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**IDAPA 15
TITLE 01
CHAPTER 03**

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 Administrator. (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 Senior Services Program,” and the [Older Americans Act \(OAA\), Section 711](#), and Title 67, Chapter 50, 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 local ombudsman or any individual or organization who registers a complaint with the local ombudsman. (3-28-18)

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 local ombudsman programs within AAAs and delegates to such programs the authority to carry out the purposes of the program. (3-28-18)

08. Local Ombudsman. An individual associated with a designated local Ombudsman for the Elderly Program, who performs the duties of ombudsman. (3-28-18)

09. 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, “Residential Care or Assisted Living Facilities in Idaho.” (7-1-98)

10. 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)

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

12. Resident. Resident as defined in IDAPA 16.03.22, “Residential Care or Assisted Living Facilities in Idaho.” (7-1-98)

011. -- 019. (RESERVED)

020. ADMINISTRATIVE REQUIREMENTS.

Each AAA local ombudsman program shall meet all administrative requirements as cited in OAA, Section 712 (a), and Title 67, Chapter 50, Idaho Code, Section 67-5009, unless granted a waiver by the Office. (3-28-18)

01. Procedures. All local ombudsmen shall follow procedures outlined in the Office Procedures Manual. (3-28-18)

02. Space. Each AAA shall provide space assuring privacy for local ombudsmen to hold confidential meetings. (3-28-18)

03. Supervision. Local ombudsmen shall operate under the direct supervision of the Office for all complaint handling activities and are considered subdivisions of the Office. (3-28-18)

04. Forms. All local ombudsmen shall utilize standardized forms provided by the Office. (3-28-18)

05. Conflict of Interest. AAAs shall ensure that the local ombudsmen shall not be part of an organization that: (3-28-18)

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 local ombudsmen to investigate and resolve complaints objectively and independently. (3-28-18)

06. Travel Funds. Each AAA shall provide travel funds for the local ombudsman program to carry out activities related to complaint investigations. (3-28-18)

07. Program Report. All local ombudsman programs shall comply with the Office’s reporting requirements. (3-28-18)

08. Program Reviews. Each AAA shall submit to a program review of local ombudsman programs at reasonable intervals deemed necessary by the Office. (3-28-18)

09. Adult Protection and Ombudsman Coordination. Each AAA shall ensure that Adult Protection staff and the local ombudsman maintain a written agreement establishing cooperative protocols in the investigation of complaints. (3-28-18)

10. State Agreements. All local programs shall honor and carry out state-level agreements between the Office and other agencies of government. (3-28-18)

021. STAFFING.

Pursuant to the OAA, Section 712, in order to meet minimum requirements established for the position of local ombudsman, each AAA shall seek applicants having the following qualifications. (3-28-18)

01. Minimum Qualifications. Any person hired to fill the position of local ombudsman on or after July 1, 1998, shall have: (3-28-18)

- 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 local ombudsman position. The AAA shall make the final selection from the top three (3) applicants. (3-28-18)

022. -- 030. (RESERVED)

031. DESIGNATION OF AUTHORITY OF AAA.

The Office shall designate an entity as a local ombudsman. (3-28-18)

01. Designation of Authority. Each AAA shall directly provide, through a contract agreement with the ICOA, a local ombudsman program employing at least one (1) full-time local ombudsman whose function shall be to carry out the duties of the Office. AAAs I, II, IV, V and VI shall employ one (1) full-time local ombudsman; AAA III shall employ two (2) full-time local ombudsmen. An AAA may petition the Office in writing for a waiver of this requirement. (3-28-18)

02. Grounds for Revocation or Termination. In revoking a designated local ombudsman program, the Office 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.” (3-28-18)

a. Following termination of a local ombudsman program, the Office shall perform the duties of the local program. (3-28-18)

b. Following termination of a local ombudsman program, the Office shall withdraw funding for the local program for the remainder of the funding period. (3-28-18)

c. An AAA’s appeal of the Office’s termination of its local 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. (3-28-18)

032. HANDLING OF COMPLAINTS.

The Office 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 local ombudsmen shall ensure that persons aged sixty (60) or older have regular and timely access to services provided through the Office. The Office shall represent the interests of older persons before governmental agencies and shall seek to

protect the health, safety, welfare and rights of older persons. (3-28-18)

01. Non-Jurisdictional Complaints. Local ombudsmen may respond to complaints made by or on behalf of under age sixty (60) long-term care residents where such action will: (3-28-18)

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. Local ombudsmen shall refer to the Office any complaint involving AAA staff or contractors. (3-28-18)

03. Complaints. Complaints concerning local ombudsmen, or relative to a local ombudsman's official duties, shall be directly referred to the Office. The Office, upon completing an investigation of such complaint, shall provide findings and recommendations to the AAA. (3-28-18)

04. Guardianship. The local 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. (3-28-18)

05. Court Visitor. The local ombudsmen shall not act as court visitor in any guardianship/conservatorship proceeding concerning a past or current client. (3-28-18)

06. Legal Documents. Local ombudsmen shall not, in their capacity as ombudsmen, act as a notary or a witness of signatures for legal documents. (3-28-18)

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, and resident representative contact information needed to investigate complaints. (3-28-18)

01. Visitation. For visitation purposes, local ombudsmen shall have access to long-term care facilities during regular business hours. Visiting local ombudsmen shall: (3-28-18)

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. Local ombudsmen shall have access to long-term care facilities at any time for the purpose of conducting investigations. A local ombudsman conducting an investigation shall: (3-28-18)

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)

f. Inspect facility administrative records, policies, and documents that are accessible to the resident

and general public. (3-28-18)

03. Privacy. Local ombudsmen shall have statutory authority to visit facilities and residents in facilities unescorted by facility personnel. See Section 67-5009, Idaho Code. (3-28-18)

04. HIPAA. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, 45 CFR 164, subparts A and E, does not preclude release by the facility of resident private health information or other resident identifying information to the Office. (3-28-18)

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 local ombudsman, with approval of the Office may inspect available client records, including medical records that are necessary for investigation of a complaint. (3-28-18)

03. Consent Refused. If a local 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 local ombudsman may, with the approval of the Office, inspect client records, including medical records. (3-28-18)

04. Requirements for Informing Client or Resident. The local ombudsman shall inform the complainant or resident regarding: (3-28-18)

- 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 local 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). (3-28-18)

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 local ombudsmen. (3-28-18)

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 is the only entity authorized to disclose ombudsmen program files, records, or information. Identifying information of any resident or complainant shall be disclosed only with proper consent or in response to a court order. The Office, in its sole discretion, may delegate the disclosure of ombudsman program files, records, or information to a local ombudsman. (3-28-18)

01. Court Order. Identifying information of a resident, complainant, or both may be disclosed, with or without the consent of the resident, complainant, or both, pursuant to a court order issued by a court of competent jurisdiction. (3-28-18)

02. Resident Consent. Without a court order, identifying information of a resident shall be disclosed only if the resident or his representative communicates informed consent to the disclosure and the consent is given in writing, orally, visually or through the use of auxiliary aids and services; and such consent is documented by a representative of the Office in accordance with procedures. (3-28-18)

03. Complainant Consent. Without a court order, identifying information of a complainant shall be disclosed only if the complainant communicates informed consent to the disclosure and the consent is given in writing, orally, visually or through the use of auxiliary aids and services; and such consent is documented by a representative of the Office in accordance with procedures. (3-28-18)

044. -- 999. (RESERVED)

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