are not older individuals but who reside in housing facilities occupied primarily by older individuals at which congregate nutrition services are provided,

(J) provides for nutrition screening and nutrition education, and nutrition assessment and counseling if appropriate,

(K) encourages individuals who distribute nutrition services under subpart 2 to provide, to homebound older individuals, available medical information approved by health care professionals, such as informational brochures and information on how to get vaccines, including vaccines for influenza, pneumonia, and shingles, in the individuals' communities, and

(L) where feasible, encourages the use of locally grown foods in meal programs and identifies potential partnerships and contracts with local producers and providers of locally grown foods.

3. Safety Standards. (ICOA)

- A. The AAA shall ensure providers comply with all state and local fire, health, sanitation, safety, building, and zoning laws, ordinances, or codes;
- B. Have a valid permit to operate a food service establishment:
 - 1. Are in compliance with the Federal Occupational Safety and Health Administration (O.S.H.A.) requirements;
 - 2. Pass the Food Safety and Sanitation course in compliance with IDAPA 16.02.19, Subsection 400.02, "Rules Governing Food Safety and Sanitation Standards for Food Establishments (UNICODE)"; and
 - 3. Comply with the provisions of the Americans with Disabilities Act (PL 101-336).

4. Food Safety and Sanitation Standards for Food Establishments (The Idaho Food Code).

- A. These Rules Apply to Food Establishments. (IDAPA 16.02.19.001.03)
 - 1. Food establishments as defined in Section 39-1602, Idaho Code must follow these rules. Those facilities include but are not limited to the following:
 - a. Restaurants, catering facilities, taverns, kiosks, vending facilities, commissaries, cafeterias, mobile food facilities, temporary food facilities; and (4-6-05)
 - b. (b) Schools, senior centers, hospitals, residential care and treatment facilities, nursing homes, correctional facilities, camps, food banks, and church facilities.

5. Donation and Fees.

A. Client Contributions. (ICOA)

1. Client Contributions. All clients from whom a cost sharing payment is not required shall be given the opportunity to make voluntary contributions.

11.4. **NUTRITION SERVICES INCENTIVE PROGRAM (NSIP)**. (OAA Section 311 (a))

1. **Purpose.** (a) The purpose of this section is to provide incentives to encourage and reward effective performance by States and tribal organizations in the efficient delivery of nutritious meals to older individuals.
2. **Cash Distribution Plans.** (b)
 - A. (1) The Secretary shall allot and provide, in accordance with this section, to or on behalf of each State agency with a plan approved under this title for a fiscal year, and to or on behalf of each grantee with an application approved under title VI for such fiscal year, an amount bearing the same ratio to the total amount appropriated for such fiscal year under subsection (e) as the number of meals served in the State under such plan approved for the preceding fiscal year (or the number of meals served by the title VI grantee, under such application approved for such preceding fiscal year), bears to the total number of such meals served in all States and by all title VI grantees under all such plans and applications approved for such preceding fiscal year.
 - B. (2) For purposes of paragraph (1), in the case of a grantee that has an application approved under title VI for a fiscal year but that did not receive assistance under this section for the preceding fiscal year, the number of meals served by the title VI grantee for the preceding fiscal year shall be deemed to equal the number of meals that the Assistant Secretary estimates will be served by the title VI grantee in the fiscal year for which the application was approved.
3. **Agricultural Commodities.** (c)
 - A. (1) Agricultural commodities (including bonus commodities) and products purchased by the Secretary of Agriculture under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), shall be donated to a recipient of a grant or contract to be used for providing nutrition services in accordance with the provisions of this title.
 - B. (2) The Commodities Credit Corporation shall dispose of food commodities (including bonus commodities) under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) by donating them to a recipient of a grant or contract to be used for providing nutrition services in accordance with the provisions of this title.
 - C. (3) Dairy products (including bonus commodities) purchased by the Secretary of Agriculture under section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a–1) shall be used to meet the requirements of programs providing nutrition services in accordance with the provisions of this title.
 - D. (4) Among the commodities provided under this subsection, the Secretary of Agriculture shall give special emphasis to foods of high nutritional value to support the health of older individuals. The Secretary of Agriculture, in consultation with the Assistant Secretary, is authorized to prescribe the terms and conditions respecting the provision of commodities under this subsection.
4. **Commodity Election and Disbursement of Funds.** (d)
 - A. (1) Each State agency and each title VI grantee shall be entitled to use all or any part of amounts allotted under subsection (b) to obtain, subject to paragraphs (2) and (3), from the Secretary of Agriculture commodities available through any food program of the

