

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]

321—8.1(231) Definitions.

“Designee” means an employee who is designated as a regional long-term care ombudsman.

“Resident advocate committee member” means a volunteer appointed by the director or the director’s designee pursuant to Iowa Code section 135C.25.

“Resident’s advocate/ombudsman” means the state long-term care ombudsman.

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

321—8.2(231) Purpose.

8.2(1) General rule. The department shall operate a statewide long-term care resident’s advocate/ombudsman program in cooperation with appropriate state and local agencies such as the department of inspections and appeals, the department of human services, and the AAAs.

8.2(2) Resident advocate committee and volunteer long-term care ombudsman program administration. The program shall include the administration of the resident advocate committee program identified in Iowa Code section 231.4 and the volunteer long-term care ombudsman program identified in Section 712(5) of the Older Americans Act.

321—8.3(231) Long-term care resident’s advocate/ombudsman duties.

8.3(1) Program administration. The department shall employ an individual (hereinafter called the resident’s advocate/ombudsman) to administer the long-term care resident’s advocate/ombudsman program in accordance with the requirements of the Act and Iowa Code chapter 231.

8.3(2) Duties of the resident’s advocate/ombudsman (also known as the state long-term care ombudsman). In accordance with the Older Americans Act, the resident’s advocate/ombudsman shall perform the following duties:

- a. Identify, investigate and resolve complaints and grievances that are made by or on behalf of residents that may adversely affect the health, safety, welfare or rights of residents;
- b. Administer the resident advocate committee system pursuant to these rules and assist the committees in the performance of their duties through training and technical assistance;
- c. Monitor the development and implementation of federal, state and local laws, rules, regulations and policies that relate to long-term care facilities;
- d. Provide information to the public and to state and local agencies about problems of persons in long-term care facilities;
- e. Train long-term care facility staff in conjunction with training provided to resident advocate committee members;
- f. Administer the volunteer long-term care ombudsman program;
- g. Assist in the development of organizations to participate in long-term care;
- h. Comment and make recommendations on administrative actions under consideration by an agency or authority which may affect residents in long-term care facilities;
- i. Designate regional long-term care ombudsmen (hereinafter called designees) to perform any of the above duties; and
- j. Approve certification for volunteer long-term care ombudsmen.

321—8.4(231) Access requirements. The resident’s advocate/ombudsman or designee shall have access to long-term care facilities, private access to residents, access to residents’ personal and medical records and access to other records maintained by the facilities or governmental agencies, pertaining only to the person on whose behalf a complaint is being investigated.

8.4(1) Visits to facilities. The resident’s advocate/ombudsman or designee may enter any long-term care facility without prior notice. After notifying the person in charge of the facility of the resident’s

advocate/ombudsman's or designee's presence, the resident's advocate/ombudsman or designee may communicate privately and without restriction with any resident who consents to the communication.

8.4(2) *Visits to resident's living area.* The resident's advocate/ombudsman or designee shall not observe the private living area of any resident who objects to the observation.

8.4(3) *Restrictions on visits.* The facility staff member in charge may refuse or terminate a resident's advocate/ombudsman's or designee's visit with a resident only when written documentation is provided to the resident's advocate/ombudsman or designee that the visit is 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.

8.4(4) *Request agency assistance.*

a. The resident's advocate/ombudsman or designee may request cooperation, assistance and data that will enable the resident's advocate/ombudsman or designee to execute any of the resident's advocate/ombudsman's or designee's duties and powers under the Older Americans Act from any governmental agency or its agent or AAA.

b. Only the state long-term care ombudsman shall have access to adult abuse case information.

8.4(5) *Facility records.* Copies of a resident's medical or personal records maintained by the facility, or other records of a long-term care facility, may be made with the permission of the resident, the resident's responsible party, or the legal representative of the resident.

a. The office of the long-term care ombudsman will pay for copies as requested.

b. All medical and personal records shall be made available to a volunteer long-term care ombudsman for review if:

(1) The volunteer long-term care ombudsman has the permission of the resident, the legal representative of the resident or the responsible party; or

(2) Access to the records is necessary to investigate a complaint; and

(3) The volunteer long-term care ombudsman obtains approval of the resident's advocate/ombudsman or designee; or

(4) The information is sought by court order.

c. The resident's advocate/ombudsman program shall keep all records and information confidential according to the Older Americans Act.

