STATE OF CONNECTICUT

DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
25 SIGOURNEY STREET • HARTFORD, CONNECTICUT 06106-5033

MEMORANDUM

To: Individuals Who Commented on Regulation 08-06/NS
State Long-Term Care Ombudsman Program

From: Roderick L. Bremby, Commissioner
Department of Social Services
25 Sigourney St.
Hartford, CT 06106

Date: August 8, 2012

Re: Response to Comment on the Proposed Regulation 08-06/NS

The Department of Social Services ("the Department") provides the following responses to public comments received concerning the proposed regulation referenced above. The Notice of Intent for this regulation was published in the Connecticut Law Journal on May 15, 2012. A public hearing was not held. A copy of the regulation with revisions based on public comment is attached. The Department intends on submitting the revised regulation to the Attorney General's Office for review of legal sufficiency by September 1, 2012.

1. Sec. 17b-411-1. Definitions

(a) Sec. 17b-411-1(3)

Comment

The word "service" should be added after "social" and before "agencies" in the last line of the definition of "Complaint."

Response

The omission of the word "service" was an oversight and the regulation has been revised as suggested.

(b) Sec. 17b-411-1

Comment

Section 17b-411-1 should include the definition of "Long-Term Care Facility."

Response

The Department agrees and added the definition of "Long-Term Care Facility" to the regulation as requested.

(c) Sec. 17b-411-1 (11)

Comment

The definition of "Resident" should include the following underlined language:

> "Resident" means "resident" as defined in section 17b-400 of the Connecticut General Statutes, and includes a person who seeks admission or readmission to a long-term care facility.

Response

The Department interprets the word "admission" broadly to encompass all admissions. The regulation will remain as written.

2. Sec. 17b-411-2. Duties of Host Agency

(a) Sec. 17b-411-2 (f) and (j)

Comment

The regulation should contain the full citation to the Older Americans Act.

Response

The regulation has been amended as suggested.

(b) Sec. 17b-411-2 (h)

Comment

The following underlined language should be added to section 17b-411-2 (h):

(h) ensure that a state-wide reporting system is developed and maintained, Including collecting data that relate to complaints and conditions in long-term care facillities and to residents for the purpose of identifying and resolving Significant problems as required by C.G.S.§ 17b-413.

Response

The language of the regulation has been revised to address this concern.

3. Sec. 17b-411-3. Long-Term Care Ombudsman Program. State Ombudsman Qualifications. Regional Ombudsman Qualifications. Volunterr Resident Advocates, Qualifications and Duties.

Sec. 17b-411-3 (a)

Comment

The following underlined language should be added to section 17b-411-3 (a):

The office of the Long-Term Care Ombudsman shall be an independent office; free from conflict of interest as set forth in section 17b-411-13 of the Regulations of Connecticut State Agencies. The position taken by the State Ombudsman on issues affecting residents shall not be dictated or compromised by policies and positions held by the state administration, the host agency or any other agency of the state.

Response

The regulation has been revised to include the suggested language.

4. Sec. 17b-411-4 State Ombudsman Responsibilities and Duties

(a) Sec. 17b-411-4 (b)

Comment

The following language should be deleted from section 17b-411-4 (b):

"The State Ombudsman shall report directly to the commissioner of the host agency in which the program is housed."

Response

The language has been removed from the regulation as suggested.

(b) Sec. 17b-411-4 (d)(7)(C)

Comment

The following underlined language should be included in section 17b-411-4 (d)(7)(C):

> represents the interests of the residents before government agencies, including hearings pursuant to Conn. Gen. Stat. Section 17b-353(d), legislative committees, individual legislators and other individuals, groups or entities where issues that affect resident are addressed.

The intent of the recommended language is to emphasize the important advocacy role that the State Long-Term Care Ombudsman's Office assumes on behalf of residents during nursing home closures.

Response

The language of the regulation has been revised to include representation of the interests of residents at public hearings.

(c) Sec. 17b-411-4 (d)(8)(C)

Comment

The following underlined language should be included in section 17b-411-4 (d)(8)(C):

"coordinating efforts with legal service organizations, bar associations or other organizations to improve resident's access to courts and administrative hearings, and resident's ability to seek legal remedies;"

Response

The regulation has been revised to include the suggested language.

5. Section 17b-411-5. Regional Ombudsman. Duties and Responsibilities.

Comment

The phrase "nursing home" should be deleted from the language of section 17b-411-5 (a)(2)(B). This phrase may be interpreted to limit the jurisdiction of the Office of the Long-Term Care Ombudsman to nursing home facilities, which is inaccurate.

Response

The regulation has been amended as suggested.

6. Section 17b-411-7 Executive Board

(a) Sec. 17b-411-7 (a)

Comment

The Executive Board should be expanded to include, in addition to the Presidents of Resident Councils, representatives from the Area Agencies on Aging; consumers; family members; consumer advocacy groups; consumer representatives; legal services; and long term care providers. Therefore, the title of the Executive Board should be changed from "Executive Board of Statewide Coalition of Presidents of Resident Councils" to "Executive Board of Citzens Coalition for Long Term Care."

Response

The Executive Board established under these regulations is intended to serve a distinct role; as an advocate for quality of care and services for residents of skilled nursing facilities. As such, the membership of the Executive Board is comprised of three resident representatives from each of the three Long-Term Care Ombudsman Program's regions. The regulation will remain as written.

(b) Sec. 17b-411-7 (b)

Comment

The maximum number of members of the Executive Board should be increased from nine members to fifteen members.

Response

The Department believes that nine Executive Board members, three from each of the Long-Term Care Ombudsman Program's three regions, are a sufficient number of resident representatives. Furthermore, the number is consistent with the Executive Committee's current bylaws. The regulation will remain as written.

(c) Sec. 17b-411-7 (d)

Comment

The following underlined language is suggested:

> The Executive Board shall make recommendations to the State Ombudsman on a range of issues in carrying out her duties, including legislative issues, policy issue and quality of care concerns affecting individual, or ggroup of individuals, residing in long-term care facilities, and procedures for identifying and handling conflicts of interest, public education, recruitment of volunteers, additional funding for the agency;

Response

The suggested language goes beyond the scope of the intended purpose of the Executive Board. The regulation will remain as written.