Department of Agriculture at the rates at which such commodities are valued for purposes of such program.

- B. (2) The Secretary of Agriculture shall determine and report to the Secretary, by such date as the Secretary may require, the amount (if any) of its allotment under subsection (b) which each State agency and title VI grantee has elected to receive in the form of commodities. Such amount shall include an amount bearing the same ratio to the costs to the Secretary of Agriculture of providing such commodities under this subsection as the value of commodities received by such State agency or title VI grantee under this subsection bears to the total value of commodities so received.
- C. (3) From the allotment under subsection (b) for each State agency and title VI grantee, the Secretary shall transfer funds to the Secretary of Agriculture for the costs of commodities received by such State agency or grantee, and expenses related to the procurement of the commodities on behalf of such State agency or grantee, under this subsection, and shall then pay the balance (if any) to such State agency or grantee. The amount of funds transferred for the expenses related to the procurement of the commodities shall be mutually agreed on by the Secretary and the Secretary of Agriculture. The transfer of funds for the costs of the commodities and the related expenses shall occur in a timely manner after the Secretary of Agriculture submits the corresponding report described in paragraph (2), and shall be subject to the availability of appropriations. Amounts received by the Secretary of Agriculture pursuant to this section to make commodity purchases for a fiscal year for a State agency or title VI grantee shall remain available, only for the next fiscal year, to make commodity purchases for that State agency or grantee pursuant to this section.
- D. (4) Each State agency and title VI grantee shall promptly and equitably disburse amounts received under this subsection to recipients of grants and contracts. Such disbursements shall only be used by such recipients of grants or contracts to purchase domestically produced foods for their nutrition projects.
- E. (5) Nothing in this subsection shall be construed to require any State agency or title VI grantee to elect to receive cash payments under this subsection.

5. **Authorization to Carry out Section.** (e) There are authorized to be appropriated to carry out this section (other than subsection (c)(1)) such sums as may be necessary for fiscal year 2007 and such sums as may be necessary for each of the 4 succeeding fiscal years.

6. **Disseminate Information.** (f) In each fiscal year, the Secretary and the Secretary of Agriculture shall jointly disseminate to State agencies, title VI grantees, area agencies on aging, and providers of nutrition services assisted under this title, information concerning the foods available to such State agencies, title VI grantees, area agencies on aging, and providers under subsection (c).

(43.S.C. 3030a)

11.5. **COMMODITY CASH IN LIEU/COMMODITY ELECTION.** (ICOA)

- 1. **Commodity Program Participation Requirements.** All AAA nutrition service providers shall choose annually to participate in the USDA Eighty/Twenty (80/20) or One Hundred Percent (100%) Cash-In-Lieu Commodity program. (7-1-99)

11.6. **SUBPART 1 - CONGREGATE NUTRITION SERVICES**

- 1. **Purposes.** (OAA, Section 330)
 - A. (1) To reduce hunger and food insecurity;
 - B. (2) To promote socialization of older individuals; and

