

LONG-TERM CARE OMBUDSMAN PROVISIONS
of the
OLDER AMERICANS ACT OF 1965
As Amended in 2006 (P.L. 109-365)
MARKUP WITH HOUSE BILL S.192 (3.17.16)

OLDER AMERICANS ACT OF 2006 2016

TITLE I – DECLARATION OF OBJECTIVES; DEFINITIONS

DEFINITIONS

Section. 102.

(a) For the purposes of this Act—

~~(1) The term “abuse” means the willful—~~

~~(A) infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or~~

~~(B) deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.~~

(1) The term ‘abuse’ means 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.;

...

(3) The term ‘adult protective services’ means 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.;

~~(4) The term ‘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.~~

(4) The term ‘Aging and Disability Resource Center’ 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, services providers, and resources within a community, including information on the availability of integrated long-term care services, and Federal or State programs that provide long-term care services and supports through home and community-based service 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.’

...

~~(17) The term ‘elder justice’—~~

~~(A) used with respect to older individuals, collectively, means efforts to prevent, detect, treat, intervene in, and respond to elder abuse, neglect, and exploitation and to protect older individuals with diminished capacity while maximizing their autonomy; and~~

~~(B) used with respect to an individual who is an older individual, means the recognition of the individual’s rights, including the right to be free of abuse, neglect, and exploitation.~~

(17) The term ‘elder justice’ means –

(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.

~~(18) (A) The term ‘exploitation’ means terms ‘exploitation’ and ‘financial exploitation’ mean 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 (A), 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.

...
(42 U.S.C. 3002)

TITLE II – ADMINISTRATION ON AGING

ESTABLISHMENT OF ADMINISTRATION ON AGING

Section. 201.

(d) (1) There is established in the Administration the Office of Long-Term Care Ombudsman Programs (in this subsection referred to as the "Office").

(2) (A) The Office shall be headed by a Director of the Office of Long-Term Care Ombudsman Programs (in this subsection referred to as the "Director") who shall be appointed by the Assistant Secretary from among individuals who have expertise and background in the fields of long-term care advocacy and management. The Director shall report directly to the Assistant Secretary.

(B) No individual shall be appointed Director if—

(i) the individual has been employed within the previous 2 years by—

(I) a long-term care facility;

(II) a corporation that then owned or operated a long-term care facility; or

(III) an association of long-term care facilities;

(ii) the individual—

(I) has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or long-term care service; or

(II) receives, or has the 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; or

(iii) the individual, or any member of the immediate family of the individual, is subject to a conflict of interest.

(3) The Director shall—

(A) serve as an effective and visible advocate on behalf of older individuals who reside in long-term care facilities, within the Department of Health and Human Services and with other departments, agencies, and instrumentalities of the Federal Government regarding all Federal policies affecting such individuals;

(B) review and make recommendations to the Assistant Secretary regarding—

(i) the approval of the provisions in State plans submitted under section 307(a) that relate to State Long-Term Care Ombudsman programs; and

(ii) the adequacy of State budgets and policies relating to the programs;

(C) after consultation with State Long-Term Care Ombudsmen and the State agencies, make recommendations to the Assistant Secretary regarding—

(i) policies designed to assist State Long-Term Care Ombudsmen; and

(ii) methods to periodically monitor and evaluate the operation of State Long-Term Care Ombudsman programs, to ensure that the programs satisfy the requirements of section 307(a)(9) and section 712, including provision of service to residents of board and care facilities and of similar adult care facilities;