(d) Sec. 17b-411-7 (f)

Comment

Section 17b-411-7 (f) should include language that requires the State Ombudsman or the State Ombudsman's designee to facilitate the attendance of residents at Executive Board meetings. The input of residents is critical and residents with disabilities may require special accomodations in order to attend Executive Board meetings.

Response

The Department recognizes the importance of the attendance of the Executive Board members at the quarterly executive board meetings. The Office of the Long-Term Care Ombudsman makes every effort to ensure the participation of Executive Board members. The Department believes the existining laguage of the regulation, which requires the Ombudsman "facilitate" meetings of the Executive Board, includes making those arrangements necessary for the active participation of the Executive Board's members. The regulation will remain as written.

7. Section 17b-411-12 Investigation of Complaints

(a) Sec. 17b-411-12 (a)(2)

Comment

The investigation of a complaint should be completed within a 30 day time frame. The resident or the resident's legal representative is entilted to a copy of the investigation report and should not be required to request a copy. Requiring a resident to request a copy of the report in writing creates an unnecessary barrier to access the findings of the Office's report.

Response

The Office of the Long-Term Care Ombudsman takes the necessary steps to complete all investigations within a reasonable time frame. The type and complexity of the complaint, however, dictates the amount of time required to complete a proper investigation. Imposing a requirement that all investigations be completed within a thirty-day time frame is unreasonable and may create an unnecessary burden on the Office of the Long-Term Care Ombudsman.

The Department agrees that the resident or the resident's representative is entitled to a copy of the investigation report. The Office of the Long-Term Care Ombudsman does not routinely send out copies of investigation reports to residents or their representatives due to confidentiality concerns. The Office of the Long-Term Care Ombudsman has a duty to maintain the confidentiality of all complaints and records. To ensure that records are not disclosed unintentionally, investigations reports are provided to a resident upon request. The Department disagrees that the need to make a written request for a copy of the investigation report creates and "unnecessary barrier" to accessing such information. However, to facilitate the ability of a resident to make a request, the language of the regulation has been revised to require disclosure of an investigation report to a resident or a resident's representative upon request, orally or in writing.

(b) Sec. 17b-411-12 (a)(4)

Comment

The resident should be provided a written explanation of the decision to close a case without having to request it from the Long-Term Care Ombudsman's Office.

Response

See response to Comment 7 (b).

(c) Sec. 17b-411-12 (b)(1)

Comment

The substance of all interviews should be recorded in writing so there is a full record of the investigation. Therefore, the language of section 17b-411-12 (b)(1) should be amended to require written recordings of all statements by all persons interviewed.

Response

The regulation has been revised to address this concern.

8. Section 17b-411-13 Conflict of Interest

Comment

The following language should be added to section 17b-411-13 of the proposed regulation to ensure that the State Ombudsman and the Regional Ombudsmen are not subject to a potential conflict of interest.

(a) Host Agency: The Host Agency shall not be involved with or influence any decision to suspend, discipline or terminate the State Ombudsman or Regional Ombudsman. No State ombudsman or Regional Ombudsman shall be subject to retalitation for any action taken in the course of its duties. The host agency may establish, by contract or arrangement with another state agency, procedures by which it may propose such suspension , discipline or termination. Any such procedures shall include provision for a hearing, with full due process rights for affected program staff, and an independent decision which shall be binding on the host agency.

Response

The suggested language has been added to the regulation as requested.

9. Section 17b-411-14. Legal Representation

Comment

The following language should be added to section 17b-411-14 of the proposed regulation to provide for independent or outside legal counsel to represent the State Long-Term Care Ombudsman in order to avoid any potential conflict of interest. Currently the State Long-Term Care Ombudsman is represented by the Office of the Attorney General.

NEW (e) Where a conflict of interest exists between the Office, the State Ombudsman or other representative of the Office, and the state administration, the host agency or any other agency of the state, as determined by the State Ombudsman, legal counsel shall be provided to the Long-Term Care Ombudsman program through an independent attorney, who has experience and expertise in long term care related laws and regulations.

Response

An Assistant Attorney General, who does not provide representation to the Department of Social Services, is assigned as counsel for the Long-Term Care Ombudsman's Office. The Department believes that the representation provided to the Long-Term Care Ombudsman's Office by an Assistant Attorney General does not create a conflict of interest and complies with section 712(g) of the Older Americans Act. The regulation will remain as written.

Cc: Nancy Shaffer, LTC Ombudsman
Charlie Hulin, Assistant Attorney General

R-39 REV. 04/04
IMPORTANT:
Read instructions on bottom of Certification Page before completing this form. Failure to comply with instructions may cause disapproval of proposed Regulations.

STATE OF CONNECTICUT
REGULATION
OF

Name of Agency

Department of Social Services

Subject Matter of Regulation

State Long-Term Care Ombudsman's Office[1]

Section 1. Sections 17b-411-1 to 17b-411-14, inclusive, of the Regulations of Connecticut State Agencies shall read as follows:

(NEW) **Sec. 17b-411-1. Definitions**

As used in section 17b-411-1 to section 17b-411-14, inclusive, of the Regulations of Connecticut State Agencies the following definitions shall apply:

(1) "Applicant" has the same meaning as in section 17b-400 of the Connecticut General Statutes;

(2) "Commissioner" means the Commissioner of Social Service or any other state agency responsible for hosting the Long-Term Care Ombudsman's Office;

(3) "Complaint" means an oral or written statement made to or initiated by the program, by or on behalf of a resident or applicant alleging or tending to allege circumstances, conduct, action, lack of action, instances or decisions by or relating to providers, public agencies, health and social service agencies or others that adversely affect the health, safety, welfare or rights of a long-term care facility resident;

(4) "Conflict of interest" means circumstances in which other interests intrude upon, interfere with or threaten to negate the ability of the Long-Term Care Ombudsman Program to advocate without compromise on behalf of long-term care facility residents;

(5) "Department" means the state Department of Social Services;

[1] 8/8/12 Reg sent out with RTC.

