

651 CMR 6.00: STATEWIDE LONG TERM CARE OMBUDSMAN PROGRAM

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6.01: Scope and Purpose

651 CMR 6.00 establishes requirements necessary and appropriate to the Administration of the Statewide Long Term Care Ombudsman Program including, but not limited to, the designation, redesignation, and termination of designation of Local Ombudsman Programs, and the receipt, investigation and resolution, through administrative action, or by referral to an appropriate agency or organization of Complaints made by or on behalf of Residents of Long Term Care Facilities. 651 CMR 6.00 also establishes criteria and procedures for the Certification of Ombudsman Representatives for Access to consenting Residents of Long Term Care Facilities at certain hours pursuant to this statute. Permissible and prohibited activities for those gaining Access pursuant to M.G.L. c. 19A, § 29 or 30 are also set forth.

6.02: Definitions

As used in 651 CMR 6.00, unless the context requires otherwise, these terms shall have the following meanings:

Access. The right to enter any Long Term Care Facility to:

- (a) Perform the actions and duties of the Ombudsman Program as set forth in 651 CMR 6.00;
- (b) Meet with Residents to obtain permission from them to conduct an investigation;
- (c) Obtain the name and contact information of all Resident Representatives;
- (d) Review medical, social, and other relevant records with the consent of the Resident or the Resident Representative; and
- (e) With the consent and approval of the State Ombudsman, review medical, social, and other records of a Resident who is unable to give informed consent and has no Resident Representative.

Act. Any action or decision made by an owner, employee or agent of a Long Term Care Facility, or by a government agency, or any condition within a Long Term Care Facility which affects the provision of service to a Resident therein.

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Administrator. A person licensed under M.G.L. c. 112, §§ 108 through 117 who administers, manages, supervises, or is in general administrative charge of a Long Term Care Facility whether or not such individual has an ownership interest in such home and whether his or her functions and duties are shared with one or more individuals, or a suitable and responsible person who administers, manages, supervises or is in general administrative charge of a rest home as further defined in 105 CMR 150.002: *Administration*.

Area Agency on Aging. An agency designated by EOEA to develop and administer the area plan as required under the Older Americans Act, 42 U.S.C. c. 35, *et seq.*, for a comprehensive and coordinated system of services within a geographic area designated by EOEA.

Case. Each inquiry brought to, or initiated by the State Ombudsman or Ombudsman Representative on behalf of a Resident or group of Residents involving one or more complaints, which includes the Ombudsman investigation, strategy for resolution, and follow up activities.

Certification. The process by which a person(s) associated with a Local Ombudsman Program is permitted Access to consenting Residents of Long Term Care Facilities pursuant to M.G.L. c. 19A, §§ 29 and 33, at reasonable hours, including at least the hours of 10:00 A.M. through 8:00 P.M., each day as provided in 651 CMR 6.00. This process includes:

- (a) The designation of the Local Ombudsman Program by the State Ombudsman to cover a particular geographic area; and,
- (b) The Certification of Ombudsmen and Local Ombudsman Program Directors upon satisfactory completion of a training program.

Commercial Purpose or Affect. Activities which include the following:

- (a) advertising, promoting or selling a product, goods or services;
- (b) engaging in any illegal or fraudulent activities;
- (c) proselytizing for religious or political purposes;
- (d) engaging in union organizing activities directed to the staff of any Long Term Care Facility.

Complainants. Resident(s) of Long Term Care Facilities, individual(s) acting on their behalf, or any individual, organization or government agency, including the State Ombudsman and Ombudsman Representatives that have reason to believe that a Long Term Care Facility, organization or government agency has engaged in Acts, practices or omissions that either constitute violations of applicable statutes or regulations or that may have an adverse effect upon the health, safety, welfare, rights, or quality of life of Residents of such Long Term Care Facilities.

Complaints. A concern brought to, or initiated by, the State Ombudsman or an Ombudsman Representative for investigation and action on behalf of one or more Residents of a Long Term Care Facility and relating to the health, safety, welfare or rights of one or more Residents.

Conflict of Interest. A situation in which other interests may intrude upon, interfere with, threaten to negate, or give the appearance of interfering with or undermining the impartiality of a person and his or her ability to act without compromise due to competing duties or obligations. A Conflict of Interest may include the following:

- (a) a Conflict of Interest arising due to the structure of an organization that may impact the effectiveness and credibility of the work of the Ombudsman Program; and
- (b) a Conflict of Interest arising due to personal financial interests, activities, or relationships that could impair the Ombudsman Program staff from acting impartially and in the best interest Residents.

Designee. Any Local Ombudsman Program Director, Assistant Director, or a member of the staff of the State Long Term Care Ombudsman.

EOEA. The Massachusetts Executive Office of Elder Affairs.

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Government Agency. Any federal or state agency including, but not limited to, any agency responsible for the administration of programs affecting Residents of Long Term Care Facilities.