321—8.5(231) Authority and responsibilities of the department.

8.5(1) *Confidentiality and disclosure.* The complaint files maintained by the resident's advocate/ombudsman program shall be maintained as confidential information and may not be disclosed unless the resident's advocate/ombudsman authorizes disclosure.

a. No member of the resident's advocate/ombudsman program shall disclose the identity of any complainant or resident, or any identifying information obtained from a resident's personal or medical records unless the complainant or resident, or the legal representative of either, consents in writing to the disclosure and specifies to whom the information may be disclosed.

b. The resident's advocate/ombudsman may use materials in the files for the preparation and disclosure of statistical, case study and other pertinent reports provided that the means of discovering the identity of particular persons is not disclosed.

8.5(2) *Referral of complaints or grievances.*

a. When the resident's advocate/ombudsman or designee encounters facts which may indicate the failure to comply with state or federal laws, rules or regulations, the resident's advocate/ombudsman or designee shall refer the case to the appropriate agency.

b. When the resident's advocate/ombudsman or designee encounters facts that may warrant the institution of civil proceedings, the resident's advocate/ombudsman or designee shall refer the case appropriately for administrative and legal assistance.

c. When the resident's advocate/ombudsman or designee encounters facts which may indicate the misconduct or breach of duty of any officer or employee of a long-term care facility or government agency, the resident's advocate/ombudsman shall refer the case to the appropriate authorities.

d. The resident's advocate/ombudsman or designee shall initiate follow-up activities on all referred complaints and grievances.

8.5(3) Reporting. The resident's advocate/ombudsman program shall maintain a statewide, uniform reporting system to collect and analyze information on complaints and grievances regarding long-term care facilities in accordance with requirements of the Act and Iowa Code section 231.42.

a. Information provided by the department of inspections and appeals, individuals and agencies to whom cases were referred, resident advocate committees and the volunteer long-term care ombudsman program shall be used in the reporting system.

b. No information from this reporting system that threatens the confidentiality of residents or complainants shall be made public without the written permission of the affected residents or complainants.

c. Any information from this reporting system which identifies a specific facility shall state that problems identified in that facility have been corrected, if problems identified have been corrected to the satisfaction of the resident or complainant or pursuant to 321—9.13(231).

d. The complaint and grievance documentation and reporting system shall include, where available:

- (1) The source and date of the complaint or grievance;
- (2) Name, location and type of facility;
- (3) Facility licensure and certification status;
- (4) Description of the problem;
- (5) Billing status of the resident;
- (6) Method by which the complaint was received; and
- (7) Description of follow-up activities and date of resolution.

e. The resident's advocate/ombudsman program shall prepare an annual report analyzing complaint statistics collected and provide this report, by January 15 of each year, to the following agencies and others as deemed appropriate, including but not limited to: AOA, the office of the governor, the general assembly of Iowa, the department of inspections and appeals, the department of human services, and AAAs.

321—8.6(231) Volunteer long-term care ombudsman program.

8.6(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 of elder affairs address listed in rule 321—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 321—2.1(231).

8.6(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.

8.6(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 8.6(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.

8.6(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.

8.6(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.

8.6(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.

8.6(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) 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.

8.6(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.

8.6(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.

8.6(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.

8.6(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.

These rules are intended to implement Iowa Code chapter 231.

[Filed 5/20/82, Notice 3/17/82—published 6/9/82, effective 7/14/82]

[Filed 11/5/82, Notice 7/21/82—published 11/24/82, effective 12/29/82]¹

[Filed emergency 12/17/82—published 1/5/83, effective 12/29/82]

[Filed 5/1/87, Notice 2/25/87—published 5/20/87, effective 6/24/87]²

[Filed emergency 8/20/87—published 9/9/87, effective 9/2/87]

[Filed 1/16/04, Notice 10/29/03—published 2/4/04, effective 3/10/04]

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.