State of Rhode Island and Providence Plantations

Department of Elderly Affairs

TO: Members of the Community Interested in the new proposed DRAFT ***Rules and Regulations Governing the Long Term Care Ombudsperson Program***

FROM: Catherine Taylor, Acting Director
Department of Elderly Affairs

DATE: May 3, 2011

Attached please find a copy of the proposed new regulations referenced above. These regulations are promulgated in accordance with the provisions of section 42-66.7-12 of the Rhode Island General Laws, as amended.

Because of your interest and expertise in these matters, the Department would appreciate your review and comment on the proposed draft regulations. An informal community review meeting is scheduled for: **Thursday, 12 May 2011 at 10:00 a.m.** in the **Arnold Conference Center** of the John Pastore Complex, Cranston, RI 02920.

Please direct questions or comments regarding these proposed regulations to: Ms. Rhonda E. Schwartz, Chief Program Development: RSchwartz@dea.ri.gov or 401-462-0561. These draft regulations also appear online for your reference:
http://sos.ri.gov/documents/archives/regdocs/holding/DELDA/Proposed%20Ombudsperson%20Regs%20Version%203.pdf

Thank you for your assistance in promulgating these new regulations and in providing comprehensive social services to Rhode Island seniors.

Attachment

John O. Pastore Center, Hazard Building/2nd Floor
74 West Road, Cranston, RI 02920,
Telephone 401-462-0501, Fax 401-462-0503
TTY 401-462-0740, Web Site: www.dea..ri.gov

STATE OF RHODE ISLAND

DEPARTMENT OF ELDERLY AFFAIRS

Rules and Regulations Governing the Long Term Care Ombudsperson Program

May, 2011 (Proposed)

Lincoln D. Chafee
Governor

Catherine Terry Taylor
Director

COMPILER'S NOTE:
Statutory language noted in *italics*.

Introduction

These ***Rules and Regulations Governing the Long Term Care Ombudsperson Program*** are promulgated pursuant to the authority conferred under section 42-66.7-12 of the Rhode Island General Laws, as amended, for the purpose of adopting prevailing standards for the implementation and enforcement of the long-term ombudsperson program including, but not limited to, the procedures for the receipt, investigation and resolution, through administrative action, of complaints filed by residents of long term care facilities, individuals acting on their behalf or any individual organization or government agency that has reason to believe that a long term care facility, organization or government agency has engaged in activities, practices or omissions that constitute a violation of applicable statutes or regulations or that may have an adverse effect upon the health, safety, welfare, rights or the quality of life of residents of long term care facilities.

Pursuant to the provisions of the Administrative Procedures Act, the following were given consideration in promulgating these regulations: (a) alternative approaches to the regulations; and (b) duplication or overlap with other state regulations. Based upon available information, no alternative approach, duplication, or overlap was identified.

These regulations are adopted in the best interest of the health, welfare, and safety of Rhode Island's seniors.

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PART I *Definitions and General Requirements*

Section 1.0 *Definitions*

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

1.1 "***Abuse***" means physical abuse, sexual abuse, and/or emotional abuse of an elderly person by a caregiver as defined herein.

1.2 *An **"act"** of any facility or government agency includes any failure or refusal to act by any facility or government agency.*

1.3 ***"Caregiver"*** means a person who has assumed the responsibility for the care of the elderly person voluntarily, by contract or by order of a court of competent jurisdiction, or who is otherwise legally responsible for the care of the elderly person.

1.4 ***"Client"*** and ***"resident",*** as used herein, shall have the same meaning.

1.5 ***"Department"*** means the Rhode Island Department of Elderly Affairs.

1.6 ***"Director"*** *means the Director of the Department of Elderly Affairs* or his/her designated agent.

1.7 ***"Elderly"*** *means any person sixty (60) years of age or older who is a resident of any facility.*

1.8 "***Emotional abuse***" means a pattern of willful infliction of mental or emotional harm upon an elder by threat, intimidation, isolation or other abusive conduct.

1.9 "***Exploitation"*** means the fraudulent or otherwise illegal, unauthorized or improper act or process of an individual, including, but not limited to, a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets by use of undue influence, harassment, duress, deception, false representation or false pretenses.