Host Agency. A private or non-profit organization or public agency that houses the designated Local Ombudsman Program in a designated geographic area.

Informed Consent. The process of informing residents of the risks and benefits associated with certain actions and decisions. Consent should be obtained in writing when possible, but may also be obtained through the use of auxiliary aids and services as necessary to communicate such consent orally or visually, provided such consent is documented.

Legal Services. Legal advice and representation provided to a Resident or their Resident Representative by an attorney (and to the extent feasible, counseling and other appropriate assistance by a paralegal, or law student under the supervision of an attorney), including counseling or representation by a non-lawyer where permitted by law.

Local Ombudsman Program. A private non-profit organization or public agency which is designated by the State Ombudsman pursuant to M.G.L. c. 19A, §§ 29 and 33, or 42 U.S.C. 3001 *et seq.*, to operate in a designated geographic service area as an advocate on behalf of Long Term Care Facility Residents and receive, investigate and resolve Complaints.

Local Ombudsman Program Director (also known as a Local Program Director). An individual employed by a Local Ombudsman Program as Director with the responsibility for the operation of a Local Ombudsman Program and Certified as such by the State Ombudsman pursuant to M.G.L. c. 19A, §§ 29 and 33, 651 CMR 6.09(1)(b) or (c), or 42 U.S.C. 3001 *et seq.*

Long Term Care Facility. Any facility subject to licensure by the Massachusetts Department of Public Health pursuant to the provisions of M.G.L. c. 111, § 71 or 42 U.S.C. 3001 *et seq.*

Ombudsman Representative. An employee or volunteer representative certified by the State Ombudsman. Personnel supervision of Ombudsman Representatives may be provided by the State Ombudsman, his or her designee, or by an agency hosting a local Ombudsman entity designated by the State Ombudsman.

Reason to Believe. Having a basis for judgment that rests on specific facts, either directly observed or obtained from reliable sources, and that supports a belief that a particular activity, practice, or omission probably took place or a particular condition probably exists.

Resident. Any person who is receiving treatment or care in a Long Term Care Facility including, but not limited to, application or admission, retention, confinement, period of residence, transfer, discharge and instances directly related to such status.

Resident Representative.

- (a) An individual identified by a Resident and documented by the Long Term Care Facility to act on the Resident's behalf to:
  1. support them in decision-making;
  2. access medical, social or other personal information of the Resident;
  3. manage financial matters for the Resident; and/or
  4. receive notifications on behalf of the Resident; or
- (b) A person authorized by State or Federal law including, but not limited to, agents under power of attorney, health care proxy, representative payees and other fiduciaries, to:
  1. act on behalf of the Resident in order to support the Resident in decision-making;
  2. access medical, social or other personal information of the Resident;
  3. manage financial matters for the Resident; and/or
  4. receive notifications on behalf of the Resident; or
- (c) The court appointed guardian or conservator of the Resident.

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Secretary. The Secretary of the Massachusetts Executive Office of Elder Affairs (EOEA).

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State Long Term Care Ombudsman (also referred to as State Ombudsman). An individual appointed by EOEA pursuant to M.G.L. c. 19A, § 28 and U.S.C. 3001, *et seq.*, to direct the Statewide Long Term Care Ombudsman Program whose training and experience qualify him or her to perform the duties of the office. An individual who heads the Ombudsman Program is responsible to personally, or through Ombudsman Representatives, fulfill the functions, responsibilities and duties of the Program.

Office of the State Long Term Care Ombudsman (also referred to as the Ombudsman Program). The program established pursuant to 42 U.S.C. 3001 *et seq.*, and M.G.L. c. 19A, §§ 27 through 35 shall operate as a separate, independent and distinct entity from EOEA. The office is directed by the State Ombudsman for the purpose of both directly, and by delegation of responsibility to Local Ombudsman Programs to:

- (a) advocate on behalf of Long Term Care Facility Residents;
- (b) receive, investigate, and resolve Complaints; and
- (c) fulfill all duties and responsibilities detailed in 42 U.S.C. 3001 *et seq.* and M.G.L. c. 19a, §§ 27 through 35.

Title III. Title III of the Older Americans Act of 1965, as amended (42 U.S.C. 3021 *et seq.*) setting forth provisions for grants for state and community programs on aging.

Willful Interference. The actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with or attempt to impede the State Ombudsman or the Ombudsman Representative from performing any of the functions or responsibilities of the Ombudsman Program.

