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**IDAPA 15
TITLE 01
CHAPTER 03**

COMMISSION ON AGING

15.01.03 - RULES GOVERNING THE OMBUDSMAN FOR THE ELDERLY PROGRAM

000. LEGAL AUTHORITY.

Under authority set forth in the OAA and Title 67, Chapter 50, Idaho Code, Section 67-5009, ICOA adopts the following rules. (7-1-98)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 15.01.03, "Rules Governing the Ombudsman for the Elderly Program." (7-1-98)

02. Scope. These rules relate to the authority, responsibility, and designation of the ombudsman program. (7-1-98)

002. WRITTEN INTERPRETATIONS.

This agency may have written statements which pertain to the interpretation of the rules in this chapter. To obtain copies, contact the Idaho Commission on Aging by writing to the Director. (7-1-98)

003. ADMINISTRATIVE APPEALS.

The ICOA shall provide AAAs with opportunity to appeal administrative decisions related to these rules in accordance with IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (7-1-98)

004. -- 009. (RESERVED).

010. DEFINITIONS.

Any item not specifically defined below shall have the same meaning as those defined in IDAPA 15.01.01, "Rules Governing Idaho Senior Services Program," and OAA, Section 711, and Idaho Code. (7-1-98)

01. Access. Right to enter long-term care facility upon notification of person in charge. (7-1-98)

02. Affected Parties. Long-term care facilities, state or county departments or agencies, or others against whom a complaint has been lodged. (7-1-98)

03. Area III. Planning and service area made up of: Canyon, Valley, Boise, Gem, Elmore, Washington, Ada, Adams, Payette, and Owyhee counties. (7-1-98)

04. Complainant. The substate ombudsman or any individual or organization who registers a complaint with the substate ombudsman. (7-1-98)

05. Complaint Investigation/Resolution. Activities related to receiving, analyzing, researching, observing, interviewing, verifying or resolving a complaint through advocacy, facilitation, conciliation, mediation, negotiation, representation, referral, follow-up, or education. (7-1-98)

06. Complaints. Allegations made by or on behalf of eligible clients, whether living in long-term care facilities or in the community. (7-1-98)

07. Designation. Process by which the Office approves the location of substate ombudsman programs within AAAs and delegates to such programs the authority to carry out the purposes of the program. (7-1-98)

08. Non-Jurisdictional Complaints. Complaints made by or on behalf of residents of long-term care facilities who are under the age of sixty (60) or complaints concerning persons outside the statutory jurisdiction of an

ombudsman. (7-1-98)

09. Office. Office of the State Ombudsman for the Elderly pursuant to Title 67, Chapter 50, Idaho Code, Sections 67-5009. (7-1-98)

10. Long-Term Care Facility. Skilled nursing facilities as defined in IDAPA 16.03.02, Subsection 002.33, "Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities," and residential care facilities as defined in IDAPA 16.03.22, "Rules for Licensed Residential and Assisted Living Facilities in Idaho." (7-1-98)

11. Resident. Resident as defined in IDAPA 16.03.22, "Rules for Licensed Residential and Assisted Living Facilities in Idaho." (7-1-98)

12. Substate Ombudsman. An individual associated with a designated local Ombudsman for the Elderly Program, who performs the duties of ombudsman. (7-1-98)

011. -- 019. (RESERVED).

020. ADMINISTRATIVE REQUIREMENTS.

Each AAA substate ombudsman program shall meet all administrative requirements as cited in OAA, Section 712 (a), and Title 67, Chapter 50, Section 67-5009, Idaho Code, unless granted a waiver by the ICOA. (7-1-98)

01. Procedures. All substate ombudsmen shall follow procedures outlined in the ombudsman for the Elderly Procedures Manual. (7-1-98)

02. Space. Each AAA shall provide space assuring privacy for substate ombudsmen to hold confidential meetings. (7-1-98)

03. Supervision. Substate ombudsmen shall operate under the direct supervision of the Office for all complaint handling activities and are considered subdivisions of the Office. (7-1-98)

04. Forms. All substate ombudsmen shall utilize standardized forms provided by the Office. (7-1-98)

05. Conflict of Interest. AAAs shall ensure that the substate ombudsmen shall not be part of an organization which: (7-1-98)

a. Is responsible for licensing and certifying skilled nursing or residential care facilities under IDAPA 16.03.22, "Rules for Licensed Residential and Assisted Living Facilities in Idaho"; (7-1-98)

b. Provides skilled nursing or living care or is an association of such a provider; or (7-1-98)

c. May impair the ability of the substate ombudsmen to investigate and resolve complaints objectively and independently. (7-1-98)

06. Travel Funds. Each AAA shall provide travel funds for the substate ombudsman program to carry out activities related to complaint investigations. (7-1-98)

