



**STATE OF RHODE ISLAND**

**DEPARTMENT OF ELDERLY AFFAIRS**

**Rules and Regulations Governing  
the Long Term Care Ombudsperson  
Program**

**April, 2011 (Proposed)**

**Lincoln D. Chafee**  
**Governor**

**Catherine Terry Taylor**  
**Director**

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

1 *Introduction*

2  
3 These *Rules and Regulations Governing the Long Term Care Ombudsperson Program* are  
4 promulgated pursuant to the authority conferred under section 42-66.7-12 of the Rhode Island  
5 General Laws, as amended, for the purpose of adopting prevailing standards for the  
6 implementation and enforcement of the long-term ombudsperson program including, but not  
7 limited to, the procedures for the receipt, investigation and resolution, through administrative  
8 action, of complaints filed by residents of long term care facilities, individuals acting on their  
9 behalf or any individual organization or government agency that has reason to believe that a long  
10 term care facility, organization or government agency has engaged in activities, practices or  
11 omissions that constitute a violation of applicable statutes or regulations or that may have an  
12 adverse effect upon the health, safety, welfare, rights or the quality of life of residents of long term  
13 care facilities.

14  
15 Pursuant to the provisions of the Administrative Procedures Act, the following were given  
16 consideration in promulgating these regulations: (a) alternative approaches to the regulations; and  
17 (b) duplication or overlap with other state regulations. Based upon available information, no  
18 alternative approach, duplication, or overlap was identified.

19  
20 These regulations are adopted in the best interest of the health, welfare, and safety of Rhode  
21 Island’s seniors.

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1 PART I *Definitions and General Requirements*

2  
3 Section 1.0 *Definitions*

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

6 1.1 **“Abuse”** means physical abuse, sexual abuse, and/or emotional abuse of an elderly person  
7 by a caregiver as defined herein.

8  
9 1.2 *An “act” of any facility or government agency includes any failure or refusal to act by any*  
10 *facility or government agency.*

11  
12 1.3 **“Caregiver”** means a person who has assumed the responsibility for the care of the elderly  
13 person voluntarily, by contract or by order of a court of competent jurisdiction, or who is  
14 otherwise legally responsible for the care of the elderly person.

15  
16 1.4 **“Client”** and **“resident”**, as used herein, shall have the same meaning.

17  
18 1.5 **“Department”** means the Rhode Island Department of Elderly Affairs.

19  
20 1.6 **“Director”** means the Director of the Department of Elderly Affairs or his/her designated  
21 agent.

22  
23 1.7 **“Elderly”** means any person sixty (60) years of age or older who is a resident of any  
24 facility.

25  
26 1.8 **“Emotional abuse”** means a pattern of willful infliction of mental or emotional harm upon  
27 an elder by threat, intimidation, isolation or other abusive conduct.

28  
29 1.9 **“Exploitation”** means the fraudulent or otherwise illegal, unauthorized or improper act or  
30 process of an individual, including, but not limited to, a caregiver or fiduciary, that uses the  
31 resources of an elder for monetary or personal benefit, profit, gain, or that results in  
32 depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets  
33 by use of undue influence, harassment, duress, deception, false representation or false  
34 pretenses.

35  
36 1.10 **“Facility”** means any facility or institution, home care provider or home nursing care  
37 provider, whether public or private, offering health or health related services for the  
38 institutionalized elderly, and which is subject to regulation, visitation, inspection, or  
39 supervision by any government agency. **“Facilities”** include, but are not limited to,  
40 nursing homes, intermediate care facilities, extended care facilities, convalescent homes,  
41 rehabilitation centers, home care agencies, homes for the aged, veterans' homes, boarding  
42 homes, and adult supportive care, residential care and assisted living residences.

43  
44 1.11 **“Governing body”** means the board of directors, however named, charged with the powers  
45 and the implementation of the duties of the office of the long term care ombudsperson, as  
46 defined herein, and as delineated in its articles of incorporation, by-laws and/or other  
47 legally adopted document(s) related to its governance.