(D) keep the Assistant Secretary and the Secretary fully and currently informed

about—

- (i) problems relating to State Long-Term Care Ombudsman programs; and
- (ii) the necessity for, and the progress toward, solving the problems;
- (E) review, and make recommendations to the Secretary and the Assistant Secretary regarding, existing and proposed Federal legislation, regulations, and policies regarding the operation of State Long-Term Care Ombudsman programs;
- (F) make recommendations to the Assistant Secretary and the Secretary regarding the policies of the Administration, and coordinate the activities of the Administration with the activities of other Federal entities, State and local entities, and nongovernmental entities, relating to State Long-Term Care Ombudsman programs;
- (G) supervise the activities carried out under the authority of the Administration that relate to State Long-Term Care Ombudsman programs;
- (H) administer the National Ombudsman Resource Center established under section ~~202(a)(21)~~ 202(a)(18) and make recommendations to the Assistant Secretary regarding the operation of the National Ombudsman Resource Center;
- (I) advocate, monitor, and coordinate Federal and State activities of Long-Term Care Ombudsmen under this Act;
- (J) submit to the Speaker of the House of Representatives and the President pro tempore of the Senate an annual report on the effectiveness of services provided under section 307(a)(9) and section 712;
- (K) have authority to investigate the operation or violation of any Federal law administered by the Department of Health and Human Services that may adversely affect the health, safety, welfare, or rights of older individuals; and
- (L) not later than 180 days after the date of the enactment of the ~~Older Americans Act Amendments of 1992~~ Older Americans Act Reauthorization Act of 2016, establish standards applicable to the training required by section ~~712(h)(4)~~ 712(h)(5).
- (M) collect and analyze best practices related to responding to elder abuse, neglect, and exploitation in long-term care facilities, and publish a report of such best practices.

FUNCTIONS OF ASSISTANT SECRETARY

Section. 202.

- (a) It shall be the duty and function of the Administration to—
- (18)(A) establish and operate the National Ombudsman Resource Center (in this paragraph referred to as the “Center”), under the administration of the Director of the Office of Long-Term Care Ombudsman Programs, that will—
 - (i) by grant or contract—
 - (I) conduct research;
 - (II) provide training, technical assistance, and information to State Long-Term Care Ombudsmen;
 - (III) analyze laws, regulations, programs, and practices; and
 - (IV) provide assistance in recruiting and retaining volunteers for State Long-Term Care Ombudsman programs by establishing a national program for recruitment efforts that utilizes the organizations that have established a successful record in recruiting and retaining volunteers for ombudsman or other programs; relating to Federal, State, and local long-term care ombudsman policies; and
 - (ii) assist State Long-Term Care Ombudsmen in the implementation of State Long-Term Care Ombudsman programs; and
 - (B) make available to the Center not less than the amount of resources made available to the Long-Term Care Ombudsman National Resource Center for fiscal year 2000;

...

(g) The Assistant Secretary shall, as appropriate, ensure that programs authorized under this Act include appropriate training in the prevention of abuse, neglect, and exploitation and provision of services that address elder justice and the exploitation of older individuals.

...

Section. 216. AUTHORIZATION OF APPROPRIATIONS

(a) IN GENERAL.—For purposes of carrying out this Act, there are authorized to be appropriated for administration, salaries, and expenses of the Administration ~~such sums as may be necessary for fiscal years 2007, 2008, 2009, 2010, and 2011.~~ \$40,063,000 for each of the fiscal years 2017, 2018, and 2019.

(b) ELDERCARE LOCATOR SERVICE.—There are authorized to be appropriated to carry out section 202(a)(24) (relating to the National Eldercare Locator Service) such sums as may be necessary for fiscal years 2007, 2008, 2009, 2010, and 2011.

(b) There are authorized to be appropriated—

(1) to carry out section 202(a)(21) (relating to the National Eldercare Locator Service), \$2,088,758 for fiscal year 2017, \$2,132,440 for fiscal year 2018, and \$2,176,121 for fiscal year 2019;

(2) to carry out section 215, \$1,904,275 for fiscal year 2017, \$1,944,099 for fiscal year 2018, and \$1,983,922 for fiscal year 2019;

(3) to carry out section 202 (relating to Elder Rights Support Activities under this title), \$1,312,904 for fiscal year 2017, \$1,340,361 for fiscal year 2018, and \$1,367,817 for fiscal year 2019; and

(4) to carry out section 202(b) (relating to the Aging and Disability Resource Centers), \$6,271,399 for fiscal year 2017, \$6,402,551 for fiscal year 2018, and \$6,533,703 for fiscal year 2019.

(c) PENSION COUNSELING AND INFORMATION PROGRAMS.—There are authorized to be appropriated to carry out section 215, such sums as may be necessary for fiscal years 2007, 2008, 2009, 2010, and 2011.

TITLE VII—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES

Subtitle A—State Provision

CHAPTER 1—GENERAL STATE PROVISIONS

Section. 702. AUTHORIZATION OF APPROPRIATIONS.

(a) OMBUDSMAN PROGRAM. – There are authorized to be appropriated to carry out chapter 2, ~~such sums as may be necessary for fiscal year 2007, and such sums as may be necessary for subsequent fiscal years.~~ \$16,280,630 for fiscal year 2017, \$16,621,101 for fiscal year 2018, and \$16,961,573 for fiscal year 2019.

