

CHAPTER 8
LONG-TERM CARE RESIDENT'S ADVOCATE/OMBUDSMAN

[Prior to 5/20/87, see Aging, Commission on the[20] rules 4.2 and 9.6]

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 8]

17—8.1(231) Purpose. This chapter establishes procedures for notice and appeal of penalties imposed for interference with the official duties of a long-term care resident's advocate/ombudsman, which are established in 2010 Iowa Acts, Senate File 2263, section 7, and in accordance with Section 712 of the federal Older Americans Act, as codified at 42 U.S.C. Section 3058g. This chapter also establishes criteria for serving under the volunteer long-term care ombudsman program. The resident's advocates/ombudsmen investigate complaints related to the actions or inactions of long-term care providers that may adversely affect the health, safety, welfare, or rights of residents and tenants who reside in long-term care facilities, assisted living programs, and elder group homes.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10]

17—8.2(231) Definitions.

"Access" means the term defined in 2010 Iowa Acts, Senate File 2263, section 7.

"Assisted living program" means a program defined in Iowa Code section 231C.2 and certified under Iowa Code chapter 231C.

"Civil penalty" means a civil money penalty not to exceed the amount authorized under 2010 Iowa Acts, Senate File 2263, section 7.

"Department" means the Iowa department on aging.

"Director" means the director of the department on aging.

"Elder group home" means a home defined in Iowa Code section 231B.1 and certified under Iowa Code chapter 231B.

"Long-term care facility" means a long-term care unit of a hospital or a facility licensed under Iowa Code section 135C.1 whether the facility is public or private.

"Long-term care resident's advocate/ombudsman" means the individual employed to carry out the duties of 2010 Iowa Acts, Senate File 2263, section 7.

"Office of the state long-term care resident's advocate" means the office established in 2010 Iowa Acts, Senate File 2263, section 7.

"Official duties" means those duties specified in 2010 Iowa Acts, Senate File 2263, section 7, and in the federal Older Americans Act.

"Volunteer long-term care ombudsman" means a volunteer who has successfully completed all requirements and received certification from a long-term care resident's advocate/ombudsman.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10]

17—8.3(231) Interference. A local long-term care resident's advocate/ombudsman or trained volunteer long-term care ombudsman certified under rule 17—8.7(231) who is denied access to a resident or tenant in a long-term care facility, assisted living program, or elder group home, or to medical and personal records while in the course of conducting official duties or whose work is interfered with during the course of an investigation shall report such denial or interference to the office of the state long-term care resident's advocate who will report the interference to the director of the department on aging.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10]

17—8.4(231) Monetary civil penalties—basis. The director, in consultation with the state long-term care resident's advocate/ombudsman, may impose a monetary civil penalty of \$1,500 on an officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who intentionally prevents, interferes with, or attempts to impede the duties of the state or a local long-term care resident's advocate/ombudsman. If the director imposes a penalty for a violation under this rule, no other state agency shall impose a penalty for the same interference violation.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10]

17—8.5(231) Monetary civil penalties—notice of penalty. The department on aging shall notify the officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home in writing by certified mail of the intent to impose a civil penalty. The notice shall include, at a minimum, the following information:

1. The nature of the interference and the date the action occurred.
2. The statutory basis for the penalty.
3. The amount of the penalty.
4. The date the penalty is due.
5. Instructions for responding to the notice, including information on the individual's right to appeal.

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17—8.6(231) Monetary civil penalties—appeals. An officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who is assessed a monetary civil penalty for interference with the official duties of a long-term care resident's advocate/ombudsman may appeal the penalty by informing the department of the intent to appeal in writing within ten days after receiving a notice of penalty. Appeals shall follow the procedures set forth in 17—Chapter 13.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10]

17—8.7(231) Volunteer long-term care ombudsman program.

8.7(1) Application. Any individual may apply to the resident's advocate/ombudsman program to become a volunteer long-term care ombudsman. A resident advocate committee member shall be given priority in the selection process and may become a certified volunteer long-term care ombudsman pending successful completion of the required training and background checks.

a. Application forms. Application forms may be obtained from the resident's advocate/ombudsman program at the department on aging address listed in rule 17—2.1(231) or from other organizations designated by the department.

b. Submission of forms. Each applicant shall complete an application and submit it to the department address listed in rule 17—2.1(231).

