

AGING, DEPARTMENT ON[17]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 231.14, 231.23 and 17A.3, the Department on Aging hereby gives Notice of Intended Action to amend Chapter 8, “Long-Term Care Resident’s Advocate/Ombudsman,” Iowa Administrative Code.

The amendments change the chapter in the following particulars:

1. The proposed amendments change the title of Chapter 8 from “Long-Term Care Resident’s Advocate/Ombudsman” to “Long-Term Care Ombudsman” to align with the term used in the Older Americans Act and in Iowa Code chapter 231.

2. The proposed amendments change the term “long-term care resident’s advocate/ombudsman” to “long-term care ombudsman” throughout the chapter to align with the term used in the Older Americans Act and in Iowa Code chapter 231.

3. The proposed amendments change the term “volunteer long-term care ombudsman” to “certified volunteer long-term care ombudsman” throughout the chapter to align with the term used in Iowa Code chapter 231.

4. The proposed amendments change the hours of training required for a certified volunteer long-term care ombudsman from 24 hours to 12 hours to accurately reflect the training process requirements. The Office of the State Long-Term Care Ombudsman has determined that the 24-hour training requirement is overly burdensome to volunteers and the training components of the program.

5. The proposed amendments correct cross references and citations.

6. The proposed amendments rescind rule 17—18.2(231) because the rule’s definitions of “access,” “volunteer long-term care ombudsman” (revised to read “‘certified volunteer long-term care ombudsman’ or ‘certified volunteer’”), and “civil penalty” are being added to Chapter 1 (see **ARC 1428C** herein) to create a comprehensive definitions chapter and because the rule’s other definitions, “assisted living program,” “department,” “director,” “elder group home,” “long-term care facility,” “long-term care resident’s advocate/ombudsman,” “office of the state long-term care resident’s advocate,” and “official duties,” duplicate definitions in Iowa Code chapter 231.

7. The proposed amendments change the term “personal records” to “social records” throughout the chapter to align with the terminology used in Iowa Code section 231.42.

8. The proposed amendments make technical corrections to align with Iowa Code sections 231.42 and 231.45.

9. The proposed amendments remove references to resident advocate committees, which were eliminated on July 1, 2013, pursuant to 2013 Iowa Acts, Senate File 184.

10. The proposed amendments define who performs the review of a certified volunteer local long-term care ombudsman.

Any interested person may make written suggestions or comments on the proposed amendments on or before May 6, 2014. Such written comments or suggestions should be directed to Kimberly Murphy, Iowa Department on Aging, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319. E-mail may be sent to kimberly.murphy@iowa.gov.

After analysis and review of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 231 and the Older Americans Act. The following amendments are proposed.

ITEM 1. Amend **17—Chapter 8**, title, as follows:
LONG-TERM CARE RESIDENT'S ADVOCATE/OMBUDSMAN

ITEM 2. Amend rule 17—8.1(231) as follows:

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, Iowa Code sections 231.42 and 231.45~~ 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 certified volunteer long-term care ombudsman program. The ~~resident's advocates/~~ long-term care 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.

ITEM 3. Rescind rule **17—8.2(231)**.

ITEM 4. Renumber rules **17—8.3(231)** to **17—8.7(231)** as **17—8.2(231)** to **17—8.6(231)**.

ITEM 5. Amend renumbered subrules 8.2(1) and 8.2(2) as follows:

8.2(1) A local long-term care ~~resident's advocate/ombudsman~~ or ~~trained~~ certified 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~~ social records while in the course of conducting official duties pursuant to Iowa Code section 231.42 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~~ ombudsman, who will report the interference to the director of the department on aging.

8.2(2) Access to facility records. Copies of a resident's medical or ~~personal~~ social records maintained by the facility, or other records of a long-term care facility, assisted living program, or elder group home, may be made with the permission of the resident, the resident's responsible party, or the legal representative of the resident. All medical and ~~personal~~ social records shall be made available to a certified volunteer long-term care ombudsman for review if:

- a. The certified volunteer long-term care ombudsman has written permission from the resident, the legal representative of the resident, or the responsible party; and
- b. Access to the records is necessary to investigate a complaint; and
- c. The certified volunteer long-term care ombudsman obtains approval of the ~~resident's advocate/~~ state long-term care ombudsman or designee.