(b) PREVENTION OF ELDER ABUSE, NEGLECT, AND EXPLOITATION.—

~~There are authorized to be appropriated to carry out chapter 3, such sums as may be necessary for fiscal year 2007, and such sums as may be necessary for subsequent fiscal years.~~

(b) OTHER PROGRAMS. – There are authorized to be appropriated to carry out chapters 3 and 4, \$4,891,876 for fiscal year 2017, \$4,994,178 for fiscal year 2018, and \$5,096,480 for fiscal year 2019.

~~(c) LEGAL ASSISTANCE DEVELOPMENT PROGRAM.—There are authorized to be appropriated to carry out chapter 4, such sums as may be necessary for fiscal year 2007, and such sums as may be necessary for subsequent fiscal years.~~

CHAPTER 2—OMBUDSMAN PROGRAMS

Section. 711. DEFINITIONS.

As used in this chapter:

(1) OFFICE.—The term “Office” means the office established in section 712(a)(1)(A).

(2) OMBUDSMAN.—The term “Ombudsman” means the individual described in section 712(a)(2).

(3) LOCAL OMBUDSMAN ENTITY.—The term “local Ombudsman entity” means an entity designated under section 712(a)(5)(A) to carry out the duties described in section 712(a)(5)(B) with respect to a planning and service area or other substate area.

(4) PROGRAM.—The term “program” means the State Long-Term Care Ombudsman program established in section 712(a)(1)(B).

(5) REPRESENTATIVE.—The term “representative” includes an employee or volunteer who represents an entity designated under section 712(a)(5)(A) and who is individually designated by the Ombudsman.

(6) RESIDENT.—The term “resident” means an ~~older~~ individual who resides in a long-term care facility.
(42 U.S.C. 3058f)

Section. 712. STATE LONG-TERM CARE OMBUDSMAN PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—In order to be eligible to receive an allotment under section 703 from funds appropriated under section 702 and made available to carry out this chapter, a State agency shall, in accordance with this section—

(A) establish and operate an Office of the State Long-Term Care Ombudsman; and
(B) carry out through the Office a State Long-Term Care Ombudsman program.

(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. The Ombudsman shall be responsible for the management, including the fiscal management, of the Office.

(3) FUNCTIONS.—The Ombudsman shall serve on a fulltime basis, and shall, personally or through representatives of the Office—

(A) identify, investigate, and resolve complaints that—

~~(i) are made by, or on behalf of, residents; and~~

(i) are made by, or on behalf of, residents, including residents with limited or no decisionmaking capacity and who have no known legal representative, and if such a

resident is unable to communicate consent for an Ombudsman to work on a complaint directly involving the resident, the Ombudsman shall seek evidence to indicate what outcome the resident would have communicated (and, in the absence of evidence to the contrary, shall assume that the resident wishes to have the resident's health, safety, welfare, and rights protected) and shall work to accomplish that outcome, and

(ii) 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), of—

(I) providers, or representatives of providers, of long-term care services;

(II) public agencies; or

(III) health and social service agencies;

(B) provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents;

(C) inform the residents about means of obtaining services provided by providers or agencies described in subparagraph (A)(ii) or services described in subparagraph (B);

(D) ensure that the residents have ~~regular and timely~~ regular, timely, private, and unimpeded access to the services provided through the Office and that the residents and complainants receive timely responses from representatives of the Office to complaints;

(E) represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(F) provide administrative and technical assistance to entities designated under paragraph (5) to assist the entities in participating in the program;

(G)

(i) 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 the residents, with respect to the adequacy of long-term care facilities and services in the State;

(ii) recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and

(iii) facilitate public comment on the laws, regulations, policies, and actions;

(H)

(i) provide for training representatives of the Office;

(ii) promote the development of citizen organizations, to participate in the program; and

(iii) provide technical support for, actively encourage, and assist in the development of resident and family councils to protect the well-being and rights of residents; ~~and~~ (I) when feasible, continue to carry out the functions described in this section on behalf of residents transitioning from a long-term care facility to a home care setting; and

~~(J)~~ (J) carry out such other activities as the Assistant Secretary determines to be appropriate.

(4) CONTRACTS AND ARRANGEMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B) the State agency may establish and operate the Office, and carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization.