- 1  
2 1.12 **“Government agency”** means any department, division, office, bureau, board,  
3 commission, authority, non-profit community organization, or any other agency or  
4 instrumentality created by any municipality or by the state, or to which the state is a party,  
5 which is responsible for the regulation, inspection, visitation, or supervision of facilities or  
6 which provides services to residents of facilities.  
7  
8 1.13 **“Health oversight agency”** means, for the purposes of Chapter 42-66.7 of the Rhode  
9 Island General Laws, as amended, the Department or the person or entity designated as  
10 the state’s long-term care ombudsperson by the Director, including the employees or  
11 agents of such person or entity, when they are acting to fulfill the duties and  
12 responsibilities of the state’s long-term care ombudsperson program in which health  
13 information is necessary to oversee the health system and in accordance with the U.S.  
14 Health Insurance Portability and Accountability Act (HIPAA) of 1996.  
15  
16 1.14 **“Interfere”** means willful and continuous conduct which prevents the ombudsperson from  
17 performing her or his official duties.  
18  
19 1.15 **“Neglect”** means the willful failure by a caregiver or other person with a duty of care to  
20 provide goods or services necessary to avoid physical harm, mental harm or mental illness  
21 to an elderly person, including, but not limited to, “abandonment” (withdrawal of  
22 necessary assistance) and denial of food or health related services.  
23  
24 1.16 **“Office”** shall have the meaning set forth in Section 2.3 below.  
25  
26 1.17 **“Official duties”** means work pursuant to the long-term care ombudsperson program  
27 authorized by the federal Older Americans Act or the long-term care ombudsperson  
28 program authorized by state law and carried out under the auspices and general direction  
29 of the state long-term care ombudsperson.  
30  
31 1.18 **“Ombudsperson”** shall have the meaning set forth in Section 2.4 below.  
32  
33 1.19 **“Ombudsperson advocate”** means a person acting as an agent of the ombudsperson,  
34 including volunteers.  
35  
36 1.20 **“Person”** means any individual, trust, or estate, partnership, limited liability corporation,  
37 corporation (including associations, joint stock companies, and insurance companies),  
38 state, or political subdivision or instrumentality of a state.  
39  
40 1.21 **“Physical abuse”** means the willful infliction of physical pain or injury (e.g. slapping,  
41 bruising or restraining) upon an elderly person.  
42  
43 1.22 **“Resident”** means any person age sixty (60) years of age or older who is receiving  
44 treatment, care, or housing in any facility in all of its aspects including, but not limited to,  
45 admission, retention, confinement, period of residence, transfer, discharge, and in any  
46 instances directly related to that status. Residents include patients and clients. Residents  
47 shall also include disabled persons under sixty (60) years of age residing in nursing  
48 homes, or clients of residential and assisted living facilities and home care providers/home  
49 nursing care providers and long-term care units at the Eleanor Slater Hospital, including  
50 the Zambarano facility.

- 1  
2 1.23 **"Sexual abuse"** means the infliction of non-consensual sexual contact of any kind upon an  
3 elderly person. Sexual abuse includes, but is not limited to, sexual assault, rape, sexual  
4 misuse or exploitation of an elder, as well as threats of sexual abuse where the perpetrator  
5 has the intent and the capacity to carry out the threatened abuse.  
6  
7 1.24 **"Willful"** means intentional, conscious and directed toward achieving a purpose.

1 PART II *General Requirements*

2  
3 Section 2.0 *Establishment of Program*

4  
5 2.1 Pursuant to Rhode Island General Laws §42-66.7, the Rhode Island General Assembly  
6 established a program of the long term care ombudsperson to be administratively attached  
7 to the Department in accordance with its mandate under [§ 42-66-4](#) of the Rhode Island  
8 General Laws, as amended, and the Older Americans Act, [42 U.S.C. § 3001 et seq.](#)

9  
10 2.2 The purpose of the program is advocating on behalf of long-term care facility residents and  
11 receiving, investigating and resolving through mediation, negotiation, and administrative  
12 action complaints filed by residents of long-term care facilities, individuals acting on their  
13 behalf or any individual organization or government agency that has reason to believe that  
14 a long-term care facility, organization or government agency has engaged in activities,  
15 practices or omissions that constitute a violation of applicable statutes or regulations or that  
16 may have an adverse effect upon the health, safety, welfare, rights or the quality of life of  
17 residents of long-term care facilities.

18  
19 2.3 The Department shall carry out the program through the establishment and operation of an  
20 office of long term care ombudsperson (the “Office”). The Department may operate the  
21 Office and carry out the program, directly or by contract or other arrangement with any  
22 public agency or non-profit organization. The Department may not enter into such contract  
23 or other arrangement with: (i) an agency or organization that is responsible for licensing or  
24 certifying long-term care services in the State; or (ii) an association (or an affiliate of such  
25 an association) of long-term care facilities, or of any other residential facilities for older  
26 individuals.

27  
28 2.4 The Office shall be headed by an individual, to be known as the ombudsperson (the  
29 “ombudsperson”), who shall be selected from among individuals with expertise and  
30 experience in the fields of long-term care and advocacy. The ombudsperson shall serve on  
31 a full-time basis, and shall, personally or through representatives of the Office, perform the  
32 functions and duties set forth in Chapter 42-66.7 of the Rhode Island General Laws, as  
33 amended, as well as in Section 712 of the Older Americans Act, as amended (42 U.S.C.  
34 §3058g). “Full-time basis” means that the ombudsperson position is full-time and the  
35 individual who serves as the ombudsperson has no duties other than those set forth in the  
36 immediately preceding sentence. If the Department elects to operate the Office and carry  
37 out the program by contract or other arrangement with any public agency or non-profit  
38 organization, the ombudsperson shall not be the chief executive officer or executive  
39 director (or any individual holding an equivalent office) of the public agency or non-profit  
40 organization.

41  
42 Section 3.0 *Nondiscrimination and Civil Rights Policy*

43  
44 3.1 The ombudsperson shall be responsible for maintaining a policy of nondiscrimination in the  
45 provision of services to participants and in the employment of staff without regard to race,  
46 color, creed, national origin, gender, sexual orientation, age, handicapping condition or  
47 degree of handicap, in accordance with all applicable state and federal statutes, regulations,  
48 and local ordinances.