1.10 ***"Facility"*** *means any facility or institution, home care provider or home nursing care provider, whether public or private, offering health or health related services for the institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision by any government agency.* ***"Facilities"*** *include, but are not limited to, nursing homes, intermediate care facilities, extended care facilities, convalescent homes, rehabilitation centers, home care agencies, homes for the aged, veterans' homes, boarding homes, and adult supportive care, residential care and assisted living residences.*

1.11 *"**Governing body**"* means the board of directors, however named, charged with the powers and the implementation of the duties of the office of the long term care ombudsperson, as defined herein, and as delineated in its articles of incorporation, by-laws and/or other legally adopted document(s) related to its governance.

1.12 ***"Government agency"*** *means any department, division, office, bureau, board, commission, authority, non-profit community organization, or any other agency or instrumentality created by any municipality or by the state, or to which the state is a party, which is responsible for the regulation, inspection, visitation, or supervision of facilities or which provides services to residents of facilities.*

1.13 *"**Health oversight agency"** means, for the purposes of Chapter* 42-66.7 of the Rhode Island General Laws, as amended , *the Department or the person or entity designated as the state's long-term care ombudsperson by the Director, including the employees or agents of such person or entity, when they are acting to fulfill the duties and responsibilities of the state's long-term care ombudsperson program in which health information is necessary to oversee the health system and in accordance with the U.S. Health Insurance Portability and Accountability Act (HIPAA) of 1996.*

1.14 ***"Interfere"*** *means willing and continuous conduct which prevents the ombudsperson from performing her or his official duties.*

1.15 "***Neglect"*** means the willful failure by a caregiver or other person with a duty of care to provide goods or services necessary to avoid physical harm, mental harm or mental illness to an elderly person, including, but not limited to, "abandonment" (withdrawal of necessary assistance) and denial of food or health related services.

1.16 ***"Office"*** shall have the meaning set forth in Section 2.3 below.

1.17 ***"Official duties"*** *means work pursuant to the long-term care ombudsperson program authorized by the federal Older Americans Act or the long-term care ombudsperson program authorized by state law and carried out under the auspices and general direction of the state long-term care ombudsperson.*

1.18 ***"Ombudsperson"*** shall have the meaning set forth in Section 2.4 below.

1.19 "***Ombudsperson advocate"*** means a person acting as an agent of the ombudsperson, including volunteers.

1.20 ***"Person"*** *means any individual, trust, or estate, partnership, limited liability corporation, corporation (including associations, joint stock companies, and insurance companies), state, or political subdivision or instrumentality of a state.*

1.21 ***"Physical abuse"*** means the willful infliction of physical pain or injury (e.g. slapping, bruising or restraining) upon an elderly person.

1.22 ***"Resident"*** *means any person age sixty (60) years of age or older who is receiving treatment, care, or housing in any facility in all of its aspects including, but not limited to, admission, retention, confinement, period of residence, transfer, discharge, and in any instances directly related to that status. Residents include patients and clients. Residents shall also include disabled persons under sixty (60) years of age residing in nursing homes, or clients of residential and assisted living facilities and home care providers/home nursing care providers and long-term care units at the Eleanor Slater Hospital, including the Zambarano facility.*

1.23 ***"Sexual abuse***" means the infliction of non-consensual sexual contact of any kind upon an elderly person. Sexual abuse includes, but is not limited to, sexual assault, rape, sexual misuse or exploitation of an elder, as well as threats of sexual abuse where the perpetrator has the intent and the capacity to carry out the threatened abuse.

1.24 "***Willful***" means intentional, conscious and directed toward achieving a purpose.

PART II *General Requirements*

Section 2.0 *Establishment of Program*

2.1 Pursuant to Rhode Island General Laws §42-66.7, the Rhode Island General Assembly established a program of the long term care ombudsperson to be administratively attached to the Department in accordance with its mandate under § 42-66-4 of the Rhode Island General Laws, as amended, and the Older Americans Act, 42 U.S.C. § 3001 et seq.

2.2 The purpose of the program is advocating on behalf of long-term care facility residents and receiving, investigating and resolving through mediation, negotiation, and administrative action complaints filed by residents of long-term care facilities, individuals acting on their behalf or any individual organization or government agency that has reason to believe that a long-term care facility, organization or government agency has engaged in activities, practices or omissions that constitute a violation of applicable statutes or regulations or that may have an adverse effect upon the health, safety, welfare, rights or the quality of life of residents of long-term care facilities.