07. Program Report. All substate ombudsman programs shall comply with ICOA's reporting requirements. (7-1-98)

08. Program Reviews. Each AAA shall submit to a program review of substate ombudsman programs at reasonable intervals deemed necessary by the ICOA. (7-1-98)

09. Adult Protection and Ombudsman Coordination. Each AAA shall ensure that Adult Protection staff and the substate ombudsman maintain a written agreement establishing cooperative protocols in the investigation of complaints. (7-1-98)

10. State Agreements. All substate programs shall honor and carry out state-level agreements between the Office and other agencies of government. (7-1-98)

021. STAFFING.

Pursuant to the OAA, Section 712, in order to meet minimum requirements established for the position of substate ombudsman, each AAA shall seek applicants having the following qualifications. (7-1-98)

01. Minimum Qualifications. Any person hired to fill the position of substate ombudsman on or after July 1, 1998, shall have: (7-1-99)

- a.** A Bachelor's degree or equivalent; (3-30-01)
- b.** Minimum of one (1) year's experience working with the elderly; (7-1-98)
- c.** Ability to effectively communicate verbally and in writing; (7-1-98)
- d.** Knowledge of long-term care issues and resources; (7-1-98)
- e.** Demonstrated ability to interpret and apply relevant local, state and federal laws, rules, regulations, and guidelines; (7-1-98)
- f.** Demonstrated ability to work independently; (7-1-98)
- g.** Demonstrated skill in interviewing techniques; and (7-1-98)
- h.** Demonstrated ability to collect data, conduct interviews and to form conclusions. (7-1-98)

02. Hiring. The Office shall be included in the process of interviewing and selecting applicants for the substate ombudsman position. The AAA shall make the final selection from the top three (3) applicants. (7-1-98)

022. -- 030. (RESERVED).

031. DESIGNATION OF AUTHORITY OF AAA.

The Office shall designate an entity as a substate ombudsman. (7-1-98)

01. Designation of Authority. Each AAA shall directly provide, through a contract agreement with the ICOA, a substate ombudsman Program employing at least one (1) full-time substate ombudsman whose function shall be to carry out the duties of the Ombudsman for the Elderly Program. AAAs I, II, IV, V and VI shall employ one (1) full-time substate ombudsman; AAA III shall employ two (2) full-time substate ombudsmen. An AAA may petition ICOA in writing for a waiver of this requirement. (7-1-98)

02. Grounds for Revocation or Termination. In revoking a designated substate ombudsman program, the ICOA shall provide due process in accordance with applicable law and IDAPA 04.11.01, Section 000 et seq., "Idaho Rules of Administrative Procedure of the Attorney General." (7-1-98)

a. Following termination of a substate ombudsman program, the ICOA shall perform the duties of the substate program. (7-1-98)

b. Following termination of a substate ombudsman program, the ICOA shall withdraw funding for the substate program for the remainder of the funding period. (7-1-98)

c. An AAAs appeal of ICOA's termination of its substate ombudsman program shall be governed by the Adjudicatory Rules of Practice and Procedures in Claims Relating to Contracts and Grants Funded under Title III, OAA. (7-1-98)

032. HANDLING OF COMPLAINTS.

The Ombudsman for the Elderly Program has jurisdiction to accept, identify, investigate, and resolve complaints

made by, or on behalf of, persons aged sixty (60) or older, living in the community or in long-term care facilities. The Office and the substate ombudsmen shall ensure that persons aged sixty (60) or older have regular and timely access to services provided through the Office. The Ombudsman for the Elderly Program shall represent the interests of older persons before governmental agencies and shall seek to protect the health, safety, welfare and rights of older persons. (7-1-98)

01. Non-Jurisdictional Complaints. Substate ombudsmen may respond to complaints made by or on behalf of under age sixty (60) long-term care residents where such action will: (7-1-98)

- a. Benefit other residents; or (7-1-98)
- b. Provide the only viable avenue of assistance available to the complainant. (7-1-98)

02. Conflict of Interest. Substate ombudsmen shall refer to the Office any complaint involving AAA staff or contractors. (7-1-98)

03. Complaints. Complaints concerning substate ombudsmen, or relative to a substate ombudsman's official duties, shall be directly referred to the ICOA. The ICOA, upon completing an investigation of such complaint(s), shall provide findings and recommendations to the AAA. (7-1-98)

04. Guardianship. The substate ombudsmen shall not serve as an ex-officio or appointed member of any Board of Community Guardian, nor file an affidavit to the court for guardianship. (7-1-99)

05. Court Visitor. The substate ombudsmen shall not act as court visitor in any guardianship/conservatorship proceeding concerning a past or current client. (7-1-98)