6.03: Functions and Responsibilities of EOEA in the Administration of the Statewide Long Term Care Ombudsman Program

- (1) The Secretary shall, subject to appropriation or the receipt of federal funds, establish either directly or by contract, a distinct and independent Statewide Long Term Care Ombudsman Program and appoint a State Ombudsman.
- (2) The functions and responsibilities of EOEA shall include, but not be limited to, the following:
  - (a) Establish a structure within EOEA to implement the Statewide Long Term Care Ombudsman Program throughout the Commonwealth funded by grant or contract;
  - (b) Ensure the State Ombudsman complies with all relevant provisions of 42 U.S.C. 3001, *et seq.*;
  - (c) Ensure the appointed State Ombudsman and all Ombudsman Representatives are free from Conflicts of Interest;
  - (d) Ensure the State Ombudsman serves on a full time basis and meets minimum qualifications which includes, but is not limited to, demonstrated expertise in:
    - 1. Long term services and supports or other direct services for older persons or individuals with disabilities;
    - 2. Consumer oriented public policy advocacy;
    - 3. Leadership and program management skills;
    - 4. Negotiation and problem resolutions skills.
  - (e) Establish policies and procedures to ensure the Ombudsman Program has sufficient authority and access to facilities, Residents, and information needed to fully perform all functions, responsibilities, and duties of the Ombudsman Program.
  - (f) Provide, through the office of the State Ombudsman, training for Certification of Ombudsman Representatives and Local Program Directors;
  - (g) Ensure the Ombudsman program maintains complete records of Complaints, actions, findings, and recommendations;
  - (h) Maintain a Statewide uniform reporting system to collect and analyze data relating to Complaints and conditions in Long Term Care Facilities for the purpose of identifying and resolving Complaints;

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- (i) Ensure the Ombudsman Program has the ability to freely analyze, comment, recommend changes, and monitor the development and implementation of federal, state and local statutes, regulations and policies regarding Long Term Care Facilities and services to protect the health, safety, welfare and rights of residents as the State Ombudsman deems appropriate;
- (j) Ensure the State Ombudsman provides information to public agencies regarding Complaints concerning Residents and the conditions of Long Term Care Facilities;
- (k) Provide oversight of the State Ombudsman to ensure the resolution of Complaints by Local Ombudsman Programs and provide technical assistance for the implementation of program policies and procedures;
- (l) Provide mechanisms to prohibit willful interference, retaliation and reprisal by any entity against residents, complainants, Ombudsman Representatives, the State Ombudsman and Ombudsman Program, and investigate allegations of such claims;
- (m) Provide for appropriate sanctions with respect to willful interference, retaliation or reprisal; and
- (n) Carry out all other activities consistent with the requirements of 42 U.S.C. 3001 *et seq.*, and M.G.L. c. 19A, §§ 27 through 35.

6.04: Functions and Responsibilities of the State Long Term Care Ombudsman

The State Ombudsman is the head of a unified ombudsman program and is responsible for providing leadership and management of the Long Term Care Ombudsman Program. Functions and responsibilities of the State Ombudsman, directly or through Ombudsman Representatives, shall include, but not be limited to, the following:

- (1) Provide services to protect the health, safety, welfare and rights of Residents, including timely access to an Ombudsman Representative and the identification, investigation, and resolution of Complaints made by or on behalf of Residents;
- (2) Independently represent the interests of Residents before government agencies and other entities;
- (3) Analyze, comment on, and monitor the development of laws, regulations, policies, and actions to protect the health, safety, welfare, and rights of Residents;
- (4) Ensure all entities within the Statewide Ombudsman Program comply with all rules, regulations, policies and procedures through the provision of technical assistance, administrative support and evaluation;
- (5) Designate local entities to fulfill the duties of Local Ombudsman Programs by:
  - (a) Reviewing and approving procedures governing Local Ombudsman Programs in coordination with the EOEA; and
  - (b) Monitoring the performance of Local Ombudsman Programs;
- (6) Comply with the requirements of 42 U.S.C. 3001 *et seq.* by confirming the following:
  - (a) Each Ombudsman Representative is trained and certified, and receives continuing training on a regular basis;
  - (b) All Ombudsman Representatives are free from Conflicts of Interest;
  - (c) All entities and Ombudsman Representatives follow disclosure and informed consent policies, procedures and provisions;
  - (d) All files, records, and other information of the Ombudsman Program are managed according to established procedures;
- (7) Investigate all allegations of interference, retaliation and reprisal by any entity against Residents, Complainants, Ombudsman Representatives, the State Ombudsman, and the Ombudsman Program;
- (8) Establish financial and administrative systems and procedures that comply with CFR 74 Title 45 and with requirements developed by the Federal Government including, but not limited to, approving all budgets and expenditures; and

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- (9) Establish state level coordination with other programs, agencies and entities with responsibilities relevant to the protection of the health, safety, welfare or rights of Residents.