8.7(2) Conflict of interest.

a. Prior to certification, applicants for the volunteer long-term care ombudsman program must not have a conflict of interest or have had a conflict of interest within the past two years in accordance with the Older Americans Act. A conflict of interest shall be defined as:

(1) Employment of the applicant or a member of the applicant's immediate family within the previous year by a long-term care facility or by the owner or operator of any long-term care facility;

(2) Current participation in the management of a long-term care facility by the applicant or a member of the applicant's immediate family;

(3) Current ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service by the applicant or a member of the applicant's immediate family;

(4) Current involvement in the licensing or certification of a long-term care facility or provision of a long-term care service by the applicant or a member of the applicant's immediate family;

(5) Receipt of remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility by the applicant or a member of the applicant's immediate family;

(6) Acceptance of any gifts or gratuities from a long-term care facility or a resident or a resident's representative;

(7) Acceptance of money or any other consideration from anyone other than the office of the state long-term care resident's advocate/ombudsman for the performance of an act in the regular course of long-term care;

(8) Provision of services while employed in a position with duties that conflict with the duties of a volunteer long-term care ombudsman;

(9) Provision of services to residents of a facility in which a member of the applicant's immediate family resides; or

(10) Participation in activities which negatively affect the applicant's ability to serve residents or which are likely to create a perception that the applicant's primary interest is other than as an advocate for the residents.

b. Immediate family shall be defined as father, mother, son, daughter, brother, sister, aunt, uncle, first cousin, nephew, niece, wife, husband, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepbrother, stepchild, stepsister, half sister, half brother, grandparent or grandchild.

8.7(3) Applicants shall not be accepted into the program if:

- a.* It is determined that the applicant has a conflict of interest as listed in subrule 8.7(2); or
- b.* The applicant has unfavorable references, which shall include a DCI criminal background check and abuse check;
- c.* The applicant lives in any part of a continuing care retirement community, or any housing owned by the long-term care facility in which the volunteer would function.

8.7(4) Training. Prior to certification, applicants must successfully complete the required training as approved by the resident's advocate/ombudsman. Successful completion shall be defined as completion of all assignments and tasks during training, demonstration of proper techniques and skills, and an understanding of the role of the volunteer long-term care ombudsman in the long-term care setting. The applicant shall complete a minimum of 24 hours of approved training, which shall include, but not be limited to:

- a.* History and overview of resident's advocate/ombudsman program;
- b.* Terminology;
- c.* Resident rights;
- d.* State and federal law, rules and regulations regarding long-term care facilities;
- e.* Regulatory process in long-term care facilities;
- f.* Aging process, common medical conditions and terminology;
- g.* Life in a long-term care facility and culture change;
- h.* Communication skills;
- i.* Confidentiality;
- j.* Problem solving and documentation, and follow-up of complaints;
- k.* Dynamics of abuse and neglect;
- l.* Ethics; and
- m.* Resources for volunteer long-term care ombudsmen.

8.7(5) Approval for certification. Final approval for certification as a volunteer long-term care ombudsman shall be made by the resident's advocate/ombudsman and shall be subject to the applicant's successful completion of the required training and to a favorable report from the instructor. The resident's advocate/ombudsman has the right to require that the applicant receive additional personal training prior to certification and has the right to deny certification to applicants not meeting the above training criteria.

8.7(6) Certification.

a. Notification. A volunteer long-term care ombudsman shall be notified in writing within 14 days following the conclusion of the training program if certification has been continued or revoked.

b. Certification shall initially be for one year, with recertification available following the volunteer's completion of a minimum of ten hours of approved continuing education in the first year and completion of a progress review by the residents of the facility, the facility administrator and staff, and the resident's advocate/ombudsman or a representative from the office of the state long-term care resident's advocate/ombudsman program.

c. After the volunteer's successful completion of one year as a volunteer long-term care ombudsman, the resident's advocate/ombudsman may recertify the volunteer for a two-year period.

