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NEBRASKA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

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TITLE 15 AGING SERVICES

CHAPTER 6 LONG-TERM CARE OMBUDSMAN PROGRAM

001. SCOPE AND AUTHORITY. These rules and regulations implement Nebraska Revised Statutes (Neb. Rev. Stat.) §§ 81-2237 to 81-2264, which directs the establishment of a statewide long-term care ombudsman program and meet the requirements of (1) Older Americans Act of 1965, 42 United States Code (U.S.C.) Sections 3058f-3058h, as amended; (2) 42 Code of Federal Regulations (CFR) Sections 483.10 through 483.13; (3) 45 CFR Parts 1321 and 1324; and (4) The Nebraska Nursing Home Act, Rev. Statutes of Nebraska, Article 60, Section 71-6019.

002. DEFINITIONS.

002.01 ADULT PROTECTIVE SERVICES. As defined in §§ 28-352.

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

002.03 CONFLICT OF INTEREST. As defined in Section 712 of the Older Americans Act of 1965, as amended.

002.04 DEPARTMENT. As defined in §§ 81-2239.

002.05 DIRECTOR. The Director of the Nebraska State Unit on Aging.

002.06 LOCAL LONG-TERM CARE OMBUDSMAN. As defined in §§ 81-2242.

002.07 LOCAL LONG-TERM CARE OMBUDSMAN PROGRAM. As defined in §§ 81-2242.

002.08 LONG-TERM CARE FACILITY. As defined in §§ 81-2243 and Neb. Rev. Stat. § 71-2017.01.

002.09 OFFICE. As defined in §§ 81-2244.

002.10 OLDER AMERICANS ACT. As defined in §§ 81-2245.

002.11 OMBUDSMAN ADVOCATE. As defined in §§ 81-2247.

002.12 REPRESENTATIVE OF THE OFFICE. As defined in §§ 81-2247.01.

002.13 RESIDENT REPRESENTATIVE. As defined in §§ 81-2247.03 and 45 CFR 1324.1(3)(4).

002.14 STATE LONG-TERM CARE OMBUDSMAN. As defined in §§ 81-2248, and in accordance with the Older Americans Act of 1965, 42 U.S.C. Sections 3058f-3058h, as amended; 42 CFR Sections 483.10 through 483.13, Neb. Rev. Stat. §§ 81-2237 to 81-2264 and these rules and regulations.

003. DESIGNATION PROCEDURES. A proposed Plan of Operation must be submitted by the agency to the Office to provide the services of a local long-term care ombudsman program within a planning and service area as described in Neb. Rev. Stat. § 81-2213(6).

003.01 PLAN OF OPERATION. The proposed Plan of Operation must comply with the Act and these rules and regulations.

003.02 DENIAL. The Office may deny designation of a proposed Plan of Operation for any or all of the following reasons:

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

003.03 PROVISIONAL DESIGNATION. The Office may provisionally designate a local long-term care ombudsman program for no more than 90 days provided:

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

004. APPROVAL AND DESIGNATION. Approval of a Plan of Operation and designation of a local long-term care ombudsman program is valid for two years from October 1 and ending on September 30, unless revoked by the Office at an earlier date or the Office specifies a different date.

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

- (A) There is a change in status or ownership of the agency operating a local long-term care ombudsman program without prior approval of the Office;
- (B) The resources allocated to the local long-term care ombudsman program by the Office or any other state or federal source are being used in violation of the Act, the Older Americans Act of 1965, as amended and its rules and regulations;

- (C) The local long-term care ombudsman program fails to perform according to the approved Plan of Operation;
- (D) The local long-term care ombudsman program fails to obtain approval from the Office for a change in its Plan of Operation in accordance with this chapter;
- (E) Failure to disclose or resolve any individual or organizational conflict of interest; or
- (F) The local long-term care ombudsman program is in violation of any of the Older Americans Act of 1965, as amended, and its rules and regulations.

