

CHAPTER 8
LONG-TERM CARE 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]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

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 ombudsman, which are established in Iowa Code sections 231.42 and 231.45 and in accordance with Section 712 of the Older Americans Act. This chapter also establishes criteria for serving under the certified volunteer long-term care ombudsman program. The 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. In addition, this chapter establishes the process for representatives of the office of the state long-term care ombudsman who are local long-term care ombudsmen performing managed care ombudsman services to provide assistance and advocacy related to long-term services and supports under the Medicaid program.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10; ARC 1535C, IAB 7/9/14, effective 8/13/14; ARC 4878C, IAB 1/15/20, effective 2/19/20]

17—8.2(231) Interference.

8.2(1) A local long-term care ombudsman or certified volunteer long-term care ombudsman 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 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 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 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 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 state long-term care ombudsman or designee.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10; ARC 9349B, IAB 2/9/11, effective 3/16/11; ARC 1535C, IAB 7/9/14, effective 8/13/14]

17—8.3(231) Monetary civil penalties—basis. The director, in consultation with the state long-term care 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, a local, or a certified volunteer long-term care 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; ARC 9349B, IAB 2/9/11, effective 3/16/11; ARC 1535C, IAB 7/9/14, effective 8/13/14]

17—8.4(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.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10; ARC 1535C, IAB 7/9/14, effective 8/13/14]

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 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 8939B, IAB 7/14/10, effective 7/1/10; ARC 1535C, IAB 7/9/14, effective 8/13/14]

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

8.6(1) Application. Any individual may apply to the office of the state long-term care ombudsman program to become a certified volunteer long-term care ombudsman.

a. Application forms. Application forms may be obtained from the office of the state long-term care ombudsman program at the department on aging address listed in 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 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) 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 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) 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 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 12 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 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 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 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 office of the state long-term care ombudsman.
- c.* After the certified volunteer's successful completion of one year as a certified volunteer long-term care ombudsman, the 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 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 office of the state long-term care ombudsman.

b. Certified volunteer long-term care ombudsmen are responsible for reporting continuing education hours to the 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 office of the state long-term care ombudsman. The final determination shall be made by the 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 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 office of the state long-term care ombudsman to violate the rules or intent of the program.

b. *Notice of revocation.* The 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 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 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.

8.6(11) Duties. The certified volunteer long-term care ombudsman shall assist the 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 ombudsman;

b. At the request of the office of the state long-term care ombudsman or designee, providing follow-up visits on cases investigated by the 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 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;

g. Completing all reports and submitting them to the office of the state long-term care ombudsman in a timely manner; and

h. Completing exit interviews when the certified volunteer ombudsman resigns.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10; ARC 1535C, IAB 7/9/14, effective 8/13/14; ARC 3714C, IAB 3/28/18, effective 5/2/18]

17—8.7(231) Managed care ombudsman program.

8.7(1) The office of the long-term care ombudsman may provide advocacy and assistance to eligible recipients, or the families or legal representatives of such eligible recipients, of long-term services and supports provided through the Medicaid program who are receiving services in a long-term care facility or under one of the home- and community-based services waivers.

8.7(2) Representatives of the office of long-term care ombudsman providing an individual with assistance and advocacy services authorized under Iowa Code section 231.44 shall be provided access to the individual and to the individual's medical, social and administrative records related to the provision of the long-term services and supports to the individual, as authorized by the individual or the individual's legal representative, as necessary to carry out the duties specified by Iowa Code section 231.44.

8.7(3) The office of long-term care ombudsman and representatives of the office, when providing assistance and advocacy services under Iowa Code section 231.44, shall be considered a health oversight agency as defined in 45 CFR §164.501 for the purposes of health oversight activities described in 45 CFR §164.512(d). Recipient information available to the office of long-term care ombudsman and representatives of the office under this subrule shall be limited to the recipient's protected health information as defined in 45 CFR §160.103 for the purpose of recipient case resolution.

[ARC 4878C, IAB 1/15/20, effective 2/19/20]

These rules are intended to implement Iowa Code sections 231.42 and 231.44.

[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]

[Filed Emergency ARC 8489B, IAB 1/27/10, effective 1/7/10]

[Filed Emergency After Notice ARC 8939B (Notice ARC 8772B, IAB 5/19/10), IAB 7/14/10, effective 7/1/10]

[Filed ARC 9349B (Notice ARC 9227B, IAB 11/17/10), IAB 2/9/11, effective 3/16/11]

[Filed ARC 1535C (Notice ARC 1425C, IAB 4/16/14), IAB 7/9/14, effective 8/13/14]

[Filed ARC 3714C (Notice ARC 3479C, IAB 12/6/17), IAB 3/28/18, effective 5/2/18]

[Filed ARC 4878C (Notice ARC 4547C, IAB 7/17/19), IAB 1/15/20, effective 2/19/20]

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.