- C. (3) To promote the health and well-being of older individuals by assisting such individuals to gain access to nutrition and other disease prevention and health promotion services to delay the onset of adverse health conditions resulting from poor nutritional health or sedentary behavior.
2. **Authorization.** (OAA Section 331) The Assistant Secretary shall carry out a program for making grants to States under State plans approved under section 307 for the establishment and operation of nutrition projects that—
 - A. (1) 5 or more days a week (except in a rural area where such frequency is not feasible (as defined by the Assistant Secretary by regulation) and a lesser frequency is approved by the State agency), provide at least one hot or other appropriate meal per day and any additional meals which the recipient of a grant or contract under this subpart may elect to provide;
 - B. (2) Shall be provided in congregate settings, including adult day care facilities and multigenerational meal sites; and
 - C. (3) Provide nutrition education, nutrition counseling, and other nutrition services, as appropriate, based on the needs of meal participants. (42 U.S.C. Chapter 35 3030e)
 3. **Eligibility.**
 - A. (ICOA)
 1. Persons eligible to receive services under the Act shall be sixty (60) years of age or older and residents of the state of Idaho.
 2. Functionally- or cognitively-impaired adults under age sixty (60) living in the home of a caregiver who is age sixty (60) or older are exempted from this requirement. In those instances the caregiver is considered to be the client. (4-5-00)
 - B. (OAA 339(2)(H) and (I)) A State that establishes and operates a nutrition project under this chapter shall—
 1. (H) Ensures that each participating area agency on aging establishes procedures that allow nutrition project administrators the option to offer a meal, on the same basis as meals provided to
 - a. participating older individuals, to individuals providing volunteer services during the meal hours, and to
 - b. individuals with disabilities who reside at home with older individuals eligible under this chapter,
 2. (I) Ensures that nutrition services will be available to older individuals and to
 - a. their spouses, and
 - b. may be made available to individuals with disabilities who are not older individuals but who reside in housing facilities occupied primarily by older individuals at which congregate nutrition services are provided.
 4. **Screening.** (OAA Section 339(J))
 - A. A State that establishes and operates a nutrition project under this chapter shall ensure that the project.
 - B. Provides for nutrition screening and nutrition education, and nutrition assessment and counseling if appropriate.

11.7. **SUBPART 2 - HOME DELIVERED NUTRITION SERVICES.**

1. **Program Authorized.** (OAA Section 336)

- A. The Assistant Secretary shall establish and carry out a program to make grants to States under State plans approved under section 307 for the establishment and operation of nutrition projects for older individuals that provide—
 - 1. (1) On 5 or more days a week (except in a rural area where such frequency is not feasible (as defined by the Assistant Secretary by rule) and a lesser frequency is approved by the State agency) at least 1 home delivered meal per day, which may consist of hot, cold, frozen, dried, canned, fresh, or supplemental foods and any additional meals that the recipient of a grant or contract under this subpart elects to provide; and
 - 2. (2) Nutrition education, nutrition counseling, and other nutrition services, as appropriate, based on the needs of meal recipients. (42 U.S.C. 3030f)
- 2. **Eligibility.**
 - A. (ICOA)
 - 1. Persons eligible to receive services under the Act shall be sixty (60) years of age or older and residents of the state of Idaho.
 - 2. Functionally- or cognitively-impaired adults under age sixty (60) living in the home of a caregiver who is age sixty (60) or older are exempted from this requirement. In those instances the caregiver is considered to be the client. (4-5-00)
 - B. (OAA 339(2)(H) and (I)) A State that establishes and operates a nutrition project under this chapter shall—
 - 1. (H) Ensures that each participating area agency on aging establishes procedures that allow nutrition project administrators the option to offer a meal, on the same basis as meals provided to
 - a. Participating older individuals, to individuals providing volunteer services during the meal hours, and to
 - b. Individuals with disabilities who reside at home with older individuals eligible under this chapter,
 - 2. (I) Ensures that nutrition services will be available to older individuals and to
 - a. their spouses, and
 - b. may be made available to individuals with disabilities who are not older individuals but who reside in housing facilities occupied primarily by older individuals at which congregate nutrition services are provided.
 - C. (ICOA) Client's eligibility to receive home-delivered meals shall be based upon the degree to which ADLs/ IADLs limit ability to independently prepare meals.
- 3. **Screening.** (OAA Section 339(J))
 - A. A State that establishes and operates a nutrition project under this chapter shall ensure that the project-
 - 1. Provides for nutrition screening and nutrition education, and nutrition assessment and counseling if appropriate.
- 4. **Client Assessment.** (ICOA)
 - A. Applicants for services under this chapter shall be assessed utilizing the ICOA approved assessment instrument.