49  
50 Section 4.0 *Compliance with All Laws, Codes, Rules and Regulations*

1  
2 4.1 The ombudsperson shall be responsible for complying with all local, state, and federal laws,  
3 codes, rules and regulations that apply to the Office. The governing body of any  
4 organization outside of the Department within which the Office is situated shall be  
5 responsible for ensuring that the ombudsperson performs his or her duties in compliance with  
6 all local, state, and federal laws, codes, rules and regulations that apply to the Office.  
7

8 **Section 5.0 Annual Report**  
9

10 5.1 *The ombudsperson shall submit an annual report of the activities of the Office and the*  
11 *ombudsperson's activities concerning facilities and the protection of the rights of residents*  
12 *of the facilities with the federal Assistant Secretary for Aging, Director, Governor, General*  
13 *Assembly, Director of the Rhode Island Department of Health, Chair of the Long-term*  
14 *Care Coordinating Council and all other appropriate governmental entities.*  
15

16 5.2 Said annual report shall be in compliance with all applicable requirements of section 42  
17 U.S.C. 3058g (Section 712 of The Older Americans Act), as the same may be amended  
18 from time to time, and also shall describe the activities carried out by the Office in the year  
19 for which the report is prepared.  
20

21 5.3 In addition to the foregoing, the report shall contain a listing of all members of the  
22 governing body, employees, and contractors of the Office, including a listing of all legal  
23 counsel who assist the ombudsperson in the performance of the official duties of the Office  
24 and provide advice and consultation needed to protect the health, safety, welfare, and rights  
25 of residents.  
26

27 . 5.4 *The report shall be available to the public.*  
28

29 **Section 6.0 Interagency Cooperation**  
30

31 6.1 *Nothing in Chapter 42-66.7 of the Rhode Island General Laws, as amended, shall be*  
32 *construed to be a limitation of the powers and responsibilities assigned by law to other*  
33 *state agencies or departments.*  
34

35 **Section 7.0 Cooperation Required**  
36

37 7.1 *The ombudsperson may request from any government agency, and the agency is authorized*  
38 *and directed to provide, any cooperation and assistance, services, and data as will enable*  
39 *the ombudsperson to properly perform or exercise any of his or her functions, duties and*  
40 *powers under Chapter 42-66.7 of the Rhode Island General Laws, as amended, and the*  
41 *rules and regulations herein.*  
42

43 7.2 *The ombudsperson shall, to the extent permissible under the provisions of § 712 of the*  
44 *Older Americans Act (42 U.S.C. § 3058g) as amended, cooperate and assist other*  
45 *government agencies in their investigations, such as the Department of Health, the*  
46 *Department of Attorney General, the Department of Human Services and any other*  
47 *pertinent department or agency.*

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

2  
3 Section 8.0 *Powers*

4  
5 8.1 *The ombudsperson shall, personally or through employees of the Office:*

6  
7 8.1.1 *Identify, investigate, and resolve complaints that (a) are made by, or on behalf of,*  
8 *residents; and (b) relate to action, inaction, or decisions, that may adversely affect*  
9 *the health, safety, welfare, or rights of the residents (including the welfare and*  
10 *rights of the residents with respect to the appointment and activities of guardians*  
11 *and representative payees) and health care and financial powers of attorney;*

12  
13 8.1.2 *Receive all reports of incidents reportable to the Rhode Island Department of*  
14 *Health within twenty-four (24) hours, or by the next business day of the occurrence,*  
15 *in cases of resident abuse, neglect, exploitation, theft, sexual abuse, accidents*  
16 *involving fires, elopement and patient to patient abuses;*

17  
18 8.1.3 *Receive all reports of thirty (30) day notices of resident discharge from long-term*  
19 *care facilities;*

20  
21 8.1.4 *Provide referral services to assist residents in protecting their health, safety,*  
22 *welfare and rights;*

23  
24 8.1.5 *Inform residents of their rights and advocate on their behalf to improve their*  
25 *quality of life and live with dignity and respect;*

26  
27 8.1.6 *Advocate on behalf of long term care facility residents, home care and hospice care*  
28 *recipients;*

29  
30 8.1.7 *Receive, investigate and resolve through mediation, negotiation, and administrative*  
31 *action, complaints filed by residents or recipients of services as outlined in section*  
32 *8.1.1 above, persons acting on their behalf, or any organization or government*  
33 *agency that has reason to believe that a facility, organization, government agency*  
34 *has engaged in activities, practices, or omissions that constitute a violation of*  
35 *applicable statutes or regulations that may have an adverse effect upon the health,*  
36 *safety, welfare, rights, or quality of life of residents of long term care facilities, or*  
37 *recipients of home or hospice care;*

38  
39 8.1.8 *Formulate written policies and procedures to identify, investigate, and resolve*  
40 *complaints;*

41  
42 8.1.9 *Make appropriate referrals of investigations to other state agencies, including, but*  
43 *not limited to, the Rhode Island Departments of Health, Human Services,*  
44 *Behavioral Health, Developmental Disabilities, and Hospitals, and Attorney*  
45 *General;*

46  
47 8.1.10 *Offer assistance and training to public and private organizations on long term care*  
48 *of elders and persons with disabilities;*

49  
50 8.1.11 *Represent the interests of residents of facilities before government agencies and*

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

5  
6            8.1.12 *Review and, if necessary, comment on any existing and proposed laws, regulations,*  
7            *and other government policies and actions that pertain to the rights and well-being*  
8            *of residents of facilities.*

9  
10           8.1.13 Have such other powers as are provided to the Office in Section 712 of The Older  
11           Americans Act (42 U.S.C. §3058g), as the same may be amended from time to  
12           time.