(6) "Executive Board" means the Statewide Coalition of Presidents of Resident Councils Executive Board established pursuant to section 17b-411-7 of the Regulations of Connecticut State Agencies;

(7) "Host agency" means the Department of Social Services or any other state agency that statutorily houses the Office of the Long-Term Care Ombudsman;

(8) "Long-Term Care Facility" has the same meaning as provided in section 17b-400 of the Connecticut General Statutes;

(9) "Office" has the same meaning as in section 17b-400 of the Connecticut General Statutes;

(10) "Program" has the same meaning as in section 17b-400 of the Connecticut General Statutes;

(11) "Provider" means an entity or person who provides goods or services to residents, and includes those who own, operate or work for Long-Term care facilities and their agents, employees, representatives and contractors;

(12) "Resident" has the same meaning as in section 17b-400 of the Connecticut General Statutes, and includes a person who seeks admission to a long-term care facility;

(13) "Regional Ombudsman" means a person duly designated by the State Long-Term Care Ombudsman to represent and act on behalf of the program in regions established throughout Connecticut;

(14) "State Long-Term Care Ombudsman" or "State Ombudsman" means the individual appointed by the Commissioner of the Department of Social Services pursuant to section 17b-400 of the Connecticut General Statutes; and

(15) "Volunteer Resident Advocate" or "VRA" means any person duly designated by the State Ombudsman and trained by the program to serve as an advocate for residents through their association with, and on behalf of, the Long-Term Care Ombudsman program.

(NEW) **Sec. 17b-411-2. Duties of Host Agency**

The commissioner of the host agency, or the commissioner's designee, shall perform the following duties:

(a) Establish the Office of the State Long-Term Care Ombudsman;
(b) appoint the State Ombudsman, based on the requirements of section 17b-411-3(c) of the Regulations of Connecticut State Agencies, to serve on a full-time basis;

(c) ensure that policies and procedures governing the program are established by the office;
(d) ensure that representatives of the office have access, in accordance with section 17b-411-9 of the Regulations of Connecticut State Agencies to the following:

(1) Long-Term care facilities and residents;
(2) administrative records, policies and documents of Long-Term care facilities available to the general public;
(3) appropriate access to medical and social records of residents; and
(4) licensing and certification records of Long-Term care facilities maintained by the state;

(e) ensure that adequate legal counsel is available to the office in accordance with section 17b-411-14 of the Regulations of Connecticut State Agencies;
(f) ensure non-interference in the operation of the program in accordance with the Older Americans Act, 42 USC 3058g(j);
(g) ensure that conflict of interest provisions set forth in the regulations are followed;
(h) ensure that a state-wide reporting system is developed and maintained as required by section 17b-413 of the Connecticut General Statutes;
(i) ensure that representatives of the office advocate on behalf of residents in administrative and legislative hearings and other forums by presenting information and testimony;
(j) ensure that the office prepares an annual report that includes policy, regulatory and legislative recommendations for improving the health, welfare, safety and rights of Long-Term care facility residents in compliance with the Older American Act, 42 USC 3058g(h)(1); and
(k) ensure that no representative of the Office shall be liable for the good faith performance of official duties.

(NEW) **Sec. 17b-411-3. Long-Term Care Ombudsman Program. State Ombudsman Qualifications. Regional Ombudsman Qualifications. Volunteer Resident Advocates, Qualifications and Duties.**

(a) The Long-Term Ombudsman Program, established by the Department of Social Services pursuant to section 17b-400(b) of the Connecticut General Statutes shall be known as the "Office of the Long-Term Care Ombudsman." The Office of the Long-Term Care Ombudsman shall be an independent office; free from conflict of interest as set forth in section 17b-411-13 of the Regulations of Connecticut State Agencies. The position taken by the State Ombudsman on issues affecting residents shall not be dictated or compromised by policies and positions held by the state administration, the host agency of the state or any other agency of the state. The Office of the Long-Term Care Ombudsman shall consist of the State Ombudsman, nine Regional Ombudsmen and Volunteer Resident Advocates.

(b) In the event the State Ombudsman is unable to fulfill the duties of the office, the commissioner shall appoint an Acting State Ombudsman. The Acting State Ombudsman shall meet the requirements of subsection (c) of this section.

(c) State Ombudsman. Qualifications. The State Ombudsman appointed by the Commissioner shall:

(1) be free of conflicts of interest as defined in section 17b-411-13 of the Regulations of Connecticut State Agencies;
(2) possess a minimum of a Bachelor's Degree;
(3) possess a minimum of 8 years of experience and expertise in social, human or community service programs for the elderly and disabled involving long-term care and advocacy; and
(4) possess knowledge and experience in the following areas:

(A) Management principles and techniques;
(B) relevant state and federal laws;
(C) relevant department policies and procedures;
(D) resident care and long-term care facility operations;
(E) the problems of the elderly and disabled in long-term care facilities;
(F) community resources available to the elderly;
(G) interpersonal skills;
(H) oral and written communication skills;
(I) ability to perform program planning, development, administration and evaluation;
(J) experience working with volunteers; and
(K) experience with dispute resolution; investigation, mediation, negotiation, problem solving or training in dispute resolution.

(d) Regional Ombudsmen. Qualifications.

(1) There shall be nine Regional Ombudsmen, with one Regional Ombudsman to serve in each service area of the state.
(2) In order to be appointed as a Regional Ombudsman by the State Long-term Care Ombudsman, an individual shall:

(A) Be free of conflicts of interest as defined in section 17b-411-13 of the Regulations of Connecticut State Agencies;
(C) possess a minimum of a Bachelor's degree;
(D) possess a minimum of 6 years experience, 1 year of which shall have been in the provision of advocacy services, and expertise in social, human or community service programs for the elderly and disabled involving Long-Term care and advocacy;
(E) possess knowledge of the following:

(i) problems of the elderly and disabled in Long-Term care facilities;
(iii) relevant state and federal laws; and
(iv) relevant department policies and procedures; and

(F) experience working with volunteers.

(e) Volunteer Resident Advocates. Certification. Qualifications.

(1) The Volunteer Resident Advocates may be certified by the State Ombudsman upon:

(A) The successful completion of the Volunteer Resident Advocate certification training program described in section 17b-411-8 of the Regulations of Connecticut State of Agencies; and
(B) the submission of at least 2 recommendations from former employers, colleagues or non-family members.