CHAPTER 12: OTHER AAA CONTRACTED SERVICES

12.1. **TRANSPORTATION.** (IC 67-5008(1)) For operating expenses only

1. **Transportation.** (ICOA)

- A. Available Services. Each AAA, in accordance with Section 306, OAA, shall assure that continuing efforts are made to make transportation services available to older individuals residing within the geographical boundaries of the PSA.
- B. Transportation to Meal Sites. Where appropriate, the AAA shall assure transportation to congregate meal sites is available.

12.2. **IN-HOME SERVICES.** (IC 67-5008(3)) In-home services - For direct provision of case management, homemaker, chore, telephone reassurance, home delivered meals, friendly visiting, shopping assistance, in-home respite and other in-home services to older persons living in noninstitutional circumstances. Fees for specific services shall be based upon a variable schedule, according to rules established by the Idaho commission on aging, based upon ability to pay for such services.

1. **Case Management. See Chapter 8. (Note. Case Management is associated with access to services in OAA (Section 306(a)(2)(A) & IDAPA 15.01.01.012.03.b)**

- A. Case management is a service provided to clients, at the direction of the individual or a family member of the individual, to assess the needs of the person and to arrange, coordinate, and monitor an optimum package of services to meet those needs. Activities of case management include: comprehensive assessment of the individual; development and implementation of a service plan with the individual to mobilize formal and informal resources and services; coordination and monitoring of formal and informal service delivery; and periodic reassessment.

2. **Homemaker.** (IDAPA 15.01.01.012.03.g)

- A. Assistance with housekeeping, meal planning and preparation, essential shopping and personal errands, banking and bill paying, medication management, and, with restrictions, bathing and washing hair.
- B. ICOA: Policy. Homemaker service is designed to provide assistance required to compensate for functional or cognitive limitations. Homemaker services provide assistance to eligible individuals in their own homes, or, based on an Adult Protection referral, in a caregivers home; to restore, enhance, or maintain their capabilities for self-care and independent living. Available family shall be involved in developing a supportive services plan for the client to ensure the formal services provided shall enhance any available informal supports provided. A client or legal representative shall have the right to accept or refuse services at any time. The AAAs may reserve funds to support the expenditure of up to a maximum of ten percent (10%) of their annual Act Homemaker Service funding to support emergency service requests and response to Adult Protection referrals of individuals aged sixty (60) years or older.
- C. Service Eligibility. Individuals are eligible for homemaker services if they meet any of the following requirements:
 - 1. They have been assessed to have ADL deficits, IADL deficits, or both, which prevent them from maintaining a clean and safe home environment.