13  
14           Section 9.0    ***Duties***

15  
16           9.1            The ombudsperson shall cause the Office to comply with all of the requirements cited  
17            herein. The ombudsperson also shall perform all ombudsman duties set forth in Section  
18            712 of The Older Americans Act (42 U.S.C. §3058g), as the same may be amended from  
19            time to time.

20  
21           9.2            The Office shall notify the Department in writing within forty-eight (48) hours of the  
22            following circumstances:

23  
24            9.2.1          The Office becomes aware that a former Department Protective Services Unit client  
25            is leaving a nursing home or assisted living facility and returning to the  
26            community; and

27  
28            9.2.2          *For clients who have not previously been referred to the Department's Protective*  
29            *Services Unit and for whom the Office believes that a discharge to the community*  
30            *may be an unsafe discharge for such resident of a nursing home or assisted living*  
31            *facility: The Office shall transmit to the Department a complete referral describing*  
32            *the circumstances and/or concerns related to such client.*

33           9.3            The Office shall develop, implement, and provide to the Department (upon request) the  
34            following:

35            9.3.1          A statement of philosophy and goals and objectives of the Office;

36            9.3.2          A statement of the procedures to be used to recruit and support any volunteer  
37            representative of the Office;

38            9.3.3          A statement of methods to evaluate the attainment of the Office's goals and  
39            objectives;

40  
41            9.3.4          Assurance that the Office will comply with all requirements of the Department,  
42            including training of all representatives of the Office, confidentiality of records,  
43            and reporting;

1 9.3.5 Assurance that no person shall investigate any complaint filed with the Office,  
2 unless such person is acting as an agent of the Office;  
3

4 9.3.6 Assurance that the Office has the ability to pursue appropriate remedies to resolve  
5 complaints, including but not limited to:  
6

7 9.3.6.1 Ensuring adequate legal counsel is available, and is able, without conflict of  
8 interest, to provide advice and consultation needed to protect the health,  
9 safety, welfare, and rights of residents; and to assist the ombudsperson and  
10 representatives of the Office in the performance of the official duties of the  
11 ombudsperson and representatives; and that legal representation is provided  
12 to any representative of the Office against whom suit or other legal action is  
13 brought or threatened to be brought in connection with the performance of  
14 the official duties of the ombudsperson or such a representative; and the  
15 Office pursues administrative, legal, and other appropriate remedies on  
16 behalf of residents.  
17

18 9.3.6.2 Making referrals and recommendations about specific courses of action,  
19 referring situations to public and private agencies such as the Department of  
20 Human Services, the Attorney General's office, state and federal courts, and  
21 other agencies, as necessary;  
22

23 9.3.6.3 Serving as an agent for residents in negotiations with long-term care  
24 facilities, public and private agencies, family members, and other  
25 individuals and agencies to the extent permitted by state and federal law.  
26

## 27 Section 10.0 *Governing Body*

28  
29 10.1 This Section 10 applies to any Office which the Department elects to operate by contract or  
30 other arrangement with any non-profit organization.  
31

32 10.2 The Office shall have an organized governing body or equivalent legal authority ultimately  
33 responsible for: (1) the management, fiscal affairs and operation of the Office; (2) the  
34 assurance of quality care and services; and (3) compliance with all federal, state and local  
35 laws and regulations pertaining to long term care ombudsperson agencies and the rules and  
36 regulations herein.  
37

38 10.2 The governing body, or equivalent legal authority, shall provide appropriate personnel,  
39 physical resources and equipment to facilitate the delivery of prescribed services and shall  
40 furthermore:  
41

42 10.2.1 appoint (a) a chief operating officer, executive director (or equivalent position),  
43 however named, and (b) the individual who shall serve as the ombudsperson;  
44

45 10.2.2 identify the range of services to be provided which must include no less than those  
46 services required herein;  
47