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

006.01 APPLICATION. Any application for redesignation must be submitted by the agency according to the designation process as outlined in this title.

006.02 NOTICE. Notice of approval or denial of redesignation will be issued by the Office prior to the expiration of the current designation period.

006.03 DESIGNATION PERIOD. The new designation period will begin on October 1, unless otherwise provided.

007. PLAN OF OPERATION. An Agency Plan of Operation for a local long-term care ombudsman program, must provide the following information:

- (A) A description of the area to be served within a planning and service area. No local program will include within its service area any facility being served by another designated program;
- (B) A statement of philosophy and goals and objectives of the program;
- (C) A statement of the procedures to be used to recruit and support volunteer ombudsman advocates;
- (D) A statement of methods to evaluate the attainment of program goals and objectives for the program;
- (E) If more than one local long-term care ombudsman program is to be established in the planning and service area, a statement detailing how the programs will coordinate services and avoid duplication of effort;
- (F) An annual budget of income and expenses for the program coincident with the state fiscal year;
- (G) A statement of procedures that ensure the program must comply with all requirements of the Office, including training of all representatives of the Office, confidentiality of records and reporting;
- (H) A statement of procedures that ensure that no person will investigate any complaint filed with the Office unless such person is certified by the Office; and
- (I) A statement of procedures that ensure the program has the ability to pursue appropriate remedies to resolve complaints, including but not limited to:
  - (i) Representing residents in administrative hearings and appeals before state and federal agencies, including the Nebraska Department of Health and Human Services and the United States Department of Health and Human Services;
  - (ii) Making referrals and recommending specific courses of action, referring situations to public and private agencies, such as the Nebraska Department of Health and

- Human Services Adult Protective Services Program, Legal Services Corporations, county attorneys' offices, the Nebraska Attorney General's office, state and federal courts and other agencies; and
- (J) Serving as an agent for residents in negotiations with long-term care facilities, public and private agencies, family members, and other individuals and agencies to the extent permitted by state and federal law.

007.01 MINIMUM STANDARDS. Written policies and procedures for the administrative and programmatic operation of the program must be based upon the following minimum standards:

- (A) The program must have a job description for each position, as well as written personnel policies and procedures for hiring and selection, compensation, evaluation, disciplinary action and grievance and supervision and training of employees, contractors, volunteers, students and interns. The personnel policies and procedures must include:
- (i) The following minimum requirements qualifications for individuals serving in the capacity of local long-term care ombudsman or ombudsman advocates for the State or local long-term care ombudsman programs:
- (1) An understanding of long-term care issues;
  - (2) Experience in the fields of aging and health care;
  - (3) Worked with and been involved in volunteer programs;
  - (4) Good verbal, listening and writing skills;
  - (5) Commitment to serve a minimum of three hours per week in the performance of their duties facility;
  - (6) No known conflict of interest which would interfere with their objective performance as an ombudsman advocate;
  - (7) Not been employed by or affiliated with a long-term care facility within the previous 12 months;
  - (8) Understanding of, and agreement to follow, the ombudsman rules of confidentiality;
  - (9) Agreement to follow the policies and procedures of the State and local long term care ombudsman program and accept the direction of the Ombudsman Advocate Coordinator;
  - (10) Compliance with the Office's reporting needs to collect and analyze data relating to complaints and conditions in long-term care facilities; and
  - (11) Certification by the Office of the Long-Term Care Ombudsman;
- (B) An Equal Opportunity Policy that includes nondiscrimination on the basis of race, disability, color, sex, affiliation, or age and an Affirmative Action statement;
- (C) An organizational chart which identifies the responsibility of each position in the program;
- (D) Means to ensure that no individual or organizational conflict of interest exists in accordance with 45 CFR 1324.21; and
- (E) A local long-term care ombudsman program staff must include at least one individual available to conduct ombudsman advocate activities, manage the program on a day-to-day basis and coordinate and supervise ombudsman advocates and adequate support staff.