(B) LICENSING AND CERTIFICATION ORGANIZATIONS; ASSOCIATIONS.—The State agency may not enter into the contract or other arrangement described in

subparagraph (A) 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.

(5) DESIGNATION OF LOCAL OMBUDSMAN ENTITIES AND REPRESENTATIVES.—

(A) DESIGNATION.—In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity.

(B) DUTIES.—An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency—

- (i) provide services to protect the health, safety, welfare^[14] and rights of residents;
- (ii) ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;
- (iii) 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;
- (iv) represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(v)

(I) 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

(II) facilitate the ability of the public to comment on the laws, regulations, policies, and actions;

(vi) support, actively encourage, and assist in the development of resident and family councils; ~~and~~

(vii) identify, investigate, and resolve complaints described in clause (iii) that are made by or on behalf of residents with limited or no decisionmaking capacity and who have no known legal representative, and if such a resident is unable to communicate consent for an Ombudsman to work on a complaint directly involving the resident, the Ombudsman shall seek evidenced to indicate what outcome the resident would have communicated (and, in the absence of evidence to the contrary, shall assume that the resident wishes to have the resident's health, safety, welfare, and rights protected) and shall work to accomplish that outcome; and

~~(vii)~~ (viii) carry out other activities that the Ombudsman determines to be appropriate.

(C) ELIGIBILITY FOR DESIGNATION.—Entities eligible to be designated as local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall—

- (i) have demonstrated capability to carry out the responsibilities of the Office;
- (ii) be free of conflicts of interest and not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves;
- (iii) in the case of the entities, be public or nonprofit private entities; and
- (iv) meet such additional requirements as the Ombudsman may specify.

(D) POLICIES AND PROCEDURES.—

(i) IN GENERAL.—The State agency shall establish, in accordance with the Office, policies and procedures for monitoring local Ombudsman entities designated to carry out the duties of the Office.

(ii) POLICIES.—In a case in which the entities are grantees, or the representatives

are employees, of area agencies on aging, the State agency shall develop the policies in consultation with the area agencies on aging. The policies shall provide for participation and comment by the agencies and for resolution of concerns with respect to case activity.

(iii) CONFIDENTIALITY AND DISCLOSURE.—The State agency shall develop the policies and procedures in accordance with all provisions of this subtitle regarding confidentiality and conflict of interest.

(b) PROCEDURES FOR ACCESS.—

(1) IN GENERAL.—The State shall ensure that representatives of the Office shall have—

(A) ~~access~~ private and unimpeded access to long-term care facilities and residents;

(B)(i) ~~appropriate access to review the medical and social records of a~~ all files, records, and other information concerning 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 communicate consent to the review and has no legal representative; or

(ii) access to ~~the records~~ the files, records, and information 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).

(3) HEALTH OVERSIGHT AGENCY. – For purposes of section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (including regulations issued under that section) (42 U.S.C. 1320d-2 note), the Ombudsman and a representative of the Office shall be considered a 'health oversight agency,' so that release of residents' individually identifiable health information to the Ombudsman or representative is not precluded in cases in which the requirements of clause (i) or (ii) or paragraph (1)(B), or the requirements of paragraph (1)(D), are otherwise met.

(c) REPORTING SYSTEM.—The State agency shall establish a statewide uniform reporting system to—

(1) collect and analyze data relating to complaints and conditions in long-term care facilities and to residents for the purpose of identifying and resolving significant problems; and

(2) submit the data, on a regular basis, to—

(A) the agency of the State responsible for licensing or certifying long-term care facilities in the State;

(B) other State and Federal entities that the Ombudsman determines to be appropriate;

(C) the Assistant Secretary; and

(D) the National Ombudsman Resource Center established in section ~~202(a)(21)~~

202(a)(18).

(d) DISCLOSURE.—

(1) IN GENERAL.—The State agency shall establish procedures for the disclosure by the Ombudsman or local Ombudsman entities of ~~files~~ files, records, and other information maintained by the program, including records described in subsection (b)(1) or (c).

(2) IDENTITY OF COMPLAINANT OR RESIDENT.—The procedures described in paragraph (1) shall—

(A) provide that, subject to subparagraph (B), the ~~files and records~~ files, records, and other information described in paragraph (1) may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the ~~files and records~~ files, records, and other information); and

(B) prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such ~~files or records~~ files, records, or other information unless—

(i) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing;

(ii) (I) the complainant or resident gives consent orally; and

(II) the consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or

(iii) the disclosure is required by court order; ~~;~~ and

(C) notwithstanding subparagraph (B), ensure that the Ombudsman may disclose information as needed in order to best serve residents with limited or no decisionmaking capacity who have no known legal representative and are unable to communicate consent, in order for the Ombudsman to carry out the functions and duties described in paragraphs (3)(A) and (5)(B) of subsection (a).