48 10.2.3 define the geographic areas to be served; and  
49

- 1 10.2.4 carry out such other functions as may be relevant to the organization and operation  
2 of the agency.  
3
- 4 10.3 The governing body, or equivalent legal authority, shall adopt and maintain by-laws or  
5 acceptable equivalent which defines responsibilities for the operation and performance of  
6 the organization, and shall identify purposes and means of fulfilling same.  
7
- 8 10.4 The governing body or equivalent legal authority, shall establish administrative policies  
9 pertaining to no less than the following (and copies of the same shall be provided to the  
10 Department upon request):  
11
- 12 10.4.1 responsibilities of the chief executive officer (or equivalent position) and of the  
13 ombudsperson;  
14
- 15 10.4.2 the mechanism for disclosure that ensures that no individual, or member of the  
16 immediate family of an individual, involved in the designation of the  
17 ombudsperson (whether by appointment or otherwise) is subject to a conflict of  
18 interest; and that no member of the governing body, officer or employee of the  
19 ombudsperson or member of the immediate family of the governing body member,  
20 officer, employee, or representative, is subject to a conflict of interest;  
21
- 22 10.4.3 the methods for identifying, and specifying in writing, mechanisms to remove  
23 conflicts of interest referred to herein;  
24
- 25 10.4.4 the modalities of services to be provided;  
26
- 27 10.4.5 circumstances under which ombudsperson services cannot be provided and  
28 procedures for referral;  
29
- 30 10.4.6 linkages and referrals with other health care facilities, which shall include a  
31 mechanism for recording, transmitting and receiving information essential to the  
32 continuity of care.  
33
- 34 10.4.7 *policies and procedures to identify, receive, investigate, and resolve complaints;*  
35
- 36 10.4.8 policies and procedures regarding persons employed by the Office. Said policies  
37 shall include, but not be limited to, the following:  
38
- 39 i) timely completion of the bureau of criminal identification (BCI) check;  
40 ii) mechanism for credentialing and/or verifying any professional licensure  
41 requirements in accordance with state statutes and regulations.  
42
- 43 10.4.9 such other matters as may be relevant to the organization and operation of the  
44 Office.  
45
- 46 10.5 The governing body or other legal authority shall organize Office services to ensure an  
47 integrated continuum of care for the resident.  
48

1 10.6 An organizational chart of the Office with written description of the organization,  
2 authorities, responsibilities, accountability, and relationships shall be maintained that shall  
3 include but not be limited to:

4  
5 10.6.1 a description of each service offered;

6  
7 10.6.2 policies and procedures pertaining to each service;

8  
9 10.6.3 a description of the system for the maintenance of each resident's record; and

10  
11 10.6.4 standards of clinical practice.

12  
13 Section 11.0 *Personnel*

14  
15 11.1 The Office shall employ a sufficient number of qualified personnel to provide effective  
16 services.

17  
18 11.2 A job description for each classification of position shall be established, clearly delineating  
19 qualifications, duties, authority and responsibilities required for each position.

20  
21 11.3 The Office shall have written personnel policies and procedures for hiring and selection,  
22 compensation, evaluation, disciplinary action and grievance, and supervision and training  
23 of employees, contractors, volunteers, students and/or interns. The personnel policies and  
24 procedures shall include, at a minimum, the following provisions:

25  
26 11.3.1 No known conflict of interest which would interfere with objective performance as  
27 an ombudsperson representative.

28  
29 11.3.2 Understanding of and agreement to follow the ombudsperson rules of  
30 confidentiality in accordance with all applicable state and federal statutes and  
31 regulations;

32  
33 11.3.3 Agreement to follow any policies and procedures of the Department and the Office  
34 and accept the direction of the ombudsperson;

35  
36 11.3.4 Compliance with the Office's reporting needs to collect and analyze data relating to  
37 complaints and conditions in facilities;

38  
39 11.3.5 At a minimum, training shall meet the requirements set forth in Section 712 of The  
40 Older Americans Act (42 U.S.C. §3058g), as the same may be amended from time  
41 to time.

42  
43 11.4 Written personnel policies supporting sound personnel practices shall be made available to  
44 all personnel, including volunteers, and to the Department.

45  
46 11.5 Personnel files shall be maintained for each employee, including volunteers, and shall be  
47 available at all times for inspection by the Department. Such files shall include no less  
48 than the following documentation:  
49

1 11.5.1 information pertaining to qualifications for employment which shall include but not  
2 be limited to an understanding of long-term care issues; experience in the fields of  
3 aging and health care; and good verbal, listening, and writing skills;

4  
5 11.5.2 records of completion of required training and educational programs;

6  
7 11.5.3 evidence of current licensure or certification as may be required by law;

8  
9 11.5.4 resume of previous employment.

10  
11 11.5.5 evidence of no conflicts of interest.

12  
13 Section 12.0 *Conflict of Interest*

14 12.1 As used in this Section 12:

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

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

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

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

25 12.2 No employee or representative of the Office, no individual involved in designating, hiring,  
26 evaluating, or terminating the ombudsperson or any other employee or representative of  
27 the Office, no organization within which the office is located and no governing body  
28 members may have an unremedied conflict of interest. Conflicts of interest shall include,  
29 but shall not be limited to, being employed by a facility at any time within the two years  
30 prior to being employed by or affiliated with the Office; or being affiliated with, or having  
31 a financial interest in, a facility or a membership organization of long-term care providers  
32 or other facilities; or standing to gain financially through an action brought on behalf of  
33 individuals whom the Office serves; or, in the case of a non-profit organization where the  
34 Office is situated, receipt of donations or other funds from a facility.

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

40 12.3 The agency within which the Office is located shall develop procedures to screen potential  
41 and existing non-representative employees of the program, potential candidates and

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

8 12.4 Prior to offering a position within the Office to an applicant or training a volunteer, the  
9 agency within which the Office is situated shall report any identified conflict of interest to,  
10 and may propose a remedy to, the Director. Within forty-five (45) days of receiving a  
11 proposed remedy, the Director shall review the nature, scope, and extent of the conflict and  
12 shall determine whether or not to allow the proposed remedy. While the decision is  
13 pending, the agency shall assign any individual with a conflict of interest to duties that do  
14 not pose a conflict.