007.02 FISCAL ACCOUNTABILITY. An agency must maintain accounting records as necessary for preparation of financial statements in accordance with generally accepted accounting principles.

007.03 COMPLAINT INVESTIGATION AND RESOLUTION. A local program will investigate and resolve to the best of its ability all complaints received by or on behalf of individuals who reside in long-term care facilities.

007.03(A) INDIVIDUAL INTEREST. The Office and designated local programs will represent the interests and wishes of individuals who are residents of long-term care facilities, even if they are contrary to the interests and wishes of any person who files a complaint with the Office or local program on behalf of such individuals.

007.04 ACCESS TO RESIDENT MEDICAL RECORDS. The Office and local programs must obtain the consent of the resident in order to have access to the medical and personal records retained by the facility of any individual who is a resident, or client of a long-term care facility. The Health Insurance Portability and Accountability Act of 1996 does not preclude release by covered entities of resident private health information or other resident identifying information to the Office and local programs, including but not limited to residents' medical social or other records, a list of resident names and room numbers, or information collected in the course of a State or Federal survey or inspection process.

007.04(A) CONSENT. If consent is given by a resident of a long-term facility to allow a representative of the Office access to medical and personal records retained by a long term care facility, such consent must be in writing, including through the use of auxiliary aids and services, unless:

- (i) The resident is unable or unwilling to consent in writing, but is willing and able to give oral consent, in which case consent may be granted orally by the resident;
- (ii) The resident is under legal guardianship or conservatorship that provides the guardian or conservator with the authority to approve review of records. In such case the representative of the Office must obtain the permission of the guardian or conservator for review of the records in the same manner as required if the resident was not under conservatorship or guardianship; or
- (iii) The consent of the legal guardian or conservator will not be required if:
  - (1) The existence of the legal guardianship or conservatorship is unknown to the Office or the facility;
  - (2) The legal guardian or conservator cannot be reached within five working days;
  - (3) The subject of the complaint is the guardian or the conservator; or
  - (4) In case of an emergency.

007.04(B) REASONABLE CAUSE. If the resident is unable to express written or oral consent and in order to investigate a complaint, the resident representative refuses to consent to the access, a representative of the Office has reasonable cause to believe that the resident representative is not acting in the best interests of the resident the Office will have access to the medical and personal records of the resident without prior consent.

007.04(C) PERMANENT FILE. If authorized in writing by the resident, legal guardian or conservator of the resident, or any other person having legal authority to inspect records, such authorization will be made a part of the permanent file of the resident.

008. CERTIFICATION OF OMBUDSMAN ADVOCATES. To receive certification, local long-term care ombudsman programs must meet the following requirements:

- (A) Successful completion of 20 hours of classroom training covering topics as listed in Revised Statute § 81-2253;
- (B) Successful completion of a three-month probationary period determined through an evaluation of the ombudsman advocate's performance of duties and responsibilities in accordance with these rules and regulations and an on-site evaluation at the ombudsman advocate's assigned facility; and
- (C) Demonstration of the ability to perform duties and display competence in advocating for residents of long-term care facilities as determined by the State Long-Term Care Ombudsman.

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

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

010. DECERTIFICATION OF OMBUDSMAN ADVOCATES. Cause for decertification of an ombudsman advocate may include the following:

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

010.01 DECERTIFICATION PROCESS. The process of decertification is:

- (A) The local long-term care ombudsman will investigate and document the reasons for pursuing the decertification process;
- (B) Upon determination that valid reason exists to decertify an ombudsman advocate, the local long-term care ombudsman program will recommend to the Office that the ombudsman advocate be decertified;

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- (C) The Office will review the recommendations and take decertification action, as appropriate;
- (D) The Office will send a letter to the ombudsman advocate stating that decertification has been requested by the local long-term care ombudsman program, has been approved by the Office and the reasons for such action; and
- (E) The Office, in consultation with the local long-term care ombudsman program, may temporarily suspend an ombudsman advocate pending completion of the investigation and appeal of the decision.