ITEM 6. Amend renumbered rule 17—8.3(231) as follows:

17—8.3(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 not more than \$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, ~~or~~ a certified volunteer 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.

ITEM 7. Amend renumbered rule 17—8.5(231) as follows:

17—8.5(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.

ITEM 8. Amend renumbered rule 17—8.6(231) as follows:

17—8.6(231) Volunteer Certified volunteer long-term care ombudsman program.

8.6(1) Application. Any individual may apply to the ~~resident's advocate/~~ office of the state long-term care ombudsman program to become a certified 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/~~ office of the state long-term care ombudsman program at the department on aging address listed in ~~rule 17—2.1(231)~~ 17—subrule 2.3(2) 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)~~ 17—subrule 2.3(2).

8.6(2) Conflict of interest.

a. Prior to certification, applicants for the certified 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) to (6) No change.

(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 certified volunteer long-term care ombudsman;

(9) and (10) No change.

b. No change.

8.6(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) 8.6(2); or

b. and *c.* No change.

8.6(4) Training. Prior to certification, applicants must successfully complete the required training as approved by the ~~resident's advocate/~~ office of the state long-term care 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 certified volunteer long-term care ombudsman in the long-term care setting. The applicant shall complete a minimum of ~~24~~ 12 hours of approved training, which shall include, but not be limited to:

a. to *l.* No change.

m. Resources for certified volunteer long-term care ombudsmen.

8.6(5) Approval for certification. Final approval for certification as a certified volunteer long-term care ombudsman shall be made by the ~~resident's advocate/~~ office of the state long-term care 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/~~ office of the state long-term care 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.

8.6(6) Certification.

a. Notification. A certified 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 certified 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 certified volunteer's successful completion of one year as a certified volunteer long-term care ombudsman, the ~~resident's advocate/~~ office of the state long-term care ombudsman may recertify the certified volunteer for a two-year period.

8.6(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) to (5) No change.

(6) Other events as approved in advance by the ~~resident's advocate/~~ office of the state long-term care ombudsman.

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

8.6(8) Contesting an appointment. A provider who wishes to contest the appointment of a certified volunteer shall do so in writing to the ~~resident's advocate/~~ office of the state long-term care ombudsman. The final determination shall be made by the ~~resident's advocate/~~ office of the state long-term care ombudsman within 30 days after receipt of notification from the provider.

8.6(9) Certification revocation.

a. *Reasons for revocation.* A certified volunteer long-term care ombudsman's certification may be revoked by the ~~resident's advocate/~~ office of the state long-term care ombudsman for any of the following reasons: falsification of information on the application, breach of confidentiality, acting as a certified 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/~~ office of the state long-term care ombudsman to violate the rules or intent of the program.

b. *Notice of revocation.* The ~~resident's advocate/~~ office of the state long-term care ombudsman shall notify the certified 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/~~ office of the state long-term care ombudsman. The request must be filed within 14 days after receipt of the notice of revocation.

d. *Response time.* The ~~resident's advocate/~~ office of the state long-term care 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.

8.6(10) Access.

a. *Visits to facilities.* A certified 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 certified volunteer long-term care ombudsman's presence, the certified 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 certified 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 certified volunteer long-term care ombudsman visit with a resident only when written documentation is provided to the certified 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.

8.6(11) Duties. The certified volunteer long-term care ombudsman shall assist the ~~resident's advocate/~~ office of the state long-term care ombudsman or designee in carrying out the duties described in the Older Americans Act. Primary responsibilities of a certified volunteer long-term care ombudsman shall include:

- a. Conducting initial inquiries regarding complaints registered with the office of the state long-term care resident's advocate/ombudsman;
- b. At the request of the ~~resident's advocate/~~ office of the state long-term care ombudsman or designee, providing follow-up visits on cases investigated by the ~~resident's advocate/~~ office of the state long-term care 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/~~ office of the state long-term care 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/~~ office of the state long-term care ombudsman in a timely manner; and
- h. Completing exit interviews when the certified volunteer ombudsman resigns.