2.3 The Department shall carry out the program through the establishment and operation of an office of long term care ombudsperson (the "Office"). The Department may operate the Office and carry out the program, directly or by contract or other arrangement with any public agency or non-profit organization. The Department may not enter into such contract or other arrangement with: (i) an agency or organization that is responsible for licensing or certifying long-term care services in the State; or (ii) an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals.

2.4 The Office shall be headed by an individual, to be known as the ombudsperson (the "ombudsperson"), who shall be selected from among individuals with expertise and experience in the fields of long-term care and advocacy. The ombudsperson shall serve on a full-time basis, and shall, personally or through representatives of the Office, perform the functions and duties set forth in Chapter 42-66.7 of the Rhode Island General Laws, as amended, as well as in Section 712 of the Older Americans Act, as amended (42 U.S.C. §3058g). "Full-time basis" means that the ombudsperson position is full-time and the individual who serves as the ombudsperson has no duties other than those set forth in the immediately preceding sentence. If the Department elects to operate the Office and carry out the program by contract or other arrangement with any public agency or non-profit organization, the ombudsperson shall not be the chief executive officer or executive director (or any individual holding an equivalent office) of the public agency or non-profit organization.

Section 3.0 *Nondiscrimination and Civil Rights Policy*

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

Section 4.0 *Compliance with All Laws, Codes, Rules and Regulations*

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

Section 5.0 ***Annual Report***

5.1 *The ombudsperson shall submit an annual report of the activities of the Office and the ombudsperson's activities concerning facilities and the protection of the rights of residents of the facilities with the* federal *Assistant Secretary for Aging, Director, Governor, General Assembly, Director of the Rhode Island Department of Health, Chair of the Long-term Care Coordinating Council and all other appropriate governmental entities.*

5.2 Said annual report shall be in compliance with all applicable requirements of section 42 U.S.C. 3058g (Section 712 of The Older Americans Act), as the same may be amended from time to time, and also shall describe the activities carried out by the Office in the year for which the report is prepared.

5.3 In addition to the foregoing, the report shall contain a listing of all members of the governing body, employees, and contractors of the Office, including a listing of all legal counsel who assist the ombudsperson in the performance of the official duties of the Office and provide advice and consultation needed to protect the health, safety, welfare, and rights of residents.

. 5.4 *The report shall be available to the public.*

Section 6.0 ***Interagency Cooperation***

6.1 *Nothing in Chapter* 42-66.7 of the Rhode Island General Laws, as amended, shall *be construed to be a limitation of the powers and responsibilities assigned by law to other state agencies or departments.*

Section 7.0 ***Cooperation Required***

7.1 *The ombudsperson may request from any government agency, and the agency is authorized and directed to provide, any cooperation and assistance, services, and data as will enable the ombudsperson to properly perform or exercise any of his or her functions, duties and powers under Chapter 42-66.7* of the Rhode Island General Laws, as amended, and the rules and regulations herein.

7.2 *The ombudsperson shall, to the extent permissible under the provisions of § 712 of the Older Americans Act (42 U.S.C. § 3058g) as amended, cooperate and assist other government agencies in their investigations, such as the Department of Health, the Department of Attorney General, the Department of Human Services and any other pertinent department or agency.*

PART III ***Powers and Duties of the Long Term Care Ombudsperson***

Section 8.0 ***Powers***

8.1 *The ombudsperson shall, personally or through employees of the Office:*

8.1.1 *Identify, investigate, and resolve complaints that (a) are made by, or on behalf of, residents; and (b) 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 the residents with respect to the appointment and activities of guardians and representative payees) and health care and financial powers of attorney;*

8.1.2 *Receive all reports of incidents reportable to the* Rhode Island *Department of Health within twenty-four (24) hours, or by the next business day of the occurrence, in cases of resident abuse, neglect, exploitation, theft, sexual abuse, accidents involving fires, elopement and patient to patient abuses;*

8.1.3 *Receive all reports of thirty (30) day notices of resident discharge from long-term care facilities;*

8.1.4 *Provide referral services to assist residents in protecting their health, safety, welfare and rights;*

8.1.5 *Inform residents of their rights and advocate on their behalf to improve their quality of life and live with dignity and respect;*