6.05: Functions and Responsibilities of the Local Ombudsman Programs

- (1) The responsibilities of a Local Ombudsman Program shall include, but not be limited to, the following:
  - (a) Recruit and retain sufficient staff to serve as Ombudsman Representatives for Long Term Care Facilities within an assigned geographic area;
  - (b) Coordinate with the Office of the State Long Term Care Ombudsman for Local Ombudsman Program Certification training;
  - (c) Provide a level of programmatic supervision which is determined by the State Ombudsman to be appropriate;
  - (d) Ensure Ombudsman Representatives have the capacity to receive, investigate, and resolve Complaints;
  - (e) Maintain complete records of Complaints received, actions taken, and findings made in response to such Complaints and report associated information and data to the State Ombudsman as required by 651 CMR 6.00;
  - (f) Comply with confidentiality requirements set forth in 651 CMR 6.16 and 42 U.S.C. 3001 *et seq.*;
  - (g) Publicize the existence and function of the Local Ombudsman Program and Statewide Long Term Care Ombudsman Program.
  - (h) Assign an Ombudsman Representative to visit Residents at one or more Long Term Care Facilities within the assigned geographic area at least once every other week at a time which best meets the needs of the program, and the Residents;
  - (i) Assure that each Ombudsman Representative has identification as such;
  - (j) Comply with regulations and policies developed by the State Ombudsman and carry out all other activities consistent with the requirements of 42 U.S.C. 3001 *et seq.* and M.G.L. c. 19A, §§ 27 through 35;
  - (k) Ensure the Local Program Director contacts the State Ombudsman for technical assistance including, but not limited to, concerns regarding Conflicts of Interest, disclosure, or possible violations of regulations, standards of care, or fire/life safety procedures.

6.06: Appeals Procedures

- (1) Applicability. An agency or organization which has applied for designation as a Local Ombudsman Program under 651 CMR 6.07 and has been denied such designation, or a Local Ombudsman Program whose designation as such is terminated by the State Ombudsman under 651 CMR 6.08 may request an appeal for a review of such action.
- (2) Notice of Action. The State Ombudsman shall give written notice of the denial or termination of designation as set forth in 651 CMR 6.06(1) at least 15 calendar days prior to the effective date of such action. Such written notice shall state the grounds for the denial or termination.
- (3) Right to Appeal. The Notice of Action described in the preceding section shall advise the affected agency or organization that it may, within 15 calendar days of receipt of the notice, request an appeal of such action to EOEI. The request must state the reason for the appeal and include all pertinent facts and relevant information in support of the appellant's position.
- (4) Continuation of Designation or Certification During Appeal. A designation, if any, held by the agency shall continue during the pendency of the appeal subject to an adverse decision. An agency or organization which has its designation terminated and does not appeal, or one whose appeal is not affirmed shall promptly be de-designated by the State Ombudsman.
- (5) Review. A designated EOEI employee shall conduct a review of the pertinent facts included in the Notice of Action and the request for appeal and render a determination within 15 business days after the timely receipt of the appeal.

6.07: Designation of Local Ombudsman Programs

(1) Generally. An agency or organization shall be permitted Access to a Long Term Care Facility for the purposes of performing the duties of a Local Ombudsman Program under M.G.L. c. 19A, §§ 27 through 35 after it has been designated by the State Ombudsman. The State Ombudsman shall not designate any agency or organization responsible for licensing or certifying Long Term Care Facilities, an association or an affiliate or agent of an association of Long Term Care Facilities, or any agency or organization for which designation would create a Conflict of Interest that cannot be remedied. To the extent practicable, the State Ombudsman shall designate such agencies and organizations which have been established for the purposes set forth in M.G.L. c. 19A, §§ 27 through 35. A Local Ombudsman Program may be an agency with the ability and capacity to carry out the functions of a Local Ombudsman Program.

(2) Procedures Prior to Designation. Prior to designating a Local Ombudsman Program the State Ombudsman shall receive from the Area Agency on Aging an assurance that it has:

(a) Requested and received proposals for a local Ombudsman Program from appropriate agencies or organizations on an annual basis.

(b) Evaluated agencies applying for or currently operating as Local Ombudsman Programs to assure they have the capacity to comply, or are complying with Local Ombudsman Program standards and procedures established by the State Ombudsman, as well as State and Federal laws and regulations.

(3) Requested designation from the State Ombudsman of each Local Ombudsman Program it intends to fund at the inception of the Local Ombudsman Program and thereafter on an annual cycle to be determined by the State Ombudsman.

(4) Funding and Designation. An Area Agency on Aging shall award a contract(s) or grant(s) for a Local Ombudsman Program only upon Designation of such program by the State Ombudsman.

(5) Method of Designation. The State Ombudsman designates each Local Ombudsman Program for a period not to exceed one year. Designation shall be made in writing by the State Ombudsman. Designation may be renewed at the discretion of the State Ombudsman.

(6) Local Ombudsman Program Geographic Areas. The State Ombudsman shall designate Local Ombudsman Programs sufficient to cover all geographic areas of the Commonwealth.

6.08: Termination of Local Ombudsman Program Designation

(1) Termination for Convenience. A Local Ombudsman Program may terminate its Designation without cause upon provision of written notice to the State Ombudsman and the appropriate Area Agency on Aging at least 90 calendar days before the effective date of such termination.

(2) Termination for Cause.