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

21 12.5 Deliberate failure to disclose any conflict of interest or any prohibition shall be sufficient  
22 grounds for the removal of the individual who is the subject of the conflict of interest from  
23 the Office, or the withdrawal of the of the ombudsperson program from the agency where  
24 the Office is situated.

## 25 Section 13.0 *Complaint Resolution*

26 13.1 After an investigation, if the ombudsperson determines that the complaint has no merit, the  
27 situation shall be explained fully to the complainant, and the office of long term care  
28 ombudsperson shall educate the complainant as to his rights and responsibilities.

29 13.2 After an investigation, if the complaint is fully or partially verified, the ombudsperson shall  
30 seek to resolve the problem.

31 13.3 Complaint resolution responsibilities shall include but not be limited to:

32 13.3.1 Development of a plan for corrective action through discussions with the  
33 complainant, resident, and appropriate officials and staff of the related institution;

34 13.3.2 Establishment of a timetable for resolution;

35 13.3.3 Follow-up within thirty (30) days to determine if the problem giving rise to the  
36 complaint has been resolved.  
37

1 13.4 Complaints of conditions adversely affecting residents that cannot be resolved shall be  
2 referred within seven (7) days by the ombudsperson to the appropriate governmental  
3 agency.  
4

5 Section 14.0 *Resident Records*

6 14.1 Accurate and complete records shall be maintained in accordance with accepted  
7 professional standards and in accordance with all applicable state and federal legal  
8 requirements. Records shall be maintained for each resident, and shall be filed in an  
9 accessible location within the Office. The ombudsperson shall cause the Office to store  
10 complaint records in a secure manner. Access to these files shall be limited to agency staff  
11 authorized by the ombudsperson. In monitoring of the program, access to these files,  
12 minus the identity of any complainant or resident of a facility, shall be available to the  
13 Director and to one other senior manager of the Department as shall be designated by the  
14 Director from time to time.

15 14.2 The Office shall maintain records related to complaints received by or on behalf of  
16 residents of related institutions which shall include:

17 14.2.1 Name, address, and phone number of the complainant;

18 14.2.2 Name of the resident;

19 14.2.3 Relationship of the complainant to the resident;

20 14.2.4 Name of the facility;

21 14.2.5 Nature of the complaint;

22 14.2.6 Steps taken to investigate the complaint;

23 12.2.7 All notes, correspondence, complaint forms, background materials, assessments,  
24 and medical and incident reports related to the complaint;

25 14.2.7 Outcome of the investigation;

26 14.2.8 Resolution and follow-up.

27 14.3 If the complainant refuses to identify himself or the resident, it should be so indicated in  
28 the record.

29 14.4 Whenever applicable, designated Office personnel shall complete a form, approved by the  
30 Director, for each resident under the care of the office of long term care ombudsperson  
31 who is transferred between health care facilities, such as a hospital or nursing facility, or  
32 other facility licensed under the provisions of Chapter 23-17 of the Rhode Island General  
33 Laws, as amended. Said form shall be provided to the receiving facility, agency, or  
34 provider prior to, upon transfer, or discharge of the patient to ensure continuity of care.  
35

1 14.5 The Office shall comply with Chapter 38-3 of the Rhode Island General Laws, also known  
2 as the Public Records Administration Act. This Act requires any executive, legislative,  
3 judicial, regulatory, administrative body of the State, or any political subdivision thereof  
4 (including but not limited to any department, division, agency, commission, board, office,  
5 bureau, authority, any school, fire, or water district, or other agency of state or local  
6 government which exercises governmental functions, *or any other public or private*  
7 *agency, person, partnership, corporation or business entity acting on behalf of any public*  
8 *agency*) to comply with records management practices and procedures for the maintenance,  
9 retention, and destruction of records. The Office shall follow the Department’s records  
10 retention schedule.

11  
12 All costs associated with complying with R.I.G.L. Chapter 38-3 shall be the sole  
13 responsibility of the agency or organization within which the Office is located. The Office  
14 shall provide to the Department a copy of all correspondence, certifications and other  
15 documents provided to or from the secretary of state relating to compliance with this  
16 Section 14.5 and the retention and destruction of records. Where destruction of records is  
17 authorized by the secretary of state, the Office shall furnish to the Department a copy of  
18 said authorization certification from the secretary of state prior to destruction of the  
19 records. The Office shall screen all documents being destroyed and properly and fully  
20 destroy all materials to protect the privacy of all individuals.