8.1.6 Advocate on behalf of long term care facility residents, home care and hospice care recipients;

8.1.7 Receive, investigate and resolve through mediation, negotiation, and administrative action, complaints filed by residents or recipients of services as outlined in section 8.1.1 above, persons acting on their behalf, or any organization or government agency that has reason to believe that a facility, organization, government agency has engaged in activities, practices, or omissions that constitute a violation of applicable statutes or regulations that may have an adverse effect upon the health, safety, welfare, rights, or quality of life of residents of long term care facilities, or recipients of home or hospice care;

8.1.8 *Formulate* written *policies and procedures to identify, investigate, and resolve complaints;*

8.1.9 *Make appropriate referrals of investigations to other state agencies, including, but not limited to, the* Rhode Island *Departments of Health, Human Services,* Behavioral Health, Developmental Disabilities, and Hospitals, *and Attorney General;*

8.1.10 *Offer assistance and training to public and private organizations on long term care of elders and persons with disabilities;*

8.1.11 *Represent the interests of residents of facilities before government agencies and*

seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents including, but not limited to, rights with respect to the appointment or removal of guardians and representative payees powers of attorney;

8.1.12 *Review and, if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions that pertain to the rights and well-being of residents of facilities.*

8.1.13 Have such other powers as are provided to the Office in Section 712 of The Older Americans Act (42 U.S.C. §3058g), as the same may be amended from time to time.

Section 9.0 ***Duties***

9.1 The ombudsperson shall cause the Office to comply with all of the requirements cited herein. The ombudsperson also shall perform all ombudsman duties set forth in Section 712 of The Older Americans Act (42 U.S.C. §3058g), as the same may be amended from time to time.

9.2 The Office shall notify the Department in writing within forty-eight (48) hours of the following circumstances:

9.2.1 The Office becomes aware that a former Department Protective Services Unit client is leaving a nursing home or assisted living facility and returning to the community; and

9.2.2 *For clients who have not previously been referred to the Department's Protective Services Unit and for whom the Office believes that a discharge to the community may be an unsafe discharge for such resident of a nursing home or assisted living facility:* The Office shall transmit to the Department a complete referral describing the circumstances and/or concerns related to such client.

9.3 The Office shall develop, implement, and provide to the Department (upon request) the following:

9.3.1 A statement of philosophy and goals and objectives of the Office;

9.3.2 A statement of the procedures to be used to recruit and support any volunteer representative of the Office;

9.3.3 A statement of methods to evaluate the attainment of the Office's goals and objectives;

9.3.4 Assurance that the Office will comply with all requirements of the Department, including training of all representatives of the Office, confidentiality of records, and reporting;

9.3.5 Assurance that no person shall investigate any complaint filed with the Office, unless such person is acting as an agent of the Office;

9.3.6 Assurance that the Office has the ability to pursue appropriate remedies to resolve complaints, including but not limited to:

9.3.6.1 Ensuring adequate legal counsel is available, and is able, without conflict of interest, to provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; and to assist the ombudsperson and representatives of the Office in the performance of the official duties of the ombudsperson and representatives; and that legal representation is provided to any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the ombudsperson or such a representative; and the Office pursues administrative, legal, and other appropriate remedies on behalf of residents.

9.3.6.2 Making referrals and recommendations about specific courses of action, referring situations to public and private agencies such as the Department of Human Services, the Attorney General's office, state and federal courts, and other agencies, as necessary;

9.3.6.3 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.

Section 10.0 ***Governing Body***

10.1 This Section 10 applies to any Office which the Department elects to operate by contract or other arrangement with any non-profit organization.

10.2 The Office shall have an organized governing body or equivalent legal authority ultimately responsible for: (1) the management, fiscal affairs and operation of the Office; (2) the assurance of quality care and services; and (3) compliance with all federal, state and local laws and regulations pertaining to long term care ombudsperson agencies and the rules and regulations herein.

10.2 The governing body, or equivalent legal authority, shall provide appropriate personnel, physical resources and equipment to facilitate the delivery of prescribed services and shall furthermore:

10.2.1 appoint (a) a chief operating officer, executive director (or equivalent position), however named, and (b) the individual who shall serve as the ombudsperson;

10.2.2 identify the range of services to be provided which must include no less than those services required herein;

10.2.3 define the geographic areas to be served; and

10.2.4 carry out such other functions as may be relevant to the organization and operation of the agency.

10.3 The governing body, or equivalent legal authority, shall adopt and maintain by-laws or acceptable equivalent which defines responsibilities for the operation and performance of the organization, and shall identify purposes and means of fulfilling same.