(a) In the event that either the State Ombudsman or the Local Ombudsman Program fails to comply with the provisions of the designation agreement, either party may, after specifying any alleged breach, default, or non-compliance in writing, and allowing not less than 15 calendar days for correction, terminate the Designation by sending written termination notice specifying the reasons for termination to the other party. Such notice of termination must be rendered at least 15 calendar days prior to the effective date of termination. The terminating party shall also forward a written notice of termination to the appropriate Area Agency on Aging specifying the date of termination.

(b) Notwithstanding the provisions governing appeals set forth in 651 CMR 6.06, if the State Ombudsman determines any action or omission on the part of the Local Ombudsman Program endangers the life, health, or safety of Residents or staff of Long Term Care Facilities, it shall terminate the designation by orally notifying the Local Ombudsman Program followed by the mailing of written notification, return receipt requested, within seven calendar days. Termination shall take effect upon the oral notification. The State Ombudsman shall provide oral and written notice to the appropriate Area Agency on Aging. The State Ombudsman shall notify the parties of the right to appeal such action within 15 calendar days to a designated EOE employee as set



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forth in 651 CMR 6.06.

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(3) Continuity of Services. Upon termination of a Designation, the State Ombudsman shall designate a new Local Ombudsman Program for the geographic area in question.

(4) Termination of Funding of a Designated Local Ombudsman Program.

(a) Upon termination of Designation of a Local Ombudsman Program by the State Ombudsman, the Area Agency on Aging shall terminate the funding status of the Local Ombudsman Program for the balance of the funding period.

(b) Appeal of such termination of funding by an Area Agency on Aging of a Local Ombudsman Program which has been terminated by the State Ombudsman shall be governed by the Adjudicatory Rules of Practice and Procedures in Claims Relating to Contracts and Grants Funded Under Title III of the Older Americans Act of 1965, as amended, in accordance with 651 CMR 9.00: *Adjudicatory Rules of Practice and Procedures in Claims Relating to Contracts and Grants Funded by Title III*.

6.09: Certification of Local Ombudsman Program Directors and Ombudsman Representatives

(1) Local Ombudsman Program Directors.

(a) Generally. No person shall be employed by or associated with a Local Ombudsman Program as Director unless he or she has been Certified by the State Ombudsman.

(b) Certification Requirements. In order to receive Certification, a Local Ombudsman Program Director shall:

1. Meet the qualifications of a Local Ombudsman Program Director established by the State Ombudsman.
2. Satisfactorily complete an Ombudsman Basic Training Program authorized by the State Ombudsman as set forth in 651 CMR 6.15.
3. Agree to attend on a regular basis the State Ombudsman-sponsored Director's training/meeting sessions.
4. Agree to comply with all laws, regulations and Operating Standards governing the Ombudsman Program.
5. Provide assurances that no individual Conflict of Interest exists.

(c) Decertification Requirements. The Certification of a Local Ombudsman Program Director shall continue under M.G.L. c. 19A, § 33(a) until:

1. De-designation by the State Ombudsman of the Local Ombudsman; or
2. He or she is no longer employed by or associated with a Local Ombudsman Program; or
3. He or she has received a written notice of decertification from the State Ombudsman citing a material failure to comply with one or more of the Certification requirements stated in 651 CMR 6.09.

(2) Ombudsman Representatives.

(a) Generally. No person shall be associated with the Ombudsman Program unless he or she has been Certified by the State Ombudsman.

(b) Certification Requirements. To receive Certification, an Ombudsman Representative shall:

1. Satisfactorily complete an Ombudsman Basic Training Program authorized by the State Ombudsman as set forth in 651 CMR 6.15.
2. Agree to comply with all relevant laws, regulations, policies and procedures.

(c) Decertification Requirements. The Certification of Ombudsman Representatives shall continue under M.G.L. c. 19A, § 33(a) until:

1. De-designation by the State Ombudsman;
2. He or she is no longer associated with a Local Ombudsman Program; or
3. He or she has received a written notice of decertification from the State Ombudsman citing a material failure to comply with one or more of the Certification requirements stated in 651 CMR 6.09.

6.10: Access To Long Term Care Facilities and Related Records(1) State Long Term Care Ombudsman or Ombudsman Representative.

(a) Access to Long Term Care Facility. The State Ombudsman shall have the right of entry into any Long Term Care Facility located in the state of Massachusetts. An Ombudsman Representative shall have the right of entry into any Long Term Care Facility within the geographic area assigned to the Local Ombudsman Program. The State Ombudsman or Ombudsman Representative may access a Facility at any time considered necessary and reasonable by him or her for the purpose of:

1. Investigating and resolving Complaints;
2. Interviewing Residents, with their consent, in private;
3. Offering his or her services to any Resident, in private;
4. Interviewing employees or agents of the Long Term Care Facility;
5. Consulting regularly with the Long Term Care Facility administration; and
6. Providing services authorized by law or regulation.