2. Clients aged sixty (60) years or older, who have been assessed to need homemaker service, may be living in the household of a family member (of any age) who is the primary caregiver.
 3. They are Adult Protection referrals for whom homemaker service is being requested as a component of an SSP to remediate or resolve an adult protection complaint.
 4. They are home health service or hospice clients who may be eligible for emergency homemaker service.
- D. Medicaid HCBS (Home and Community Based Services). When clients are determined by the Department to be eligible for Medicaid HCBS, they are no longer eligible for homemaker services unless the services are determined to be needed on an interim, emergency basis until Medicaid HCBS is initiated.
- E. Purpose of Service.
1. Maintain Independence and Dignity. To secure and maintain in a home environment the independence and dignity of clients who are capable of self-care with appropriate supportive services.
 2. Prevent Institutionalization. To avoid or delay placement into long-term care institutions.
 3. Remedy Harmful Living Arrangements. To promote the health and safety of the client.
 4. Crisis Intervention. To assist the client through a crisis situation, if the homemaker service required meet the client's needs and can be provided within the guidelines set forth in these rules.
- F. Exclusions.
1. Meal Preparation. Homemakers shall not prepare meals for a client if home-delivered meals are available.
 2. Transportation. Homemakers shall not transport a client.
 3. Medical Judgments. Homemakers shall not make medical judgments nor any determinations regarding the application of advance directives.
 4. Bathing and Washing Hair. Providers shall obtain adequate and appropriate insurance coverage prior to assigning their homemakers to assist clients with bathing or washing hair, or both.
- G. Service Priority. Once approved, clients shall be prioritized to receive homemaker services based on their needs, as determined through the completion of the ICOA approved assessment instrument as follows:
1. Highest priority shall be given to clients with the greatest degree of functional or cognitive impairment; then
 2. To clients lacking other formal or informal supports, or both; then
 3. To clients whose homes are in poor condition with respect to those circumstances which the homemaker service can remedy.
- H. Program Intake.
1. If homemaker services are to be provided, the income declaration and Supportive Services Plan shall be completed prior to any work being performed.
 2. If the client is not eligible for services, appropriate referrals shall be made.
3. **Chore** (IDAPA 15.01.01.012.03.c)
- A. Providing assistance to clients who have functional limitations that prohibit them from performing tasks such as routine yard work, sidewalk maintenance, heavy cleaning, or minor household maintenance.

- B. ICOA Policy. Chore service is designed to be provided to individuals who reside in their own homes or who occupy individual rental units. Chore services for those individuals who rent housing shall not provide repairs or maintenance that are the contractual responsibility of the property owner.
 - C. Service Eligibility. Clients qualify to receive chore service if:
 1. They have been assessed to have ADL or IADL deficits which inhibit their ability to maintain their homes or yards;
 2. There are no available formal or informal supports;
 3. Chore service is needed to improve the client's safety at home or to enhance the client's use of existing facilities in the home. These objectives shall be accomplished through one-time or intermittent service to the client.
 - C. Service Priority. Service provision shall be prioritized based on client's degree of functional impairment.
 - D. Program Intake.
 1. If chore services are to be provided, the income declaration and Supportive Service Plan shall be completed prior to any work being performed.
 2. If the client is not eligible for services, appropriate referrals shall be made.
4. **Respite** (IDAPA 15.01.01.012.03.m)
- A. Short-term, intermittent relief provided to caregivers of an ADL or IADL impaired care recipient.
 - B. ICOA Policy. Respite is a Home and Community Based Service designed to encourage and support efforts of caregivers to maintain functionally or cognitively impaired persons at home. Paid respite staff and volunteers provide companionship or personal care services, or both, when needed and appropriate for the care recipient and the caregiver. Respite services may include, but are not limited to, the following:
 1. Meeting emergency needs;
 2. Restoring or maintaining the physical and mental wellbeing of the caregivers; (4-6-05)
 3. Providing socialization for the care recipient.
 - C. Eligibility.
 1. The care recipient shall have physical or cognitive impairments affecting ADL or IADL functioning to the extent twenty-four (24) hour care or supervision is required.
 2. A caregiver sixty (60) years of age or older residing with an eligible care recipient who is under sixty (60) years of age is eligible to receive Respite.
 3. A caregiver under sixty (60) years of age residing with an eligible care recipient aged sixty (60) years or older is eligible to receive Respite.
- A. Service Limitations. (ICOA)
 1. When personal care services are a part of the SSP, those services shall be provided by trained Respite employees or trained Respite volunteers. (4-6-05)
 2. Services requiring supervision of a registered nurse in accordance with the Nurse Practices Act shall not be performed by respite workers. (3-30-01)
 3. The Respite provider shall provide adequate and appropriate insurance coverage prior to assigning its respite employees or volunteers to assist clients with personal care tasks. (4-6-05)
 - B. Eligibility Determination. Highest priority shall be given to caregivers of care recipients who have the greatest degree of physical or cognitive impairment and who are lacking informal supports other than the regular caregiver. (4-6-05)