(2) The initial certification shall be a 90 day probationary period. If the individual is requested to continue as a VRA after the 90 day probationary period, the designation will be considered permanent and will continue until the VRA provides a written notice of resignation or the VRA's certification is revoked by the State Ombudsman.

(3) VRAs shall demonstrate or meet the following qualifications:

(A) If possible, be a resident of the region in which they will serve;
(B) be at least 18 years of age;
(C) possess good communication and interpersonal skills including knowledge of interviewing techniques, observation, ability to provide the resident with a sense of participation and self-determination;
(D) have the ability to identify and focus on relevant issues;
(E) be impartial and non-judgmental in approach to problems. For example, the individual shall not be biased toward or against facilities or specific aging and disability issues, such as end of life issues;
(F) have the ability to identify the parameters of their role and defer to the Regional Ombudsman or State Ombudsman when appropriate;
(G) be available to visit facility at least once a week, during regular business hours, to receive concerns from residents, families, staff and administration concerning quality of care and welfare of residents;
(H) be able to get to the facility either by car or public transportation;
(I) be physically and mentally capable of fulfilling the responsibilities

of the job;

(J) possess problem solving skills;

(K) possess the ability to clearly and effectively articulate the issues and facts either orally or in writing;

(L) be able to effectively interact with individuals who are physically or mentally incapacitated;

(M) be able to understand the medical, financial and psychosocial problems of aging and disabled;

(N) be able to understand federal and state law and policies as they relate to nursing homes; and

(O) be free of any conflict of interest with the nursing facility to which they are assigned in compliance with section 17b-411-13(b) of the Regulations of Connecticut State Agencies;

(4) VRA's shall serve without compensation but may be reimbursed, within available appropriations, for reasonable expenses incurred in the performance of their duties. A schedule of allowable expenses, reimbursement rates and procedures shall be issued by the State Ombudsman.

(5) A VRA's certification may be revoked and removed from their duties, by written notice by the State Ombudsman, whenever the State Ombudsman finds such VRA fails to meet the requirements of subsection (3) of this section or has committed misconduct, material neglect of duty or incompetence in the conduct of the office. The State Ombudsman shall provide the VRA with at least one verbal notice, followed by one written notice to that effect, at least two weeks prior to the removal notice, unless the VRA's performance is so seriously delinquent that it merits immediate removal.

(NEW) **Sec. 17b-411-4. State Ombudsman Responsibilities and Duties**

(a) In fulfilling the responsibilities and duties of the Office of the State Long-Term Care Ombudsman, the State Ombudsman shall have full independence and authority to advocate without seeking the host agency's approval. The position taken by the State Ombudsman on issues affecting residents shall not be dictated or compromised by policies and positions held by the state administration or the host agency.

(b) The State Ombudsman shall be independent in all actions, but will consult with the commissioner of the host agency, or the commissioner's designee, to ensure coordination of efforts when appropriate.

(c) The State Ombudsman shall direct the Office of the Long-Term Care Ombudsman Program and shall independently manage the administrative, advocacy, budget and program decisions of the Office.

(d) The State Ombudsman, personally or through representatives of the office, shall perform the following duties:

(1) Indentify, investigate, resolve or attempt to resolve complaints by or on behalf of residents;
(2) provide services to protect the health, safety, welfare and rights of residents, including, but not limited to:

(A) Information and referral services; and
(B) education and training for residents, their family members, staff of the Long-Term care facility and the public;

(3) inform residents, family members, Long-Term care facility staff and the public about the Ombudsman program's services, how residents can access those services or how those services can be accessed on behalf of residents;
(4) inform residents or the resident's representative about means of obtaining services provided by providers of Long-Term care services, public agencies and health and social service agencies;
(5) ensure that residents state-wide have regular and timely access to representatives of the office of the Ombudsman through on-site visits by a representative of the office to the facility. The required frequency of resident visits shall be set forth in the policies and procedures manual;
(6) ensure that complainants and residents receive timely responses to complaints and requests for assistance; and
(7) advocate on behalf of residents in the following ways:

(A) Identify problems affecting residents at the facility, local, state or national levels and attempt to resolve those problems;
(B) identify problems in the Long-Term care system and advocate for changes to that system;
(C) represent the interests of residents before government agencies, legislative committees, individual legislators and other individuals, groups or entities where issues that affect residents are addressed including, but not limited to, public hearings;
(D) communicate directly with legislators, policy makers and the media about issues affecting residents and other consumers of Long-Term care;
(E) analyze, comment on, provide public testimony and monitor the development and implementation of proposed existing federal, state or local laws, regulations, government policies and actions that affect residents;

(F) work in coalitions with residents, citizens and advocates on issues affecting residents and other consumers of Long-Term care;
(G) educate residents, their family members and the public about the need for these changes and empowering them to voice their concerns to legislators, policy makers and the media;
(H) facilitate public comment;
(I) provide information regarding problems and concerns to public agencies, private entities, state and federal legislators, the public and the media; and
(J) take any other action determined to be appropriate by the State Ombudsman.

(8) pursue administrative, legal and other remedies on behalf of residents, including, but not limited to:

(A) Presenting testimony to legislative and policy making bodies;
(B) identifying issues that may require legal action and providing information and direction to residents on how to seek legal redress;
(C) assist to coordinate efforts with legal service organizations, bar associations or other organizations to improve resident's access to courts, administrative hearings and resident's ability to seek legal remedies;
(D) explaining the appeals process to residents or their family members, assisting residents or their family members with requesting administrative hearings or assisting in such hearings;
(E) holding public hearings to provide a forum for discussion of the issues affecting residents; and
(F) assisting residents in petitioning local, state and federal government agencies for redress of grievances;

(9) prepare policies and procedures manual setting forth state-wide operational policies and procedures. The State Ombudsman shall have final authority in developing, interpreting and enforcing such policies and procedures;

(10) designate Regional Ombudsmen and certify Volunteer Resident Advocates in accordance with section 17b-411-3 of the Regulations of Connecticut State Agencies and the policies and procedures manual. The State Ombudsman may seek input in the designation process, but has sole and final authority to designate individuals to represent the office;

(11) identify, supervise and direct the activities of the Regional Ombudsmen. The State Ombudsman shall directly oversee the work of the Regional Ombudsmen;