(b) Access to Resident Records. The State Ombudsman or Ombudsman Representative shall have access to any Resident's records, and to the records of any public agency as necessary to carry out the duties of the Ombudsman Program including, but not limited to, Resident medical records and records concerning patient abuse Complaints; provided, however, that the Resident or Resident Representative has communicated informed consent for such records to be accessed.

(c) Access to Contact Information. The State Ombudsman or Ombudsman Representative shall have access to the contact information of a Resident Representative, if any, when needed to perform the functions and duties of the Ombudsman Program.

(d) Access to Resident Records of Any Long Term Care Facility Resident Who Is Unable to Give Informed Consent. The State Ombudsman or Ombudsman Representative shall have access to the records of any Resident who is unable to give informed consent and access is necessary to the duties of the Ombudsman Program, provided:

1. There is no Resident Representative or a Resident Representative refuses permission and the State Ombudsman or the Ombudsman Representative has reasonable cause to believe the Resident Representative is not acting in the best interest of the Resident; and
2. the State Ombudsman has approved such access.

(e) HIPAA Provisions. Nothing in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule precludes the release of health or identifying information to the Ombudsman Program.

(2) Ombudsman Representatives. An Ombudsman Representative shall be permitted Access to any consenting individual Resident of a Long Term Care Facility at any time considered necessary and reasonable by the Local Program Director in order to:

- (a) Investigate and resolve Complaints;
- (b) Interview Residents, with their consent, in private;
- (c) Offer services to any Resident, in private;
- (d) Interview employees or agents of the Long Term Care Facility;
- (e) Consult regularly with the Long Term Care Facility administration; and
- (f) Provide any services authorized by law or regulation.

(3) Visitation. The State Ombudsman or Ombudsman Representative shall make solicited or unsolicited visits to a Resident of a Long Term Care Facility in accordance with the applicable requirements of M.G.L. c. 19A, § 29 or 30. The State Ombudsman or Ombudsman Representative shall:

- (a) when entering a Long Term Care Facility, notify staff of his or her presence and shall produce identification upon request by the staff;
- (b) be allowed to visit common areas of the Long Term Care Facility and the doorway thresholds of the room(s) of a Resident(s) without escort by personnel of the Long Term Care Facility. Prior to entering the room of a Resident(s), he or she shall knock on the door or door frame, identify himself or herself and explain the purpose of the visit. He or she shall be allowed to enter into the room(s) of a Resident(s) who has given consent orally, in writing, or by a sign of affirmation by the Resident. Such entry shall be without escort by Long Term Care Facility personnel. The rights of other Residents present in the room shall be respected.

6.11: Resident Council, Family Councils, and Community Advocacy Groups

The State Ombudsman and Ombudsman Representatives shall promote, provide technical support for the development of, and provide ongoing support, as requested by resident groups, family groups and community advocacy organizations, to protect the wellbeing and rights of residents.

6.12: Complaint and Problem Resolution Procedures for the Ombudsman Program

(1) Generally. The goal of the Ombudsman Program is to maintain or improve the quality of life of Residents by the receipt, investigation and resolution of a Complaint(s). The State Ombudsman or Ombudsman Representative may initiate his or her own investigation of any Long Term Care Facility independent of the receipt of a specific Complaint.

(2) Receipt of a Complaint(s). The State Ombudsman or Ombudsman Representative shall receive Complaints, both oral and written, made by or on behalf of Residents, and may also initiate a Complaint on his or her own accord.

(a) The State Ombudsman and Local Ombudsman Programs shall have the capacity to receive Complaints during regular business hours, Monday through Friday, excluding holidays.

(b) All Complaints initiated or received by the State Ombudsman and/or Local Ombudsman Programs shall be reduced to writing and become part of a case file.

(c) Upon receipt of a Complaint, an Ombudsman Representative shall:

1. Determine the Resident's wishes regarding the disclosure and resolution of the Complaint and work with the Resident to develop a plan to provide a resolution. Seek to obtain the Resident's Informed Consent to proceed with the Complaint and advise the Resident that his or her identity shall not be disclosed without his or her permission to make such a disclosure and specify to whom his or her identity may be disclosed. Such disclosure shall be made without the Resident's consent if ordered by a court of competent jurisdiction.
2. If the Informed Consent to proceed is not obtained, the Resident or the Resident Representative shall be provided with information and/or referral sources appropriate to enable them to advocate on their own behalf.
3. If the Ombudsman Representative determines the Resident is unable to give informed consent and has no Resident Representative, he or she shall work to protect the health, welfare, safety or rights of the resident.
4. If the Ombudsman Representative has reasonable cause to believe the Resident Representative is not acting in the best interest of the resident, he or she shall work to protect the health, welfare, safety or rights of the resident.
5. The Ombudsman Representative shall attempt to verify the facts alleged in the Complaint by investigating and contacting those who may be involved in a resolution;
6. If the Complaint is found to be unjustified, the Ombudsman Representative shall inform the Resident or Complainant of this fact as soon as possible after making such determination.
7. If any Ombudsman Representative observes a practice in a Long Term Care Facility which affects the Resident or a substantial number of Residents in the Long Term Care Facility, and such practice constitutes grounds for a Complaint, he or she may investigate and attempt to resolve such Complaints without the consent of individual Residents.

