

at a minimum referral processes and strategies to be used when the Ombudsman program and a legal assistance program are both providing program services to a resident;

(ii) Facility and long-term care provider licensure and certification programs, addressing at minimum communication protocols and procedures to share information including procedures for access to copies of licensing and certification records maintained by the State with respect to long-term care facilities.

(2) The recommended adoption of memoranda of understanding or other means between the Ombudsman program and:

- (i) Area agency on aging programs;
- (ii) Aging and disability resource centers;
- (iii) Adult protective services programs;
- (iv) Protection and advocacy systems, as designated by the State, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 *et seq.*);
- (v) The State Medicaid fraud control unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q));
- (vi) Victim assistance programs;
- (vii) State and local law enforcement agencies;
- (viii) Courts of competent jurisdiction;
- (ix) The State Legal Assistance Developer as provided under section 731 of the Act (42 U.S.C. 3058j) and as set forth in subpart C to this part; and
- (x) The State mental health authority.

(i) *Other activities.* The Ombudsman shall carry out such other activities as the Assistant Secretary for Aging determines to be appropriate and are consistent with the functions of the State Long-Term Care Ombudsman Program as authorized by the Older Americans Act.

§ 1324.15 State agency responsibilities related to the Ombudsman program.

(a) *Compliance.* In addition to the responsibilities set forth in part 1321 of this chapter, the State agency shall ensure that the Ombudsman complies

with the relevant provisions of the Act and of this rule.

(b) *Authority and access.* The State agency shall ensure, through the development of policies, procedures, and other means, consistent with § 1324.11(e)(2), that the Ombudsman program has sufficient authority and access to facilities, residents, and information needed to fully perform all of the functions, responsibilities, and duties of the Office.

(c) *Training.* The State agency shall provide opportunities for training for the Ombudsman and representatives of the Office in order to maintain expertise to serve as effective advocates for residents. The State agency may utilize funds appropriated under Title III and/or Title VII of the Act designated for direct services in order to provide access to such training opportunities.

(d) *Personnel supervision and management.* The State agency shall provide personnel supervision and management for the Ombudsman and representatives of the Office who are employees of the State agency. Such management shall include an assessment of whether the Office is performing all of its functions under the Act.

(e) *State agency monitoring.* The State agency shall provide monitoring, as required by § 1321.9(b) of this chapter, including but not limited to fiscal monitoring, where the Office and/or local Ombudsman entity is organizationally located within an agency under contract or other arrangement with the State agency. Such monitoring shall include an assessment of whether the Ombudsman program is performing all of the functions, responsibilities and duties set forth in §§ 1324.13 and 1324.19. The State agency may make reasonable requests for reports, including aggregated data regarding Ombudsman program activities, to meet the requirements of this provision.

(f) *Disclosure limitations.* The State agency shall ensure that any review of files, records, or other information maintained by the Ombudsman program is consistent with the disclosure limitations set forth in §§ 1324.11(e)(3) and 1324.13(e).

(g) *State and area plans on aging.* The State agency shall integrate the goals and objectives of the Office into the

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State plan and coordinate the goals and objectives of the Office with those of other programs established under Title VII of the Act and other State elder rights, disability rights, and elder justice programs, including, but not limited to, legal assistance programs provided under section 306(a)(2)(C) of the Act (42 U.S.C. 3026(a)(2)(C)), to promote collaborative efforts and diminish duplicative efforts. Where applicable, the State agency shall require inclusion of goals and objectives of local Ombudsman entities into area plans on aging.

(h) *Elder rights leadership.* The State agency shall provide elder rights leadership. In so doing, it shall require the coordination of Ombudsman program services with the activities of other programs authorized by Title VII of the Act, as well as other State and local entities with responsibilities relevant to the health, safety, well-being, or rights of older adults, including residents of long-term care facilities as set forth in § 1324.13(h).

(i) *Interference, retaliation, and reprisals.* The State agency shall:

(1) Ensure that it has mechanisms to prohibit and investigate allegations of interference, retaliation, and reprisals:

(i) By a long-term care facility, other entity, or individual with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the Office; or

(ii) By a long-term care facility, other entity or individual against the Ombudsman or representatives of the Office for fulfillment of the functions, responsibilities, or duties enumerated at §§ 1324.13 and 1324.19; and

(2) Provide for appropriate sanctions with respect to interference, retaliation, and reprisals.