- D. National Family Caregiver Support Program (15.01.01.012.03.j)
- Information Services - A service for caregivers that provides the public and individuals with information on resources and services available to the individuals within their communities.
 - Access Assistance. A service that assists caregivers in obtaining access to the services and resources that are available within their communities. To the maximum extent practicable, it ensures that the individuals receive the services needed by establishing adequate follow-up procedures.
 - Counseling. Assist caregivers in making decisions and solving problems relating to their caregiver roles. This includes counseling to individuals, support groups, and caregiver training (of individual caregivers and families).
 - Respite Care. Services which offer temporary, substitute supports or living arrangements for care recipients in order to provide a brief period of relief or rest for caregivers.
 - Supplemental services –Services provided on a limited basis to complement the care provided by caregivers. Examples of supplemental services include, but are not limited to, home modifications, assistive technologies, emergency response systems, and incontinence supplies.
 - OAA Family Caregiver Eligibility Exceptions: (OAA Section 372(a)(2))
 1. (2) GRANDPARENT OR OLDER INDIVIDUAL WHO IS A RELATIVE CAREGIVER.—The term “grandparent or older individual who is a relative caregiver” means a grandparent or step-grandparent of a child, or a relative of a child by blood, marriage, or adoption who is 55 years of age or older and—
 - a. (A) lives with the child;
 - b. (B) is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and
 - c. (C) has a legal relationship to the child, as such legal custody or guardianship, or is raising the child informally.
 - (b) RULE.—In providing services under this subpart—
 1. (1) for family caregivers who provide care for individuals with Alzheimer’s disease and related disorders with neurological and organic brain dysfunction, the State involved shall give priority to caregivers who provide care for older individuals with such disease or disorder; and
 2. (2) for grandparents or older individuals who are relative caregivers, the State involved shall give priority to caregivers who provide care for children with severe disabilities.
5. **Adult Day Care** (IDAPA 15.01.01.012.03.a)
- A. Personal care for clients in a supervised, protective, and congregate setting during some portion of a day. Services offered in conjunction with adult day care/adult day health typically include social and recreational activities, training, counseling, and services such as rehabilitation, medications assistance and home health aide services for adult day health.
 - B. ICOA Policy. Adult Day Care is designed to meet the needs of eligible participants whose functional or cognitive abilities have deteriorated. It is intended to provide relief for care providing family members. It is a comprehensive program which provides a variety of social