21  
22 14.6 The Office shall have written policies and procedures to govern the use and removal of  
23 records and determine the conditions for release of information in accordance with  
24 statutory provisions pertaining to confidentiality (see also “Access to Records” and  
25 “Confidentiality” sections below).  
26

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

2  
3 Section 15.0 *Access*

4  
5 15.1 *In the course of an investigation, the ombudsperson shall, personally or through*  
6 *designated employees of the Office:*

7  
8 15.1.1 *Make the necessary inquiries and obtain information as is deemed necessary;*

9  
10 15.1.2 *Have access to facilities and residents; and*

11  
12 15.1.3 *Enter facilities and, after notifying the person in charge, inspect any books, files,*  
13 *medical records, or other records that pertain to the resident, subject to the*  
14 *following requirements:*

15  
16 (A) access to review the medical and social records of a resident shall be provided, if-

17  
18 (I) the representative has the permission of the resident, or the legal  
19 representative of the resident; or

20 (II) the resident is unable to consent to the review and has no legal  
21 representative;

22  
23 (B) access to the records as is necessary to investigate a complaint shall be provided if-

24  
25 (I) a legal guardian of the resident refuses to give the permission;

26 (II) a representative of the Office has reasonable cause to believe that  
27 the guardian is not acting in the best interests of the resident; and

28 (III) the representative obtains the approval of the Ombudsperson;

29  
30 (C) access shall be provided to the administrative records, policies, and documents, to  
31 which the residents have, or the general public has access, of long-term care  
32 facilities; and

33  
34 (D) access to and, on request, copies of all licensing and certification records  
35 maintained by the State with respect to long-term care facilities.

36  
37 15.2 *In the ordinary course of the ombudsperson's duties, the ombudsperson and designated*  
38 *employees of the Office shall have access to residents of a facility to:*

39  
40 15.2.1 *Visit, talk with, make personal, social, and other appropriate services available;*

41  
42 15.2.2 *Inform them of their rights and entitlements and corresponding obligations under*  
43 *federal and state law by distribution of educational materials, discussion in groups,*  
44 *or discussion with individual residents and their families; and*

45  
46 15.2.3 *Engage in other methods of assisting, advising, and representing residents to*  
47 *extend to them the full enjoyment of their rights.*

48  
49 15.3 *The Office is considered a health oversight agency.*

1 15.3.1 *Notwithstanding any other provision of law, a health oversight agency, and its*  
2 *employees and agents, shall comply with all state and federal confidentiality laws,*  
3 *including, but not limited to, Chapter 5-37.3 of the Rhode Island General Laws, as*  
4 *amended (Confidentiality of Health Care Communications and Information Act)*  
5 *and specifically subsection 5-37.3-4(c), which requires limitation on the*  
6 *distribution of information which is the subject of Chapter 42-66.7 of the Rhode*  
7 *Island General Laws, as amended, on a “need to know” basis, and section § 40.1-*  
8 *5-26 of the Rhode Island General Laws, as amended (Mental health law:*  
9 *“Disclosure of Confidential Information and Records”).*

10  
11 **Section 16.0 Confidentiality**

12  
13 16.1 *The files maintained by the Office are confidential and shall be disclosed only with the*  
14 *written consent of the resident affected or his or her legal representative, or if any*  
15 *disclosure is required by court order. Nothing in this paragraph shall be construed to*  
16 *prohibit the disclosure of information gathered in an investigation to any interested party*  
17 *as may be necessary to resolve the complaint or to refer to other appropriate state*  
18 *agencies investigating civil, criminal or licensing violations.*

19  
20 **Section 17.0 Retaliation Prohibited**

21  
22 17.1 *No discriminatory, disciplinary, or retaliatory action shall be taken against any officer or*  
23 *employee of a facility by the facility; nor against any guardian or family member of any*  
24 *resident; nor against any resident of the facility; nor against any volunteer for any*  
25 *communication by him or her with the ombudsperson or for any information given or*  
26 *disclosed by him or her in good faith to aid the ombudsperson in carrying out his or her*  
27 *duties and responsibilities.*

28  
29 **Section 18.0 Immunity from Liability**

30  
31 18.1 *Any person, institution, or official who in good faith participates in the registering of a*  
32 *complaint, or who in good faith investigates that complaint or provides access to those*  
33 *persons carrying out the investigation, or who participates in a judicial proceeding*  
34 *resulting from that complaint, is immune from any civil or criminal liability that might*  
35 *otherwise be a result of these actions. For the purpose of any civil or criminal*  
36 *proceedings, there is a rebuttable presumption that any person acting pursuant to Chapter*  
37 *42-66.7 of the Rhode Island General Laws, as amended, did so in good faith.*

38  
39 **Section 19.0 Noninterference**

40  
41 19.1 *No person shall willfully interfere with the ombudsperson in the performance of the*  
42 *ombudsperson's official duties.*

43  
44 **Section 20.0 Inspections**

45  
46 20.1 *The Department may make, or cause to be made, such inspections and investigations,*  
47 *including resident records, as deemed necessary in accordance with Chapter 42-66.7 of the*  
48 *Rhode Island General Laws, as amended, and the rules and regulations herein.*

1 20.2 Said inspections may include, but may not be limited to, home visits, resident surveys, and  
2 employee interviews.

3  
4 20.3 Refusal to permit inspections shall constitute a valid ground for suspension or revocation  
5 of any contractual agreement with the Office.

6  
7 20.4 The Office shall be given notice by the Department of all deficiencies reported as a result  
8 of any inspection or investigation.