(j) *Legal counsel.* (1) The State agency shall ensure that:

(i) Legal counsel for the Ombudsman program is adequate, available, is without conflict of interest (as defined by the State ethical standards governing the legal profession), and has competencies relevant to the legal needs of:

(A) The program, in order to provide consultation and/or representation as

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needed to assist the Ombudsman and representatives of the Office in the performance of their official functions, responsibilities, and duties, including complaint resolution and systems advocacy. Legal representation, arranged by or with the approval of the Ombudsman, is provided to the Ombudsman or any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of official duties.

(B) Residents, in order to provide consultation and representation as needed for the Ombudsman program to protect the health, safety, welfare, and rights of residents.

(ii) The Ombudsman and representatives of the Office assist residents in seeking administrative, legal, and other appropriate remedies. In so doing, the Ombudsman shall coordinate with the Legal Assistance Developer, legal services providers, and victim assistance services to promote the availability of legal counsel to residents.

(2) Such legal counsel may be provided by one or more entities, depending on the nature of the competencies and services needed and as necessary to avoid conflicts of interest (as defined by the State ethical standards governing the legal profession). At a minimum, the Office shall have access to an attorney knowledgeable about the Federal and State laws protecting the rights of residents and governing long-term care facilities.

(3) Legal representation of the Ombudsman program by the Ombudsman or representative of the Office who is a licensed attorney shall not by itself constitute sufficiently adequate legal counsel.

(4) The communications between the Ombudsman and their legal counsel are subject to attorney-client privilege.

(k) *Fiscal management.* The State agency shall ensure that:

(1) The Ombudsman receives notification of all sources of funds received by the State agency that are allocated or appropriated to the Ombudsman program and provides information on any requirements of the funds, and the Ombudsman is supported in their determination of the use of funds;

(2) The Ombudsman has full authority to determine the use of fiscal resources appropriated or otherwise available for the operation of the Office;

(3) Where local Ombudsman entities are designated, the Ombudsman approves the allocations of Federal and State funds to such entities, prior to any distribution of such funds, subject to applicable Federal and State laws and policies; and

(4) The Ombudsman determines that program budgets and expenditures of the Office and local Ombudsman entities are consistent with laws, policies, and procedures governing the Ombudsman program.

(1) *State agency requirements of the Office.* The State agency shall require the Office to:

(1) Develop and provide final approval of an annual report as set forth in section 712(h)(1) of the Act (42 U.S.C. 3058g(h)(1)) and § 1324.13(g) and as otherwise required by the Assistant Secretary for Aging;

(2) Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the State, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate;

(3) Provide such information as the Office determines to be necessary to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of individuals residing in long-term care facilities; and recommendations related to such problems and concerns;

(4) Establish procedures for the training of the representatives of the Office, as set forth in § 1324.13(c)(2); and

(5) Coordinate Ombudsman program services with entities with responsibilities relevant to the health, safety, welfare, and rights of residents of long-term care facilities, as set forth in § 1324.13(h).

§ 1324.17 Responsibilities of agencies hosting local Ombudsman entities.

(a) The agency in which a local Ombudsman entity is organizationally located shall be responsible for the personnel management, but not the programmatic oversight, of representatives, including employee and volunteer representatives, of the Office.

(b) The agency in which a local Ombudsman entity is organizationally located shall not have personnel policies or practices which prohibit the representatives of the Office from performing the duties, or from adhering to the access, confidentiality, and disclosure requirements of section 712 of the Act (42 U.S.C. 3058g), as implemented through this rule and the policies and procedures of the Office.

(1) Policies, procedures, and practices, including personnel management practices of the host agency, which the Ombudsman determines conflict with the laws or policies governing the Ombudsman program shall be sufficient grounds for the refusal, suspension, or removal of the designation of local Ombudsman entity by the Ombudsman.

(2) Nothing in this provision shall prohibit the host agency from requiring that the representatives of the Office adhere to the personnel policies and procedures of the agency which are otherwise lawful.

§ 1324.19 Duties of the representatives of the Office.

In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity and may designate an employee or volunteer of the local Ombudsman entity as a representative of the Office. Representatives of the Office may also be designated employees or volunteers within the Office.

(a) *Duties.* An individual so designated as a representative of the Office shall, in accordance with the policies and procedures established by the Office and the State agency:

(1) Identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;