- and other related support services in a protective setting other than the participant's home during any part of a day, but for a duration of less than twenty-four (24) hours.
- C. Eligibility. Individuals eligible for adult day care include:
 - 1. Those who have physical or cognitive disabilities affecting ADL or IADL functioning;
 - 2. Those capable of being transported;
 - 3. Those capable of benefiting from socialization, structured and supervised group-oriented programs; and
 - 4. Those capable of self-care with supervision or cueing.
 - D. Eligibility Determination. Highest priority shall be given to clients with the greatest degree of functional or cognitive impairment and then to clients lacking informal supports other than the regular caregiver.
 - E. Enrollment Agreement. A signed enrollment agreement shall be completed by the provider and the client, or the client's legal representative, and shall include:
 - 1. Scheduled days of attendance;
 - 2. Services and goals of the day care provider;
 - 3. Amount of fees and when due;
 - 4. Transportation agreement, if appropriate;
 - 5. Emergency procedures;
 - 6. Release from liability (for field trips, etc.);
 - 7. Conditions for service termination;
 - 8. A copy of the center's policy; and
 - 9. An SSP.
 - F. Staffing. Staff shall be adequate in number and skills to provide essential services.
 - 1. There shall be at least two (2) responsible persons at the site at all times when clients are in attendance. One (1) shall be a paid staff member.
 - 2. Staff to client ratio shall be increased appropriately if the number of clients in day care increases or if the degree of severity of clients' functional or cognitive impairment increases.
 - 3. Staff persons counted in the staff to client ratio shall be those who spend the major part of their work time in direct service to clients.
 - 4. If the site administrator is responsible for more than one (1) site or has duties not directly related to adult day care, a program manager shall be designated for each site.
 - 5. Volunteers shall be included in the staff ratio only when they conform to the same standards and requirements as paid staff.
 - G. Services. Adult Day Care Programs shall, at a minimum, provide the following services:
 - 1. Assistance with transferring, walking, eating, toileting;
 - 2. Recreation;
 - 3. Nutrition and therapeutic diets; and
 - 4. Exercise.
 - H. National Standards. Adult Day Care Programs shall operate under guidelines established by the ICOA in accordance with national standards developed by the National Council on Aging's National Institute on Adult Day Care.
6. **Outreach.** (IDAPA 15.01.01.012.03.k)
- A. A service which actively seeks out older individuals with greatest social and economic needs with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas.

- B. **ICOA Policy: Identification of Older Persons in Need of Services.** The AAA, in accordance with Section 306 of the OAA, shall assure that outreach efforts focus on identifying those older persons who have the greatest economic or social need, with particular attention to low-income minority elderly, elderly living in rural communities, and severely disabled elderly.
 - 1. **Minimum Requirements.** To determine the effectiveness of outreach services, each AAA shall:
 - a. Annually review program data to determine success in reaching those older individuals having greatest economic or social need, especially low-income minority elderly, elderly living in rural communities, and severely disabled elderly; and
 - b. Require all funded nutrition providers report outreach activities on a quarterly basis.
- 7. **Access Services. (ICOA)**
 - A. Expenditures for Access Services. The AAA shall expend for access services the percentage established in the ICOA state plan.
- 8. **Legal Assistance. ()(IDAPA 15.01.01.012.03.i)**
 - A. Advice, counseling, or representation by an attorney or by a paralegal under the supervision of an attorney.
 - B. **ICOA Policy: Administrative Requirements.** The AAA shall assure adherence to all administrative requirements as set forth in rule, unless the ICOA grants a waiver.
 - C. **Title III-B Funds.** Under an approved area plan, the AAA shall expend a minimum percentage of Title III-B funds as set forth in the ICOA state plan in Title III-B funds for legal assistance.
 - D. **Contracts.** Through performance-based agreements with local providers, the AAA shall provide legal assistance to older residents of the PSA.
 - 1. The AAA contracts with for-profit providers of legal assistance services shall conform with standards set forth in 45 CFR 1321.71. Prior to being executed, contracts shall be submitted to the ICOA for approval.
 - 2. Contracts for legal assistance services shall be executed for the purpose of providing direct legal assistance and representation to persons aged sixty (60) years or older. The number of service units to be provided must be clearly stated in the contract.
 - 3. Contracts for legal services shall include provision for legal services to clients of the AAA's Ombudsman for the Elderly Program and clients aged sixty (60) years or older of the Adult Protection Program.
 - E. **Idaho Legal Aid Services.** The AAA contracts with Idaho Legal Aid Services, Inc. shall provide the following assurances:
 - 1. Services provided under the contract to individuals sixty (60) years of age or older shall be in addition to legal assistance furnished with funds obtained from other sources.
 - F. **Maintenance of Legal Assistance Records.** The AAAs shall maintain records documenting legal assistance provided within each calendar quarter to individuals aged sixty (60) years or older.
 - G. **Provision of Service.** In accordance with OAA Section 307 (a) and 45 CFR 1321.71, Subparts (a) through (k), each AAA shall assure provision of legal assistance to older individuals residing within the PSA.