10.4 The governing body or equivalent legal authority, shall establish administrative policies pertaining to no less than the following (and copies of the same shall be provided to the Department upon request):

10.4.1 responsibilities of the chief executive officer (or equivalent position) and of the ombudsperson;

10.4.2 the mechanism for disclosure that ensures that no individual, or member of the immediate family of an individual, involved in the designation of the ombudsperson (whether by appointment or otherwise) is subject to a conflict of interest; and that no member of the governing body, officer or employee of the ombudsperson or member of the immediate family of the governing body member, officer, employee, or representative, is subject to a conflict of interest;

10.4.3 the methods for identifying, and specifying in writing, mechanisms to remove conflicts of interest referred to herein;

10.4.4 the modalities of services to be provided;

10.4.5 circumstances under which ombudsperson services cannot be provided and procedures for referral;

10.4.6 linkages and referrals with other health care facilities, which shall include a mechanism for recording, transmitting and receiving information essential to the continuity of care.

10.4.7 *policies and procedures to identify*, receive, *investigate, and resolve complaints;*

10.4.8 policies and procedures regarding persons employed by the Office. Said policies shall include, but not be limited to, the following:

i) timely completion of the bureau of criminal identification (BCI) check;
ii) mechanism for credentialing and/or verifying any professional licensure requirements in accordance with state statutes and regulations.

10.4.9 such other matters as may be relevant to the organization and operation of the Office.

10.5 The governing body or other legal authority shall organize Office services to ensure an integrated continuum of care for the resident.

10.6 An organizational chart of the Office with written description of the organization, authorities, responsibilities, accountability, and relationships shall be maintained that shall include but not be limited to:

10.6.1 a description of each service offered;

10.6.2 policies and procedures pertaining to each service;

10.6.3 a description of the system for the maintenance of each resident's record; and

10.6.4 standards of clinical practice.

Section 11.0 ***Personnel***

11.1 The Office shall employ a sufficient number of qualified personnel to provide effective services.

11.2 A job description for each classification of position shall be established, clearly delineating qualifications, duties, authority and responsibilities required for each position.

11.3 The Office shall have written personnel policies and procedures for hiring and selection, compensation, evaluation, disciplinary action and grievance, and supervision and training of employees, contractors, volunteers, students and/or interns. The personnel policies and procedures shall include, at a minimum, the following provisions:

11.3.1 No known conflict of interest which would interfere with objective performance as an ombudsperson representative.

11.3.2 Understanding of and agreement to follow the ombudsperson rules of confidentiality in accordance with all applicable state and federal statutes and regulations;

11.3.3 Agreement to follow any policies and procedures of the Department and the Office and accept the direction of the ombudsperson;

11.3.4 Compliance with the Office's reporting needs to collect and analyze data relating to complaints and conditions in facilities;

11.3.5 At a minimum, training shall meet the requirements set forth in Section 712 of The Older Americans Act (42 U.S.C. §3058g), as the same may be amended from time to time.

11.4 Written personnel policies supporting sound personnel practices shall be made available to all personnel, including volunteers, and to the Department.

11.5 Personnel files shall be maintained for each employee, including volunteers, and shall be available at all times for inspection by the Department. Such files shall include no less than the following documentation:

11.5.1 information pertaining to qualifications for employment which shall include but not be limited to an understanding of long-term care issues; experience in the fields of aging and health care; and good verbal, listening, and writing skills;

11.5.2 records of completion of required training and educational programs;

11.5.3 evidence of current licensure or certification as may be required by law;

11.5.4 resume of previous employment.

11.5.5 evidence of no conflicts of interest.

Section 12.0 ***Conflict of Interest***

12.1 As used in this Section 12:

(1) "Financial interest" means an ownership interest or investment in a facility by a representative of the Office or a relative of the representative of the Office,

(2) "Relative" means a member of the immediate family, which is the spouse, parents, children, siblings, or household member.

(3) "Remedy" means an action, restriction of action, restriction of contact, or other means proposed to the Department that would neutralize a conflict of interest and ensure that the conflict will not adversely influence the activities of the representative on behalf of the Office.

(4) "Waiver" means the Department has determined that sufficient circumstances exist to eliminate a conflict of interest and the need to remedy a conflict of interest.