(12) provide or assure the provision of initial and ongoing training for the Regional Ombudsmen and Volunteer Resident Advocates;

(13) provide administrative and technical assistance to the Regional Ombudsmen and Volunteer Resident Advocates;

(14) monitor and evaluate the activities and performance of the Regional Ombudsmen in accordance with section 17b-411-5 of the Regulations of Connecticut State Agencies;

(15) monitor and evaluate, in conjunction with the Regional Ombudsmen, the activities and performance of the Volunteer Resident Advocates in accordance with section 17b-411-6 of the Regulations of Connecticut State Agencies;

(16) request needed program funding directly from the state legislature;

(17) seek and administer grant funds for the office;

(18) promote the development of citizens organizations to participate in the program;

(19) coordinate efforts with other private organizations, advocacy groups and public entities who share the mission and goals of the program to improve the well being of Long-Term care facility residents;

(20) consult with state agencies and programs whose duties and services affect residents including, but not limited to, the Department of Social Services, the Department of Public Health, the Attorney General's Office, Protective Services for the Elderly and the State Unit on Aging;

(21) initiate and support the development and maintenance of resident and family councils;

(22) prepare an annual report in accordance with the Older Americans Act;

(23) ensure that the confidentiality of program records is maintained in accordance with these and other applicable state and federal laws;

(24) identify duties to be performed by Volunteer Resident Advocates;

(25) perform other duties specified in the policies and procedures manual; and

(26) ensure that a state-wide registry of complaints is maintained as required by section 3058g(c) of the Older American's Act.

(e) The State Ombudsman shall have discretion to consult with the Executive Board regarding policy, legislative or advocacy issues. The State Ombudsman may also seek the advice of the Executive Board regarding any other issue the State Ombudsman determines necessary.

(NEW) **Sec.17b-411-5. Regional Ombudsmen. Duties and Responsibilities.**

(a) The Regional Ombudsman shall perform the following duties:

(1) Identify, investigate, resolve or attempt to resolve complaints made by or on behalf of residents that relate to actions, inactions or decisions that may adversely affect the health, safety, welfare or rights of residents. The Regional Ombudsman shall inform the complainant, the resident or the resident's legal representatives of the findings of an investigation or the reasons why a complaint cannot be investigated;

(2) provide services to protect the health, safety, welfare and rights of long-term care facility residents, including, but not limited to:

(A) Information and referral services;

(B) assistance to residents to locate and retain legal representation in those cases in which the problem appears, in the judgment of the Regional Ombudsman or State Ombudsman, to require legal action or when the resident explicitly requests assistance in retaining legal counsel or representation. Such legal counsel will be at the resident's expense; and

(C) education and training for residents, their family members, staff of long term care facilities and the public;

(3) ensure that residents have regular and timely access to representatives of the Ombudsman through frequent on-site visits by a representative of the office to the facility;

(4) respond to complaints and requests for assistance;

(5) support the development and maintenance of resident and family councils and assist in addressing council concerns;

(6) inform residents, their family members, citizens' organizations, the public and Long-Term care facility staff about the Long-Term Care Ombudsman program;

(7) advocate on behalf of residents, at the direction of the State Ombudsman, in the following nonexclusive ways:

(A) Identify problems affecting residents at the facility, local, state or national levels and attempt to resolve those problems;

(B) identify problems in the Long-Term care system and advocate for changes to that system;

(C) represent the interests of residents before government agencies, legislative committees, individual legislators and other individuals, groups or entities where issues that affect residents are addressed;

(D) communicate with legislators, policy makers and the media about issues affecting residents and other consumers of Long-Term care;

(E) assist the State Ombudsman to analyze, comment on, provide public testimony and monitor the development and implementation of proposed or existing federal, state and local laws, regulations, government policies and actions that affect residents; and

(F) provide information regarding the problems and concerns of residents and recommendations for resolving those problems and concerns to:

(i) Public agencies;
(ii) private entities; and
(iii) state and federal legislators;

(8) pursue administrative, legal and other remedies on behalf of individual residents;

(9) in accordance with federal and state laws and regulations, share information related to Long-Term care facilities with the State of Connecticut Department of Public Health;

(10) participate in surveys of Long-Term care facilities conducted by the State of Connecticut Department of Public Health and communicate with Department of Public Health surveyors regarding issues affecting a particular facility;

(11) document and report activities as required by the office;

(12) accept the direction, instruction, guidance and assistance of the State Ombudsman in all program activities;

(13) remain knowledgeable regarding current federal and state laws and regulations relating to issues affecting Long-Term care facility residents; and

(14) carry out other program-related activities that the State Ombudsman determines to be appropriate.

(NEW) **Sec. 17b-411-6. Volunteer Resident Advocate Duties and Responsibilities**

The Volunteer Resident Advocates shall be responsible for the following:

(A) Informing residents of their rights and advocating on their behalf;

(B) aiding to ensure the residents are satisfied with the care and services provided by the Long-Term care facility;

(C) assisting the Regional Ombudsman in carrying out the policies and procedures of the Long-Term Care Ombudsman program in the region or long-term care facility in which the VRA is assigned to serve;

(D) assisting the Regional Ombudsman, and possibly the State Ombudsman, on the evaluation, investigation and resolution of certain complaints which are determined to require such joint action;

(E) reporting, in writing, to the Regional Ombudsman any complaints received and actions taken by the VRA;

(F) when a complaint can be acted on by the VRA in the nursing home facility, the VRA may take action at the direction of the Regional Ombudsman or the State Ombudsman;

(G) at the resident's request, acting as a liaison between the nursing home administrator, other staff, friends or family;

(H) aiding and assisting residents in ensuring that they are satisfied with the management of their financial affairs including, but not limited to, informing them of their rights regarding knowledge of and control of their assets; and

(I) complete a minimum of 12 hours of in-service training each calendar year in accordance with section 17b-411-8 of the Regulations of Connecticut State Agencies.

(NEW) **Sec. 17b-411-7. Executive Board**

(a) There shall be an "Executive Board of Statewide Coalition of Presidents of Resident Councils." The Executive Board shall advocate for quality of care and services for Connecticut skilled nursing facility residents.