(3) Resolution of a Justified Complaint.

(a) If an Ombudsman Representative has reasonable cause to believe that a Complaint is justified, and has obtained permission to act as described in 651 CMR 6.15(2)(d) or (e), he or she shall discuss the Complaint with the appropriate staff member or contact person at the Long Term Care Facility.

1. If the Complaint is resolved without further action, the Ombudsman Representative shall notify the Resident and the Complainant (if not the affected Resident).
2. If the Resident resides in a Long Term Care Facility and is unable to give informed consent and has no Resident Representative, the Ombudsman Representative shall determine whether the Complaint was resolved to the satisfaction of the Complainant.

6.12: continued

(b) If an Ombudsman Representative is unable to resolve the Complaint, or if Access to the records is required, or a legal referral is required, the Ombudsman Representative shall inform the Local Ombudsman Program Director. The Local Ombudsman Director shall work with the Ombudsman Representative in the investigation and resolution of the Complaint.

(c) If such a Complaint is referred to an Attorney or Legal Services organization and the Complaint is not able to be resolved, the Local Ombudsman Program shall timely inform the Resident or the Resident Representative and the State Ombudsman.

(4) Consultation with the State Ombudsman. If a Local Ombudsman Program is unable, after investigation, to resolve a Complaint, said Program shall refer the case to the Office of the State Long Term Care Ombudsman. Such Office shall work with the Local Ombudsman Program in a timely manner in the investigation and resolution of the Complaint. If the State Ombudsman or Ombudsman Representative, following investigation, determines that any Act of any Long Term Care Facility may adversely affect the health, safety, welfare or rights of any Resident of the Long Term Care Facility, he or she shall make recommendations for the elimination or correction of such Act to the Administration of the Facility involved.

(5) Referral to Government and Other Appropriate Agencies.

(a) If a Local Ombudsman Program is unable, after investigation, to resolve a Complaint, said Program shall refer the Complaint to the State Ombudsman, which may, with the Resident's informed consent, refer it to the proper government or other appropriate agency, including law enforcement, for investigation and resolution.

(b) A Local Ombudsman Program shall refer a Complaint regarding possible serious violations of medical care, nursing care, treatment rules, or fire safety regulations to the State Ombudsman, who shall report it to the Massachusetts Department of Public Health for investigation and resolution with the informed consent of the Resident.

(6) Resolution of Complaints of Abuse, Mistreatment or Neglect. If the State Ombudsman or an Ombudsman Representative has reasonable cause to believe that a Resident is suffering from abuse, mistreatment or neglect as set forth in M.G.L. c. 111, §§ 72F through 72L, he or she shall comply with the Complaint resolution procedures set forth in 651 CMR 6.12 and 42 U.S.C. 3001 *et seq.*

(7) Documentation of Complaints. Local Programs shall document all Complaints in a format as directed by the State Ombudsman. Each Local Ombudsman Program Director shall ensure all Complaints and other relevant information is updated in the case file not less than monthly. The State Ombudsman or his or her designee shall have the right of Access to the case records, files and other documents of each Local Ombudsman Program. The State Ombudsman may, in his or her discretion, require other periodic reports from each Local Ombudsman Program which may include, but not be limited to, identification of barriers to effectively respond to Complaints, and patterns of significant problems relating to conditions and/or Residents' care in Long Term Care Facilities in its assigned geographic area.

6.13: Interagency Agreement

The Secretary shall establish an interagency agreement among EOEA, the Department of Public Health, and the Office of the Attorney General to ensure a cooperative effort in meeting the needs of the Residents of Long Term Care Facilities. This agreement shall set forth procedures by which the State Long Term Care Ombudsman may report his or her findings or conclusions that an Act, practice or omission of any Long Term Care Facility may constitute a violation of any applicable federal or state statute or regulation to the regulatory agency or agencies having jurisdiction to enforce M.G.L. c. 19A, §§ 27 through 35, or to the Office of the Attorney General. It shall also set forth procedures for the coordination among the above mentioned agencies during the pendency of any further investigatory or enforcement action.

6.14: Financial and Administrative Responsibilities of Local Ombudsman Programs

(1) The State Ombudsman shall establish financial and administrative systems and procedures that comply with CFR 74 Title 45 as well as with requirements developed by the Federal Government including, but not limited to, approving all budgets and expenditures.

(2) Each Host Agency shall establish financial and administrative systems and procedures which comply with the provisions contained in CFR 74 Title 45 (Administration of Grants) Sub-part H (Standards for Grantee and Sub-grantee Financial Management Systems) as well as requirements developed by EOE, the Office of the State Ombudsman, and the Federal Government.