9  
10 Section 21.0 ***Penalty for Violations***

11  
12 21.1 *Every person who willfully violates the provisions of § 42-66.7-8 or § 42-66.7-14 of the*  
13 *Rhode Island General Laws, as amended, will be subject to a fine up to one thousand*  
14 *dollars (\$1,000) for each violation of these sections and any other remedy provided for in*  
15 *Rhode Island law.*

1 PART V *Appeal Procedures and Severability*

2  
3 Section 22.0 *Procedures for Appeal*

4  
5 22.1 All hearings and reviews required under the provisions of Chapter 42-66.7 of the Rhode  
6 Island General Laws, as amended, shall be held in accordance with the provisions of the  
7 Administrative Procedures Act (Rhode Island General Laws Chapter 42-35) and any  
8 applicable administrative procedures of the Department.  
9

10 Section 23.0 *Complaints Against the Ombudsperson*

11  
12 23.1 All complaints concerning the Office must be sent in writing to the Director of the  
13 Department. Each complaint shall set forth the nature of the complaint in reasonable detail  
14 and must be received by the Director within one hundred eighty (180) days after the  
15 incident which is the subject of the complaint (such 180 day period may be extended in the  
16 event of extenuating circumstances, as determined by the Director).  
17

18 23.2 The Director shall send a letter to the complainant acknowledging receipt of the written  
19 complaint.  
20

21 23.3 The Director will notify the ombudsperson that a complaint has been made and will send a  
22 copy of the complaint to the ombudsperson, and to the governing body (or equivalent legal  
23 authority), if any. The Director, at his or her option, may require that the ombudsperson  
24 submit a written response to the complaint, and in such case the Director shall set forth the  
25 time frame within which the written response must be provided.  
26

27 23.4 The Director will conduct an investigation of the complaint. The Director may consult with,  
28 and be assisted by, attorneys and/or Department staff in conducting the investigation. At  
29 the option of the Director, the investigation may include, but need not be limited to, an  
30 interview with the complainant by the Director [and/or a Department attorney and/or  
31 Department staff person(s)]. The Director [and/or a Department attorney and/or  
32 Department staff person(s)] may interview the Office staff person about whom the  
33 complaint was made and also may elect to interview other staff members of the Office  
34 and/or the governing body (or equivalent legal authority) members and other third parties,  
35 as the Director deems appropriate.  
36

37 23.5 Following the investigation, the Director will make a determination about the complaint  
38 and will convey his or her resolution, in writing, to the ombudsperson and to the governing  
39 body (or equivalent legal authority), if any. The Director also will send a letter setting  
40 forth the resolution to the complainant.  
41

42 23.5.1 If, after an investigation, the Director deems the complaint to be without merit, no further  
43 action shall be taken by the Director.  
44

45 23.5.2 If, after an investigation, the Director deems the complaint to be fully or partially verified,  
46 possible resolution of the complaint shall include but not be limited to: (a) establishment  
47 by the Director, or at the option of the Director the proposal by the agency where the  
48 Office is located, of a plan for corrective action or (b) in cases where the program of the  
49 long term care ombudsperson is operated by contract or other arrangement by an agency or

1 other organization located outside the Department, the removal of the program from the  
2 agency or other organization and the termination of the contract or other arrangement. In  
3 the event that the Director elects to establish, or to cause the agency where the Office is  
4 located to propose, a plan for corrective action, the following shall apply:  
5

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

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

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

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

17 (e) if the agency has failed to comply with the corrective plan of action at the end  
18 of the designated time frame, the Director may elect any other remedy available to her at  
19 law and/or in equity, including without limitation, in cases where the program of the long  
20 term care ombudsperson is operated by contract or other arrangement by an agency or  
21 other organization located outside the Department, the removal of the program from the  
22 agency or other organization and the termination of the contract or other arrangement.  
23

24 23.6. If the complainant is not satisfied with the resolution of the complaint as set forth in the  
25 letter from the Director referred to in section 23.5 above, the complainant may appeal the  
26 resolution in accordance with the hearings and review procedures referred to in Section 22  
27 above.  
28

## 29 Section 24.0 *Severability*

30  
31 24.1 *If any provision of Chapter 42-66.7 of the Rhode Island General Laws, as amended, or any*  
32 *rule or regulation made under said Chapter, or the application of any provision of this*  
33 *Chapter to any person or circumstance shall be held invalid by any court of competent*  
34 *jurisdiction, the remainder of the Chapter, rule or regulation and the application of such*  
35 *provision to other persons or circumstances shall not be affected thereby. The invalidity of*  
36 *any section or sections or parts of any section of this Chapter shall not affect the validity of*  
37 *the remainder of this Chapter and to this end the provisions of the Chapter are declared to*  
38 *be severable.*  
39  
40  
41

**REFERENCES**

- 1  
2  
3  
4 1. The Older Americans Act of 1965 (unofficial compilation) appears online:  
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6  
7 2. The Long Term Ombudsperson Act of 1995: Chapter 42-66.7 of the Rhode Island General  
8 Laws, as amended. Available online: [http://www.rilin.state.ri.us/Statutes/TITLE42/42-](http://www.rilin.state.ri.us/Statutes/TITLE42/42-66.7/INDEX.HTM)  
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12 amended. Available online: [http://www.rilin.state.ri.us/Statutes/TITLE42/42-](http://www.rilin.state.ri.us/Statutes/TITLE42/42-35/INDEX.HTM)  
13 [35/INDEX.HTM](http://www.rilin.state.ri.us/Statutes/TITLE42/42-35/INDEX.HTM)