12.2 No employee or representative of the Office, no individual involved in designating, hiring, evaluating, or terminating the ombudsperson or any other employee or representative of the Office, no organization within which the office is located and no governing body members may have an unremedied conflict of interest. Conflicts of interest shall include, but shall not be limited to, being employed by a facility at any time within the two years prior to being employed by or affiliated with the Office; or being affiliated with, or having a financial interest in, a facility or a membership organization of long-term care providers or other facilities; or standing to gain financially through an action brought on behalf of individuals whom the Office serves; or, in the case of a non-profit organization where the Office is situated, receipt of donations or other funds from a facility.

Absent a waiver granted by the Department, no representative of the Office shall be assigned to investigate a complaint concerning a facility with which the representative was formerly employed, with which the representative was formerly or is currently affiliated or associated, from which a relative receives long-term care services, or that poses any other conflict of interest.

12.3 The agency within which the Office is located shall develop procedures to screen potential and existing non-representative employees of the program, potential candidates and

existing representatives of the Office, individuals involved in designating, hiring, evaluating, or terminating the ombudsperson, and potential and existing governing body members for conflicts of interest. The procedures shall be applied upon initial screening and annually thereafter. When completed, the person who conducted the screen and the person screened shall acknowledge the completion of the screen in writing. The completed screening instrument shall be made a record of the program and shall be subject to review by the Department.

12.4 Prior to offering a position within the Office to an applicant or training a volunteer, the agency within which the Office is situated shall report any identified conflict of interest to, and may propose a remedy to, the Director. Within forty-five (45) days of receiving a proposed remedy, the Director shall review the nature, scope, and extent of the conflict and shall determine whether or not to allow the proposed remedy. While the decision is pending, the agency shall assign any individual with a conflict of interest to duties that do not pose a conflict.

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

12.5 Deliberate failure to disclose any conflict of interest or any prohibition shall be sufficient grounds for the removal of the individual who is the subject of the conflict of interest from the Office, or the withdrawal of the of the ombudsperson program from the agency where the Office is situated.

Section 13.0 ***Complaint Resolution***

13.1 After an investigation, if the ombudsperson determines that the complaint has no merit, the situation shall be explained fully to the complainant, and the office of long term care ombudsperson shall educate the complainant as to his rights and responsibilities.

13.2 After an investigation, if the complaint is fully or partially verified, the ombudsperson shall seek to resolve the problem.

13.3 Complaint resolution responsibilities shall include but not be limited to:

13.3.1 Development of a plan for corrective action through discussions with the complainant, resident, and appropriate officials and staff of the related institution;

13.3.2 Establishment of a timetable for resolution;

13.3.3 Follow-up within thirty (30) days to determine if the problem giving rise to the complaint has been resolved.

13.4 Complaints of conditions adversely affecting residents that cannot be resolved shall be referred within seven (7) days by the ombudsperson to the appropriate governmental agency.

Section 14.0 ***Resident Records***

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

14.2 The Office shall maintain records related to complaints received by or on behalf of residents of related institutions which shall include:

14.2.1 Name, address, and phone number of the complainant;

14.2.2 Name of the resident;

14.2.3 Relationship of the complainant to the resident;

14.2.4 Name of the facility;

14.2.5 Nature of the complaint;

14.2.6 Steps taken to investigate the complaint;

12.2.7 All notes, correspondence, complaint forms, background materials, assessments, and medical and incident reports related to the complaint;

14.2.7 Outcome of the investigation;

14.2.8 Resolution and follow-up.

14.3 If the complainant refuses to identify himself or the resident, it should be so indicated in the record.

14.4 Whenever applicable, designated Office personnel shall complete a form, approved by the Director, for each resident under the care of the office of long term care ombudsperson who is transferred between health care facilities, such as a hospital or nursing facility, or other facility licensed under the provisions of Chapter 23-17 of the Rhode Island General Laws, as amended. Said form shall be provided to the receiving facility, agency, or provider prior to, upon transfer, or discharge of the patient to ensure continuity of care.

14.5 The Office shall comply with Chapter 38-3 of the Rhode Island General Laws, also known as the Public Records Administration Act. This Act requires any executive, legislative, judicial, regulatory, administrative body of the State, or any political subdivision thereof (including but not limited to any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or other agency of state or local government which exercises governmental functions, *or any other public or private agency, person, partnership, corporation or business entity acting on behalf of any public agency*) to comply with records management practices and procedures for the maintenance, retention, and destruction of records. The Office shall follow the Department's records retention schedule.