(b) The Executive Board shall consist of a maximum of nine members, comprised of three members from each of the three Long-Term Care Ombudsman Program regions. The Executive Board members shall be appointed as provided in the Executive Board's bylaws.

(c) The Executive Board shall have the authority to establish and amend bylaws.

(d) The Executive Board shall make recommendations to the State Ombudsman regarding legislative issues, policy issues and quality of care concerns affecting individuals, or groups of individuals, residing in long-term care facilities;

(e) The State Ombudsman may request the Executive Board make recommendations or advise the State Ombudsman on issues brought to the attention of the Executive Board. The State Ombudsman shall take into consideration the Executive Board's recommendations, but the Executive Board's recommendations shall not be binding. Any final decision shall be that of the State Ombudsman.

(f) The State Ombudsman or the State Ombudsman's designee shall assist to facilitate meetings of the Executive Board, to be held at least quarterly, and provide administrative support.

(NEW) **17b-411-8. Volunteer Resident Advocate Certification and Training Program**

(a) Every person who acts as a VRA is required to complete 28 hours of initial training, consisting of a curriculum developed and coordinated by the State Ombudsman, followed by a minimum of 12 hours per calendar year of in-service training, in addition to an annual training required for all VRAs. The annual training will be developed and coordinated by the Long-Term Care Ombudsman Program.

(b) In-service training topics shall be related to issues affecting Long-Term care residents.

(c) VRAs may meet the in-service training requirement by attending trainings sponsored by the Office of the Long-Term Ombudsman or sponsored by other organizations so long as the training topic is related to issues affecting long-term care residents and the VRA obtains prior approval from the State Ombudsman.

Trainings may be instructor led or web-based.

(d) The specific content of the initial certification training course shall include, but is not limited to, the following topics:

(1) Resident's rights;
(2) Resident Council and Family Council;
(3) resident care plans;
(4) federal, state and local laws, regulations and policy affecting long-term care facility residents, their rights, and the Long-Term Care Ombudsman Program;
(5) oversight agencies, licensure and certification;
(6) legal issues, including but not limited to, conservatorship; power of attorney; and advanced directives;
(7) aging process: physical and mental health;
(8) types of facilities and levels of care;
(9) resident complaints, investigative techniques, complaint resolution techniques and conflict issues;
(10) admission issues, contracts and payer issues;
(11) facility grievance policies and procedures;
(12) systems advocacy; legislation and policy making;
(13) state and federal deficiency ratings and consumer reports; and
(14) the Long-Term Care Ombudsman program's policies and procedures.

(e) A training manual will be provided to each trainee and will contain information including, but not limited to, the topics covered in the initial certification training course as set forth in subsection (d) of this section.

(f) If, in the opinion of the State Ombudsman, a candidate for VRA exhibits an adequate understanding of the role and the responsibilities of the VRA, after the candidate has completed the initial certification training course, the State Ombudsman may certify that person as a VRA.

(g) Reassessment and Recertification of Volunteer Resident Advocates. The Regional Ombudsman shall reassess a VRA's ability to perform the duties associated with the role and responsibilities of a VRA once every two years. The Regional Ombudsman shall annually, in accordance with section 17b-411-3 of the Regulations of Connecticut State Agencies, ensure that the VRA is free of any conflict of interest. The Regional Ombudsman shall make a recommendation regarding recertification of the individual to the State Ombudsman.

(NEW) **17b-411-9. Access to Facilities, Residents and Resident Records.**

(a) Access to the Facility and Residents. The State Ombudsman or the State Ombudsman's designee shall have access to Long-Term care facilities and residents at any time deemed reasonable and necessary to effectively carry out the duties of the Long-Term Care Ombudsman program as set forth in federal law and sections 17b-411-1 through 17b-411-14, inclusive, of the Regulations of Connecticut State Agencies.

(1) Access to Long-Term care facilities and residents shall be deemed reasonable and necessary at the following times:

(A) anytime during a facility's regular business hours; or

(B) any other time access may be required by a particular condition to be investigated or monitored and the visit is approved by the State Ombudsman or the State Ombudsman's designee.

(2) The State Ombudsman or the State Ombudsman's designee shall make announced and unannounced visits to residents of a facility.

(3) Upon entering the facility, or as soon as practicable thereafter, all representatives of the Ombudsman Program shall report their presence to the facility administration or staff in charge and, upon request, present identification as a representative of the Ombudsman Program.

(4) The Ombudsman shall have private access to residents without willful interference from the facility or the resident's representative, including a guardian, family member, power of attorney or conservator.

(b) Access to Resident Records. The State Ombudsman or the State Ombudsman's designee shall have prompt access to a resident's records if the Ombudsman or the Ombudsman's designee, has permission of the resident or the legal representative of the resident. The State Ombudsman or the State Ombudsman's designee shall have access to a resident's records if the person is unable to consent and has no legal representative, or the legal representative refuses to provide consent, and the Ombudsman has reasonable cause to believe that the legal representative is not acting in the resident's best interest and the State Ombudsman designee obtains approval from the State Ombudsman. The State Ombudsman or the State Ombudsman's designee, shall have access to, but not limited to, the following resident records:

(1) Medical and social records of the resident;
(2) other records of a resident necessary to investigate a complaint;

(3) administrative records, policies and documents of the Long-Term care facility which residents and the general public also have access to; and
(4) all licensing and certification records maintained with the state.

(NEW) **17b-411-10. Confidentiality and Disclosure.**

(a) For purposes of this section, the terms "records" or "files" mean all documentation including, but not limited to, complaints, reports, findings, medical and social records of residents or information accessed or collected to conduct an investigation of a complaint.

(b) Maintenance of Records. The Long-Term Care Ombudsman Program records shall be maintained in locked files to ensure confidentiality. Measures shall be implemented by the host agency and the local ombudsman entity to ensure the privacy of the Regional Ombudsman and State Ombudsman with respect to the receipt of complaints by mail, fax or telephone.

(c) Confidentiality. All records and files maintained by the Long-Term Care Ombudsman Program shall remain confidential.

(d) Disclosure. Subject to subsection (e) of this section, records maintained by the Long-Term Ombudsman Program may not be disclosed to any individual or entity unless the State Ombudsman authorizes the disclosure. The State Ombudsman or the person designated by the State Ombudsman may, at their discretion, disclose information to other persons or agencies when the Ombudsman determines that such release is in the best interest of the resident or resident population.