(e) CONSULTATION.—In planning and operating the program, the State agency shall consider the views of area agencies on aging, older individuals, and providers of long-term care.

~~(f) CONFLICT OF INTEREST.—The State agency shall—~~

~~(1) ensure that no individual, or member of the immediate family of an individual, involved in the designation of the Ombudsman (whether by appointment or otherwise) or the designation of an entity designated under subsection (a)(5), is subject to a conflict of interest;~~

~~(2) ensure that no officer or employee of the Office, representative of a local Ombudsman entity, or member of the immediate family of the officer, employee, or representative, is subject to a conflict of interest;~~

~~(3) ensure that the Ombudsman—~~

~~(A) does not have a direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;~~

~~(B) does not have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;~~

~~(C) is not employed by, or participating in the management of, a long-term care facility; and~~

~~(D) does not receive, or have the 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; and~~

~~(4) establish, and specify in writing, mechanisms to identify and remove conflicts of~~

interest referred to in paragraphs (1) and (2), and to identify and eliminate the relationships described in subparagraphs (A) through (D) of paragraph (3), including such mechanisms as—

(A) the methods by which the State agency will examine individuals, and immediate family members, to identify the conflicts; and

(B) the actions that the State agency will require the individuals and such family members to take to remove such conflicts.

(f) CONFLICT OF INTEREST. –

(1) INDIVIDUAL CONFLICT OF INTEREST. – The State agency shall –

(A) ensure that no individual, or member of the immediate family of an individual, involved in the designation of the Ombudsman (whether by appointment or otherwise) or the designation of an entity designated under subsection (a)(5), is subject to a conflict of interest;

(B) ensure that no officer or employee of the Office, representative of a local Ombudsman entity, or member of the immediate family of the officer, employee, or representative, is subject to a conflict of interest; and

(C) ensure that the Ombudsman—

(i) does not have a direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(ii) does not have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;

(iii) is not employed by, or participating in the management of, a long-term care facility or a related organization, and has not been employed by such a facility or organization within 1 year before the date of the determination involved;

(iv) does not receive, or have the 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;

(v) does not have management responsibility for, or operate under the supervision of an individual with management responsibility for, adult protective services; and

(vi) does not serve as a guardian or in another fiduciary capacity for residents of long-term care facilities in an official capacity (as opposed to serving as a guardian or fiduciary for a family member, in a personal capacity).

(2) ORGANIZATIONAL CONFLICT OF INTEREST.—

(A) IN GENERAL.— The State agency shall comply with subparagraph (B)(i) in a case in which the Office poses an organizational conflict of interest, including a situation in which the Office is placed in a organization that—

(i) is responsible for licensing, certifying, or surveying long-term care services in the State;

(ii) is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals;

(iii) provides long-term care services, including programs carried out under a Medicaid waiver approved under section 1115 of the Social Security Act (42 U.S.C. 1315) or under subsection (b) or (c) of section 1915 of the Social Security Act (42 U.S.C. 1396n), or under a Medicaid State plan amendment under subsection (i), (j), or (k) of section 1915 of the Social Security Act (42 U.S.C. 1396n);

(iv) provides long-term care case management;

(v) sets rates for long-term care services;

(vi) provides adult protective services

(vii) is responsible for eligibility determinations for the Medicaid program carried out under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

(viii) conducts preadmission screening for placements in facilities described in clause (ii); or

(ix) makes decisions regarding admission or discharge of individuals to or from such facilities.

(B) IDENTIFYING, REMOVING, AND REMEDYING ORGANIZATIONAL CONFLICT.—

(i) IN GENERAL.—The State agency may not operate the Office or carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization, in a case in which there is an organizational conflict of interest (within the meaning of subparagraph (A)) unless such conflict of interest has been—

(I) identified by the State agency;

(II) disclosed by the State agency to the Assistant Secretary in writing; and

(III) remedied in accordance with this subparagraph.