All costs associated with complying with R.I.G.L. Chapter 38-3 shall be the sole responsibility of the agency or organization within which the Office is located. The Office shall provide to the Department a copy of all correspondence, certifications and other documents provided to or from the secretary of state relating to compliance with this Section 14.5 and the retention and destruction of records. Where destruction of records is authorized by the secretary of state, the Office shall furnish to the Department a copy of said authorization certification from the secretary of state prior to destruction of the records. The Office shall screed all documents being destroyed and properly and fully destroy all materials to protect the privacy of all individuals.

14.6 The Office shall have written policies and procedures to govern the use and removal of records and determine the conditions for release of information in accordance with statutory provisions pertaining to confidentiality (see also "Access to Records" and "Confidentiality" sections below).

PART IV *Confidentiality, Retaliation, Immunity, Inspections, and Penalties*

Section 15.0 *Access*

15.1 *In the course of an investigation, the ombudsperson shall, personally or through designated employees of the Office:*

15.1.1 *Make the necessary inquiries and obtain information as is deemed necessary;*

15.1.2 *Have access to facilities and residents; and*

15.1.3 *Enter facilities and, after notifying the person in charge, inspect any books, files, medical records, or other records that pertain to the resident, subject to the following requirements:*

(A) access to review the medical and social records of a resident shall be provided, if-

(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;

(B) access to the records as is necessary to investigate a complaint shall be provided 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 Ombudsperson;

(C) access shall be provided to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities; and

(D) access to and, on request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities.

15.2 *In the ordinary course of the ombudsperson's duties, the ombudsperson and designated employees of the Office shall have access to residents of a facility to:*

15.2.1 *Visit, talk with, make personal, social, and other appropriate services available;*

15.2.2 *Inform them of their rights and entitlements and corresponding obligations under federal and state law by distribution of educational materials, discussion in groups, or discussion with individual residents and their families; and*

15.2.3 *Engage in other methods of assisting, advising, and representing residents to extend to them the full enjoyment of their rights.*

15.3 *The Office is considered a health oversight agency.*

15.3.1 *Notwithstanding any other provision of law, a health oversight agency, and its employees and agents, shall comply with all state and federal confidentiality laws, including, but not limited to, Chapter 5-37.3 of* the Rhode Island General Laws, as amended *(Confidentiality of Health Care Communications and Information Act) and specifically subsection 5-37.3-4(c), which requires limitation on the distribution of information which is the subject of* Chapter 42-66.7 of the Rhode Island General Laws, as amended, *on a "need to know" basis, and* section *§ 40.1-5-26 of* the Rhode Island General Laws, as amended (Mental health law: *"Disclosure of Confidential Information and Records").*

Section 16.0 ***Confidentiality***

16.1 *The files maintained by the Office are confidential and shall be disclosed only with the written consent of the resident affected or his or her legal representative, or if any disclosure is required by court order. Nothing in this paragraph shall be construed to prohibit the disclosure of information gathered in an investigation to any interested party as may be necessary to resolve the complaint or to refer to other appropriate state agencies investigating civil, criminal or licensing violations.*

Section 17.0 ***Retaliation Prohibited***

17.1 *No discriminatory, disciplinary, or retaliatory action shall be taken against any officer or employee of a facility by the facility; nor against any guardian or family member of any resident; nor against any resident of the facility; nor against any volunteer for any communication by him or her with the ombudsperson or for any information given or disclosed by him or her in good faith to aid the ombudsperson in carrying out his or her duties and responsibilities.*

Section 18.0 ***Immunity from Liability***

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

Section 19.0 ***Noninterference***

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

Section 20.0 ***Inspections***

20.1 The Department may make, or cause to be made, such inspections and investigations, including resident records, as deemed necessary in accordance with Chapter 42-66.7 of the Rhode Island General Laws, as amended, and the rules and regulations herein.

20.2 Said inspections may include, but may not be limited to, home visits, resident surveys, and employee interviews.

20.3 Refusal to permit inspections shall constitute a valid ground for suspension or revocation of any contractual agreement with the Office.

20.4 The Office shall be given notice by the Department of all deficiencies reported as a result of any inspection or investigation.