(e) The State Ombudsman, or any representative of the Long-Term Care Ombudsman Program, shall not release the identity of a complainant or a resident, either by name or by release of sufficient facts to allow the identity of the complainant or resident to be inferred, unless:
    (1) The complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure in writing; or
    (2) a court orders the disclosure in the course of a legal proceeding.

(f) Requests for Disclosure. Requests by the parties involved in a complaint to review the report of findings shall be made in writing to the State Ombudsman.

    (1) No records, required by state or federal law to be kept confidential, shall be released to any party except with the written consent of the resident or the resident's legal representative.

(2) Upon receipt of authorization or release the Long-Term Care Ombudsman's Office shall have ten days to provide the requested documentation.

(3) Materials, reports, records or other information utilized by the Volunteer Resident Advocate, Regional Ombudsman or State Ombudsman in the investigation of the complaint or report and used to prepare a report of findings shall not be considered public information and shall, therefore, not be available for review.

(NEW) **17b-411-11. Complaints**

(a) The Long-Term Care Ombudsman's Office shall identify, investigate and resolve complaints made by, or on behalf of, residents that relate to an action, inaction or decision of a provider, long-term care facility, a public agency or a health and social service agency, that may adversely affect the health, safety, welfare or rights of residents.

(b) Content of Complaint. Any complaint filed with the Long-Term Care Ombudsman's Office under these regulations shall contain the name and address of the long-term care facility, the name of the involved resident or residents or the statement that all the residents are affected, information regarding the nature and extent of the complaint and any other information which the reporter believes might be helpful in the investigation of the complaint.

(c) Method of Filing Complaints.

(1) A complaint may be filed with the Long-Term Care Ombudsman Office or the VRA assigned to the resident's facility in person, by mail, facsimile, electronic mail or by telephone.

(2) For information or for filing of complaints with the State Ombudsman, persons may contact the Long-Term Care Ombudsman's Office. A toll free number will be available and the number shall be conspicuously posted in each facility.

(d) A complaint filed by an individual who chooses not to disclose his or her identity shall be considered an anonymous complaint. Anonymous complaints shall be reviewed by the State Ombudsman or the State Ombudsman's designee. An investigation shall be done only if the State Ombudsman or the State Ombudsman's designee considers the nature of the complaint to be of such seriousness as to warrant follow-up.

(e) The State Ombudsman shall maintain a registry of all complaints.

(f) A complaint filed by a resident with the Long-Term Care Ombudsman's Office may be withdrawn by the resident at any time. Any request for withdrawal of a complaint, where the complainant is an individual other than the resident, will be withdrawn only after consultation with the resident. If the resident wishes to proceed with an investigation, the Long-Term Care Ombudsman's Office will proceed with the investigation on behalf of the resident. Requests for withdrawals shall be documented in the resident's case record. The complainant shall be advised, at the time the withdrawal, of the consequences of the withdrawal and that a complaint may be reopened if requested.

(NEW) **17b-411-12. Investigation of Complaints**

(a) Initial Evaluation of Complaints.

(1) Upon receipt of a complaint by a representative of the Long-Term Care Ombudsman's Office the complaint shall be evaluated within two working days by either the VRA or the Regional Ombudsman, to determine whether there are reasonable grounds for an investigation. If there is reason to believe, based on the information contained in the complaint received, that the resident is potentially at risk for immediate physical or emotional harm the evaluation will be done immediately. Examples of immediate risk of physical or emotional harm include, but are not limited to, allegations of physical endangerment or withholding of medication, nutrition or hydration. In cases where the complaint is received directly by the State Ombudsman or there is a question regarding whether the resident is potentially at risk for immediate physical or emotional harm, the evaluation may be done by the State Ombudsman.

(2) If such reasonable grounds are found, a representative of the Long-Term Care Ombudsman's Office shall initiate a full investigation of the complaint within ten business days after the determination is made that an investigation is warranted. A copy of the investigation report shall be sent to the State Ombudsman who shall maintain a registry of investigation reports. A copy of the investigation report may be sent to the resident or the resident's legal representative upon request. The State Ombudsman shall not disclose the identity or identifying information regarding another resident or the complainant if the complainant is someone other than the resident.

(3) If it is determined that reasonable grounds do not exist for an investigation, the complainant shall be notified of this determination within five business days after receipt of the complaint. The notification will include a brief explanation of the reasons upon which the Long-Term Care Ombudsman's representative concluded that an investigation was not warranted.

(4) If it is determined that reasonable grounds do exist, and an investigation is completed and the Long-Term Care Ombudsman's Office has taken actions to

attempt to resolve the complaint, but the complaint is not resolved to the satisfaction of the resident, the State Ombudsman may, with the authorization of the resident, request the advice or recommendations of the Executive Board. The State Ombudsman may, considering the advice or recommendations of the Executive Board, take any recommended actions or close the case. The State Ombudsman shall provide upon request, a written explanation to the individual regarding the decision to close a case.

(b) Investigation of Complaint. Access to Facility and Records.

(1) The appropriate representative of the Long-Term Care Ombudsman's Office shall conduct an impartial investigation of the complaint. The representative may, with the permission of the resident or the resident's legal representative, speak with the administrator of the facility and any other persons who may be a source of information. Other persons may include, but are not limited to, the friends and family of the resident involved, and if there is a specific resident involved, the staff of the facility, representatives from involved or relevant public and private agencies or the legal representative of the resident. The representatives of the Long-Term Care Ombudsman's Office shall make written recordings of all statements by all persons being interviewed.

(2) In the course of an investigation any representative of the Long-Term Care Ombudsman's Office may observe the functioning of the entire facility and may interview residents at random. Except when the facts warrant immediate action, investigations shall be carried out at reasonable times and without interference with resident care.

(3) Nothing in these regulations will be construed as permitting a nursing home, a representative of the Long-Term Care Ombudsman's Office or any other person, to interfere with the proper medical treatment of any resident.