(3) Each Host Agency shall be responsible for the personnel management but not the programmatic oversight of all Ombudsman Representatives. Personnel policies and practices cannot prohibit any Ombudsman Representative from performing the duties or from adhering to the access, confidentiality and disclosure requirements of § 712 of the Older Americans Act.

6.15: Training Requirements for Ombudsmen

(1) Basic Training for Ombudsman Representatives. The office of the State Ombudsman shall develop and conduct a basic Certification training program for Ombudsman Representatives.

(2) Examination for Certification. The office of the State Ombudsman shall develop a standardized written examination which shall measure the skills necessary for certification as an Ombudsman Representative.

(3) Ongoing Training for Ombudsman Representatives. Each Local Ombudsman Program Director shall conduct follow-up training meetings in a manner prescribed by the State Ombudsman.

(4) Ongoing Training for Local Ombudsman Program Directors. Each Local Ombudsman Program Director shall attend the Local Ombudsman Program Director training meetings as scheduled by the State Ombudsman. Attendance at such meetings by each Local Ombudsman Program Director shall be considered by State Ombudsman in the re-designation of that Local Ombudsman Program and the Certification of such Local Ombudsman Program Director.

6.16: Disclosure and Confidentiality Requirements

(1) Generally. The State Ombudsman shall be the custodian of all records maintained by the State Ombudsman Program including, but not limited to, records and files containing personal data concerning Complaints held by State Ombudsman or designated Local Ombudsman Programs. As such, requests for the disclosure of personal data, other than that ordered by a Court, or authorized by Statute or regulation, shall be approved or disapproved by the State Long Term Care Ombudsman or his or her State Office Designee, consistent with the rules set forth in 651 CMR 6.16(2) through (4).

(2) Disclosure of Identity of Complainant or Resident. The State Ombudsman, his or her Designee, or any Ombudsman Representative shall not disclose the identity of any Complainant or Resident of a Long Term Care Facility, either by name or by the release of sufficient facts to allow the Complainant or Resident's identity to be inferred, unless the Complainant, Resident, or Resident Representative communicated informed consent to such disclosure and specifies to whom the identity may be disclosed.

(a) Such disclosure shall be made without the Complainant or Resident's consent if ordered by a court of competent jurisdiction.

(b) If the Resident resides in a Long Term Care Facility, is unable to give informed consent, and has no Resident Representative, the State Ombudsman or an Ombudsman Representative shall not disclose his or her identity unless:

6.16: continued

1. There is reasonable cause to believe that action, inaction or a decision may adversely affect the health, safety, welfare or rights of said Resident and disclosure is in the best interest of the Resident;
  2. There is no evidence the Resident would not wish a referral to be made, including the disclosure of his or her identity; or
  3. The Ombudsman Representative follows the policies and procedures of the Ombudsman Program, which may require approval from the State Ombudsman.
- (3) Confidentiality of Communications. A representative of the State Ombudsman shall, at all times, respect the confidentiality of all communications with a Resident.
- (4) Right to Privacy. The State Ombudsman Program shall, at all times, respect the rights of Residents and shall not subject the Resident to photographing, filming, videotaping, or audiotaping without the written permission of the Resident or Resident Representative.

6.17: Non-discrimination In-service Delivery

A Local Ombudsman Program shall not deny services to or otherwise discriminate in the delivery of services to any Resident on the basis of race, color, religion, sex, gender identity, sexual orientation, age, national origin, ancestry, physical or mental disability, or because such a person is a recipient of federal, state, or local public assistance. A local Ombudsman Program shall comply with all applicable provisions of:

- (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*);
- (2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the regulations promulgated thereunder (45 CFR 84);
- (3) M.G.L. c. 151B, § 4(10); and
- (4) Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*).

6.18: Non-discrimination in Employment

A Local Ombudsman Program shall not discriminate against any qualified employee or applicant for employment because of race, color, religion, sex, gender identity, sexual orientation, age, national origin, ancestry, or physical or mental disability. It shall comply with all applicable provisions of:

- (1) Title VII of the Civil Rights Acts of 1964 (42 U.S.C. 2000e *et seq.*);
- (2) M.G.L. c. 151B, §§ 4(1) and (16); and
- (3) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the regulations promulgated pursuant thereto (45 CFR 84).

6.19: Affirmative Action

A Local Ombudsman Program, or the agency within which it operates, shall have in effect, maintain, and adhere to current Affirmative Action requirements as set forth in the Governor's Executive Order Number 227, as amended.

REGULATORY AUTHORITY

651 CMR 6.00: M.G.L. c. 19A, § 34.

651 CMR: DEPARTMENT OF ELDER AFFAIRS

(PAGES 107 THROUGH 118 ARE RESERVED FOR FUTURE USE.)