(ii) ACTION BY ASSISTANT SECRETARY.—In a case in which a potential or actual organizational conflict of interest (within the meaning of subparagraph (A)) involving the Office is disclosed or reported to the Assistant Secretary by an person or entity, the Assistant Secretary shall require that the State agency, in accordance with the policies and procedures established by the State agency under subsection (a)(5)(D)(iii)—t

(I) remove the conflict; or

(II) submit, and obtain the approval of the Assistant Secretary for, an adequate remedial plan that indicates how the Ombudsman will be unencumbered in fulfilling all of the functions specified in subsection (a)(3).

(g) LEGAL COUNSEL.—The State agency shall ensure that—

(1)(A) adequate legal counsel is available, and is able, without conflict of interest, to—

(i) provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; and

(ii) assist the Ombudsman and representatives of the Office in the performance of the official duties of the Ombudsman and representatives; and

(B) 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 Ombudsman or such a representative; and

(2) the Office pursues administrative, legal, and other appropriate remedies on behalf of residents.

(h) ADMINISTRATION.—The State agency shall require the Office to—

(1) prepare an annual report—

(A) describing the activities carried out by the Office in the year for which the report is prepared;

(B) containing and analyzing the data collected under subsection (c);

(C) evaluating the problems experienced by, and the complaints made by or on behalf of, residents;

(D) containing recommendations for—

(i) improving quality of the care and life of the residents; and

(ii) protecting the health, safety, welfare, and rights of the residents;

(E)(i) analyzing the success of the program including success in providing services to residents of board and care facilities and other similar adult care facilities; and

(ii) identifying barriers that prevent the optimal operation of the program; and

(F) providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of

residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers;

(2) 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 Office determines to be appropriate;

(3)(A) provide such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding—

(i) the problems and concerns of ~~older~~ individuals residing in long-term care facilities; and

(ii) recommendations related to the problems and concerns; and

(B) make available to the public, and submit to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities, each report prepared under paragraph (1);

~~(4)(A) not later than 1 year after the date of the enactment of this title, establish^[15]~~

(4) ensure that the Ombudsman or a designee participates in training provided by the National Ombudsman Resource Center established in section 202(a)(18);

~~(4) (5) strengthen and update~~ procedures for the training of the representatives of the Office, including unpaid volunteers, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs, in consultation with representatives of citizen groups, long-term care providers, and the Office, that—

(A) specify a minimum number of hours of initial training;

(B) specify the content of the training, including training relating to—

(i) Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State;

(ii) investigative techniques; and

(iii) such other matters as the State determines to be appropriate; and

(C) specify an annual number of hours of in-service training for all designated representatives;

~~(5) (6)~~ prohibit any representative of the Office (other than the Ombudsman) from carrying out any activity described in subparagraphs (A) through (G) of subsection (a)(3) unless the representative—

(A) has received the training required under ~~paragraph (4)~~ paragraph (5); and

(B) has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office;

~~(6) (7)~~ coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses established under—

(A) ~~subtitle C of the~~ subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000^[16]; and

(B) the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.);

~~(7) (8)~~ coordinate, to the greatest extent possible, ombudsman services with legal assistance provided under section 306(a)(2)(C), through adoption of memoranda of

understanding and other means;

~~(8)~~ (9) coordinate services with State and local law enforcement agencies and courts of competent jurisdiction; and

~~(9)~~ (10) permit any local Ombudsman entity to carry out the responsibilities described in paragraph (1), (2), (3), ~~(6), or (7)~~ (7), or (8).

(i) LIABILITY.—The State shall ensure that no representative of the Office will be liable under State law for the good faith performance of official duties.

(j) NONINTERFERENCE.—The State shall—

(1) ensure that willful interference with representatives of the Office in the performance of the official duties of the representatives (as defined by the Assistant Secretary) shall be unlawful;

(2) prohibit retaliation and reprisals by a long-term care facility or other entity with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of, the Office; and

(3) provide for appropriate sanctions with respect to the interference, retaliation, and reprisals.

(42 U.S.C. 3058g)

Section. 713. REGULATIONS.

The Assistant Secretary shall issue and periodically update regulations respecting—

(1) conflicts of interest by persons described in ~~paragraphs (1) and (2) of section 712(f)~~ subparagraphs (A) and (B) of section 712(f)(1); and

(2) the relationships described in ~~subparagraphs (A) through (D) of section 712(f)(3)~~ clauses (i) through (vi) of section 712(f)(1)(C).

(42 U.S.C. 3058h)