(c) Confidentiality of Complaints

(1) Complaints are not deemed public record and are not subject to the provisions of section 1-201 of the Connecticut General Statutes. Information derived from complaints may be disclosed by the State Ombudsman, however, in no case shall the name of the resident or the complainant be disclosed as provided in section 17b-411-10(e) of the Regulations of Connecticut State Agencies.

(2) A report of the findings of the investigation may be available for review by the parties involved in the complaint with the written authorization of the resident or the resident's legal representative. However, the actual complaint filed by the complainant shall not be available for review.

(3) The name of the complainant or any person or any identifying information mentioned in the complaint or in the investigation report shall not be disclosed

except in accordance with section 17b-411-10(e) of the Regulations of Connecticut State Agencies.

(NEW) **17b-411-13. Conflict of Interest**

(a) The Host Agency shall not be involved with or influence any decision to suspend, discipline or terminate the State Ombudsman or Regional Ombudsman. No State Ombudsman or Regional Ombudsman shall be subject to retalitation for any action taken in the course of its duties. The host agency may establish, by contract or arrangement with another state agency, procedures by which it may propose such suspension, discipline or termination. The state agency contracted will investigate and determine whether the State Ombudsman or Regional Ombudsman's alleged action or inaction warrants suspension, discipline or termination and make a recommendation to the host agency.

(b) State Ombudsman. Any individual who has the following conflicts of interest, or any individual who has an immediate family member with the following conflicts of interest, shall not be appointed as the State Ombudsman:

(1) Direct involvement in the licensing or certification of Long-Term care facilities or a provider of Long-Term care services;
(2) ownership or investment interest in a Long-Term care facility or a Long-Term care service;
(3) employed by, or participating in the management of, a Long-Term care facility;
(4) receives, or has the right to receive, directly or indirectly, remuneration under a compensation arrangement with an owner or operator of a Long-Term care facility; or
(5) membership in a trade association for Long-Term care facilities.

(c) Regional Ombudsmen and Volunteer Resident Advocates. To be designated as a Regional Ombudsman or a VRA, an individual shall be free from the following conflicts of interest:

(1) Ownership or investment interest in a Long-Term care facility or Long-Term care service;
(2) serve as a Regional Ombudsman or VRA in a Long-Term care facility in which the individual was employed at least one year prior to the date of designation;
(3) serve as a Regional Ombudsman or VRA in a Long-Term care facility in which the individual or a member of the individual's family resides or is employed;

(4) direct involvement in the licensing or certification of a Long-Term care facility or a provider of Long-Term care services;
(5) current employment in, contractual arrangement with, or participation in the management of, a Long-Term care facility;
(6) membership in a trade association for Long-Term care facilities;
(7) supervise any state of Connecticut agency program that may come in conflict with the philosophy, goals and the objectives of the ombudsman program as determined by the State Ombudsman;
(8) serve in a leadership role in a community or professional organization that may come in conflict with the philosophy, goals and the objectives of the Ombudsman program as determined by the State Ombudsman;
(9) perform duties or provide services, other than those required of the individual's designation, that are in conflict with, or that may create conflict with the representative's duties as determined by the State Ombudsman. This may include, but is not limited to, case management services, pre-admission screening, guardianship services or duties; or
(10) serve as one of the following: (a) a witness to any legal document; (2) a resident's legal representative; or (3) a member of the Long-Term care facility's ethics committee which makes medical decisions for residents.

(d) Conflict of Interest Screening Tool. The host agency in consultation with the State Ombudsman shall develop a screening tool for conflicts of interest. The screening tool shall be used at the time of initial designation and at least annually thereafter.

(1) The host agency shall screen the acting State Ombudsman or any applicant for appointment to State Ombudsman for potential conflicts of interest.
(2) The State Ombudsman shall screen for potential conflicts of interest for any Regional Ombudsman or applicant for designation as a Regional Ombudsman.
(3) The State Ombudsman shall, in consultation with the Regional Ombudsman, screen new applicants for VRA designation for potential conflicts of interest. Subsequent annual screenings of VRAs shall be done by the Regional Ombudsman.

(e) Resolving Conflicts of Interest

(1) Whenever a conflict of interest involves the State Ombudsman the following rules apply:

(A) A State Ombudsman who has knowledge of a conflict of interest shall immediately disclose the conflict of interest to the commissioner.

(B) The commissioner and the State Ombudsman shall determine and agree, in writing, of the method and deadline for removing or otherwise resolving the conflict of interest.
(C) Failure of the State Ombudsman and the commissioner to arrive at a written agreement shall be a reason to terminate the State Ombudsman.
(D) Failure of the State Ombudsman to comply with the terms of the written agreement shall result in termination of the appointment of the State Ombudsman.
(E) An applicant for appointment as State Ombudsman who fails to comply with the terms of the written agreement shall not be appointed.

(2) Whenever a conflict of interest, involving a Regional Ombudsman or a VRA, is identified by or reported to the State Ombudsman, the following rules shall apply:

(A) A Regional Ombudsman or a VRA who has knowledge of a conflict of interest, shall immediately disclose the conflict of interest to the State Ombudsman.

(B) The State Ombudsman, the Regional Ombudsman or VRA shall agree in writing, within a reasonable amount of time after the conflict is identified, on the method and deadline for resolving the conflict of interest.

(C) Failure to arrive at a written agreement shall be grounds for the State Ombudsman to deny designation or redesignation.

(D) An acting Regional Ombudsman or VRA shall lose their designation if they fail to comply with the terms of the agreement within timeframe specified in the agreement. An applicant for designation as a Regional Ombudsman or VRA that fails to comply with the agreed upon terms before the anticipated date of designation shall not be designated.

(E) Any individual applying for designation has the duty to disclose any known conflicts of interest at the time of application for designation.

(NEW) **17b-411-14. Legal Representation**

The host agency shall ensure that adequate legal counsel is available, and is able, without conflict of interest, to:

(a) Provide advice and consultation needed to protect the health, safety, welfare and rights of residents;
(b) pursue administrative, legal and other remedies on behalf of residents;
(c) assist representatives of the state office in the performance of their duties; and
(d) provide legal representation to any representative of the state office, including the ombudsmen, against whom legal action is threatened or brought in connection with performance of their duties.

Section 2. Sections 17-136d-1 to 17-136d-5, inclusive, of the Regulations of Connecticut State Agencies, are repealed.