06. Legal Documents. Substate ombudsmen shall not, in their capacity as ombudsmen, act as a notary or a witness of signatures for legal documents. (7-1-98)

033. ACCESS.

The Office shall ensure that representatives of the Office have access to long-term care facilities and residents as well as appropriate access to medical and social records needed to investigate complaints. (7-1-98)

01. Visitation. For visitation purposes, substate ombudsmen shall have access to long-term care facilities during regular business hours. Visiting substate ombudsmen shall: (7-1-98)

- a. Notify the person in charge upon entering the facility; (7-1-98)
- b. Be allowed to visit common areas of the facility and the rooms of residents if consent is given by the resident; and (7-1-99)
- c. Communicate privately and without restriction with any resident who consents to the communication. (7-1-98)

02. Investigation. Substate ombudsmen shall have access to facilities for the purpose of conducting investigations. A substate ombudsman conducting an investigation shall: (7-1-98)

- a. Notify the person in charge upon entering the facility; (7-1-98)
- b. Be allowed to visit common areas of the facility and the rooms of residents if consent is given by the resident; (7-1-98)
- c. Seek out residents who consent to communicate privately; (7-1-98)
- d. Communicate privately and without restriction with any resident who consents to the communication; and (7-1-98)

- e. Inspect a resident's records under conditions set forth in the OAA, Section 712. (7-1-98)

03. Privacy. Substate ombudsmen shall have statutory authority to visit facilities and residents in facilities unescorted by facility personnel. See Section 67-5009, Idaho Code. (7-1-98)

034. -- 040. (RESERVED).

041. WRITTEN CONSENT.

The Office shall ensure appropriate access to review medical and social records of a resident. (See OAA, Section 712) (7-1-98)

01. Resident Written Consent. Access to confidential records requires the written consent of the resident or legal representative. (7-1-98)

02. Lack of Consent. If the client is unable to provide written or oral consent, or the legal representative is unavailable to provide consent, the substate ombudsmen, with approval of the Office may inspect available client records, including medical records that are necessary for investigation of a complaint. (7-1-98)

03. Consent Refused. If a substate ombudsman has been refused access to records by legal representative but has reasonable cause to believe that the legal representative is not acting in the best interest of the client, the substate ombudsman may, with the approval of the Office, inspect client records, including medical records. (7-1-98)

04. Requirements for Informing Client or Resident. The substate ombudsman shall inform the complainant or resident regarding: (7-1-98)

- a. Who will receive the information; (7-1-98)
- b. What information will be disclosed; and (7-1-98)
- c. The purpose for which the information is being disclosed. (7-1-98)

042. CONFIDENTIALITY.

The Office shall be the custodian of all substate ombudsman program records including, but not limited to, records and files containing personal information relative to complainants and residents of long-term care facilities. Requests for release of confidential information shall be submitted to the Office for approval or denial. Release of information shall be granted pursuant to OAA, Section 721(e). (7-1-98)

01. Storage of Records. Client records shall be maintained in locked storage. Case records inactive for two (2) years or longer may be expunged. As required by law, release of these records shall be limited to persons authorized by the Office. (7-1-98)

02. Performance Evaluations. For performance evaluation purposes, direct supervisors shall have access to client files maintained by substate ombudsmen. (7-1-98)

03. Confidential Records. Records to be safeguarded include, but are not limited to, long-term care and community-based complaint files including: (7-1-98)

- a. Notes of interviews with complainants and clients or collateral contacts; (7-1-98)
- b. All copies of residents' medical records or diagnoses; (7-1-98)
- c. All records relevant to complaint investigations; (7-1-98)
- d. All memoranda generated by the Office or by another agency office during the evaluation and resolution of a complaint; (7-1-98)

- e. All photographs, video tapes, tape recordings, etc. pertaining to complaint investigation; (7-1-98)
- f. All memoranda or letters generated during evaluation or resolution of a complaint; (7-1-98)
- g. Written documentation that parties affected by ombudsman opinions or recommendations have been notified; and (7-1-98)
- h. Information containing unverified complaints about long-term care facility owners, administrators, staff or other persons involved in the long-term care system or in other service programs. (7-1-98)

04. Request for Anonymity. The ombudsman shall honor a resident's or complainant's request to remain anonymous. If investigation of a complaint requires that a resident's or complainant's name be divulged in order for the investigation to proceed, the ombudsman shall so inform the resident or complainant. If the resident or complainant insists on maintaining anonymity, the ombudsman may terminate the investigation. (7-1-98)

043. DISCLOSURE.

The Office shall be the only entity having authority to authorize disclosure of substate ombudsmen files maintained by the program except when the ICOA is subpoenaed by the court to disclose pertinent records. (7-1-98)

044. -- 999. (RESERVED).

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