8.7(7) Continuing education.

a. All certified volunteer long-term care ombudsmen shall complete a minimum of ten hours of continuing education the first year and a minimum of six hours of continuing education each year thereafter. Continuing education may include, but is not limited to:

- (1) Scheduled telephone conference calls with representatives from the office of the state long-term care resident's advocate/ombudsman program;
- (2) Governor's conference on aging;
- (3) Area Alzheimer's disease conferences;
- (4) Elder abuse conferences;
- (5) Courses related to aging conducted by a local community college or university or via the Internet;
- (6) Other events as approved in advance by the resident's advocate/ombudsman.

b. Volunteer long-term care ombudsmen are responsible for reporting continuing education hours to the resident's advocate/ombudsman or designee within 30 days following the completion of the continuing education event.

8.7(8) Contesting an appointment. A provider who wishes to contest the appointment of a volunteer shall do so in writing to the resident's advocate/ombudsman. The final determination shall be made by the resident's advocate/ombudsman within 30 days after receipt of notification from the provider.

8.7(9) Certification revocation.

a. Reasons for revocation. A volunteer long-term care ombudsman's certification may be revoked by the resident's advocate/ombudsman for any of the following reasons: falsification of information on the application, breach of confidentiality, acting as a volunteer long-term care ombudsman without proper certification, attending less than the required continuing education training, voluntary termination, unprofessional conduct, failure to carry out the duties as assigned, or actions which are found by the resident's advocate/ombudsman to violate the rules or intent of the program.

b. Notice of revocation. The resident's advocate/ombudsman shall notify the volunteer and the facility in writing of a revocation of certification.

c. Request for reconsideration. A request for reconsideration or reinstatement of certification may be made in writing to the resident's advocate/ombudsman. The request must be filed within 14 days after receipt of the notice of revocation.

d. Response time. The resident's advocate/ombudsman shall investigate and consider the request and notify the requesting party and the facility of the decision within 30 days of receipt of the written request.

8.7(10) Access.

a. Visits to facilities. A volunteer long-term care ombudsman may enter any long-term care facility without prior notice. After notifying the person in charge of the facility of the volunteer long-term care ombudsman's presence, the volunteer long-term care ombudsman may communicate privately and without restriction with any resident who consents to the communication.

b. Visits to resident's living area. The volunteer long-term care ombudsman shall not observe the private living area of any resident who objects to the observation.

c. Restrictions on visits. The facility staff member in charge may refuse or terminate a volunteer long-term care ombudsman visit with a resident only when written documentation is provided to the volunteer long-term care ombudsman that the visits are a threat to the health and safety of the resident. The restriction shall be ordered by the resident's physician, and the order shall be documented in the resident's medical record.

8.7(11) Duties. The volunteer long-term care ombudsman shall assist the resident's advocate/ombudsman or designee in carrying out the duties described in the Older Americans Act. Primary responsibilities of a volunteer long-term care ombudsman shall include:

a. Conducting initial inquiries regarding complaints registered with the long-term care resident's advocate/ombudsman;

b. At the request of the resident's advocate/ombudsman or designee, providing follow-up visits on cases investigated by the resident's advocate/ombudsman or designee;

c. Attending, assisting with, or providing technical assistance to resident and family council meetings as needed;

d. At the request of the resident's advocate/ombudsman or designee, making follow-up visits to a facility after a department of inspections and appeals survey or complaint investigation to monitor the progress and changes listed in the plan of correction or to monitor the correction of deficiencies;

e. Tracking, monitoring and following up on publicly available information regarding facility performance;

f. Identifying concerns in a facility. Concerns identified should be discussed with the chair of the resident advocate committee to determine an appropriate course of action to reach resolution;

g. Completing all reports and submitting them to the resident's advocate/ombudsman in a timely manner; and

h. Completing exit interviews when the volunteer ombudsman resigns.

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¹ Effective date of subrule 20—4.2(1) delayed 70 days by the Administrative Rules Review Committee. (IAB 12/22/82). Delay lifted by Committee on January 4, 1983.

² Effective date of Ch 8 delayed 70 days by the Administrative Rules Review Committee.