Section 21.0 ***Penalty for Violations***

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

PART V *Appeal Procedures and Severability*

Section 22.0 *Procedures for Appeal*

22.1 All hearings and reviews required under the provisions of Chapter 42-66.7 of the Rhode Island General Laws, as amended, shall be held in accordance with the provisions of the Administrative Procedures Act (Rhode Island General Laws Chapter 42-35) and any applicable administrative procedures of the Department.

Section 23.0 *Complaints Against the Ombudsperson*

23.1 All complaints concerning the Office must be sent in writing to the Director of the Department. Each complaint shall set forth the nature of the complaint in reasonable detail and must be received by the Director within one hundred eighty (180) days after the incident which is the subject of the complaint (such 180 day period may be extended in the event of extenuating circumstances, as determined by the Director).

23.2 The Director shall send a letter to the complainant acknowledging receipt of the written complaint.

23.3 The Director will notify the ombudsperson that a complaint has been made and will send a copy of the complaint to the ombudsperson, and to the governing body (or equivalent legal authority), if any. The Director, at his or her option, may require that the ombudsperson submit a written response to the complaint, and in such case the Director shall set forth the time frame within which the written response must be provided.

23.4 The Director will conduct an investigation of the complaint. The Director may consult with, and be assisted by, attorneys and/or Department staff in conducting the investigation. At the option of the Director, the investigation may include, but need not be limited to, an interview with the complainant by the Director [and/or a Department attorney and/or Department staff person(s)]. The Director [and/or a Department attorney and/or Department staff person(s)] may interview the Office staff person about whom the complaint was made and also may elect to interview other staff members of the Office and/or the governing body (or equivalent legal authority) members and other third parties, as the Director deems appropriate.

23.5 Following the investigation, the Director will make a determination about the complaint and will convey his or her resolution, in writing, to the ombudsperson and to the governing body (or equivalent legal authority), if any. The Director also will send a letter setting forth the resolution to the complainant.

23.5.1 If, after an investigation, the Director deems the complaint to be without merit, no further action shall be taken by the Director.

23.5.2 If, after an investigation, the Director deems the complaint to be fully or partially verified, possible resolution of the complaint shall include but not be limited to: (a) establishment by the Director, or at the option of the Director the proposal by the agency where the Office is located, of a plan for corrective action or (b) in cases where the program of the long term care ombudsperson is operated by contract or other arrangement by an agency or

other organization located outside the Department, the removal of the program from the agency or other organization and the termination of the contract or other arrangement. In the event that the Director elects to establish, or to cause the agency where the Office is located to propose, a plan for corrective action, the following shall apply:

(a) any plan proposed by the agency where the Office is located shall be subject to the written approval of the Director and shall be submitted under signature of the ombudsperson and the chief executive of the governing body of the agency;

(b) any corrective plan of action shall include a time frame within which the corrective plan of action shall be accomplished;

(c) if the agency fails to comply with the corrective plan of action within the designated time frame, the chief executive of the governing body of the agency must send a written explanation to the Director for the delay with a request for an amended time frame; this request must be received within twenty-four hours of the deadline;

(d) the Director may either accept or reject the request for an amended time frame in writing;

(e) if the agency has failed to comply with the corrective plan of action at the end of the designated time frame, the Director may elect any other remedy available to her at law and/or in equity, including without limitation, in cases where the program of the long term care ombudsperson is operated by contract or other arrangement by an agency or other organization located outside the Department, the removal of the program from the agency or other organization and the termination of the contract or other arrangement.

23.6. If the complainant is not satisfied with the resolution of the complaint as set forth in the letter from the Director referred to in section 23.5 above, the complainant may appeal the resolution in accordance with the hearings and review procedures referred to in Section 22 above.

Section 24.0 ***Severability***

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

REFERENCES

1. The Older Americans Act of 1965 (unofficial compilation) appears online: http://www.aoa.gov/AoARoot/AoA_Programs/OAA/oaa_full.asp

2. The Long Term Ombudsperson Act of 1995: Chapter 42-66.7 of the Rhode Island General Laws, as amended. Available online: http://www.rilin.state.ri.us/Statutes/TITLE42/42-66.7/INDEX.HTM

3. Administrative Procedures Act: Chapter 42-35 of the Rhode Island General Laws, as amended. Available online: http://www.rilin.state.ri.us/Statutes/TITLE42/42-35/INDEX.HTM