R-39 Rev. 03/2012
(Title page)

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State of Connecticut
REGULATION
of

NAME OF AGENCY

Department of Social Services

Concerning

SUBJECT MATTER OF REGULATION

State Long-Term Care Ombudsman's Office

Section 1. The Regulations of Connecticut State Agencies are amended by adding sections 17b-411-1 to 17b-411-14, inclusive, as follows:

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

As used in sections 17b-411-1 to 17b-411-14, inclusive, of the Regulations of Connecticut State Agencies:

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

(2) "Commissioner" means the Commissioner of the Department on Aging or of 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 on Aging;

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

(7) "Host agency" means the Department on Aging 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 provided in section 17b-400 of the Connecticut General Statutes;

(10) "Program" has the same meaning as provided in section 17b-400 of the Connecticut General Statutes, unless the context otherwise requires;

(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 provided 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; 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 the VRA's 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:

(1) Establish the Office of the State Long-Term Care Ombudsman;
(2) 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;
(3) ensure that policies and procedures governing the program are established by the office;
(4) 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:

(A) Long-term care facilities and residents;
(B) administrative records, policies and documents of long-term care facilities available to the general public;
(C) appropriate access to medical and social records of residents; and
(D) licensing and certification records of long-term care facilities maintained by the state;

(5) ensure that adequate legal counsel is available to the office in accordance with section 17b-411-14 of the Regulations of Connecticut State Agencies;

(6) ensure non-interference in the operation of the program in accordance with the Older Americans Act, 42 USC 3058g(j);
(7) ensure that conflict of interest provisions set forth in section 17b-411-13 of the regulations of Connecticut State Agencies are followed;
(8) ensure that a state-wide reporting system is developed and maintained as required by section 17b-413 of the Connecticut General Statutes;
(9) ensure that representatives of the office advocate on behalf of residents in administrative and legislative hearings and other forums by presenting information and testimony;

(10) 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
(11) 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 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;
(B) possess a minimum of a bachelor's degree;
(C) 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;

(D) 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

(E) experience working with volunteers.

(e) **Volunteer Resident Advocates. Certification. Qualifications.**

(1) The State Ombudsman may certify the Volunteer Resident Advocates 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 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 shall be considered permanent and shall 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 shall 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 a Regional Ombudsman or State Ombudsman when appropriate;
(G) be available to visit the long-term care 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 long-term care 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 individuals;
(N) be able to understand federal and state law and policies as they relate to long-term care facilities; and
(O) be free of any conflict of interest with the long-term care facility to which they are assigned in compliance with section 17b-411-13(c) of the Regulations of Connecticut State Agencies;

(4) VRAs 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) The State Ombudsman may revoke a VRA's certification and remove the VRA from duty by written notice whenever the State Ombudsman finds such VRA 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 of the revocation of the VRAs certification. The verbal notice shall be followed by one written notice, provided to the VRA at least two weeks prior to the date on which the VRAs certification will be revoked. The written notice shall include a statement that provides the basis for the removal of the VRA's certification. Written notice may be waived if 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 shall 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) Identify, investigate, resolve or attempt to resolve complaints made 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 from long-term care service providers, 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 such visits shall be set forth in the office's policies and procedures manual;
(6) ensure that complainants and residents receive timely responses to complaints and requests for assistance;
(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 or 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) assisting to coordinate efforts with legal service organizations, bar associations or other organizations to improve residents access to courts, administrative hearings and residents 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 the office's 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 a Regional Ombudsmen and certify Volunteer Resident Advocates in accordance with section 17b-411-3 of the Regulations of Connecticut State Agencies and the office's 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, oversee, supervise and direct the activities of Regional Ombudsmen;

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

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

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

(15) monitor and evaluate, in conjunction with 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 citizen 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 on Aging; the Department of Social Services, the Department of Public Health, the Office of the Attorney General, state's Protective Services for the Elderly and the state's 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 17b-411-10of the Regulations of Connecticut State Agencies 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 the Older American's Act, 42 USC 3058g(c).

(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) Regional Ombudsmen 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. Regional Ombudsmen 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;

(A) assistance to residents to locate and retain legal representation in those cases in which the problem appears, in the judgment of a 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 shall be at the resident's expense; and

(B) 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, citizen 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:

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

(2) aiding to ensure the residents are satisfied with the care and services provided by the long-term care facility;

(3) assisting Regional Ombudsmen 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;

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

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

(6) when a complaint can be acted on by the VRA in the long-term care facility, the VRA may take action at the direction of Regional Ombudsmen or the State Ombudsman;

(7) at the resident's request, acting as a liaison between the long-term care facility administrator, other staff, friends or family;

(8) aiding and assisting residents in ensuring that residents 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

(9) completing 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 the Statewide Coalition of Presidents of Resident Councils." The Executive Board shall advocate for quality of care and services for Connecticut long-term care 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 that the Executive Board make recommendations or advise the State Ombudsman on issues brought to the attention of the Executive Board. The Executive Board's recommendations shall be taken into consideration by the State Ombudsman, 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 to the Executive Board.

(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 shall 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 Care 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 Councils and Family Councils;
(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 shall be provided to each trainee and shall 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 a VRA, after the candidate has completed the initial certification training course, the State Ombudsman may certify that person as a VRA.

(g) At the expiration of each two year certification period, the Regional Ombudsmen shall reassess a VRA's ability to perform the duties associated with the role and responsibilities of a VRA and make a recommendation to the State Ombudsman regarding the recertification of the individual as a VRA.

(h) Regional Ombudsmen shall annually, in accordance with section 17b-411-13 of the Regulations of Connecticut State Agencies, ensure that the VRA is free of any conflict of

interest.

(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 State Ombudsman or the State Ombudsman's designee shall have private access to residents without willful interference from the facility or the resident's representative, including a guardian, family member, person holding 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 State Ombudsman or the State Ombudsman's designee 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 the following resident records including, but not limited to:

(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 a secure location to ensure confidentiality. Measures shall be implemented by the host agency and the local ombudsman entity to ensure the privacy of Regional Ombudsmen 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, unless otherwise provided under state or federal law.

(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 Ombudsmen 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 a 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 shall 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, may be withdrawn only after consultation with the resident. If the resident wishes to proceed with an investigation, the Long-Term Care Ombudsman's Office shall 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 a 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 shall 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 shall 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 shall be construed as permitting a long-term care facility, 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 filed pursuant to section 17b-407 of the Connecticut General Statutes 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) **Matters of Discipline, Suspension or Termination**. Pursuant to 17b-400(c) of the Connecticut General Statutes, the State Ombudsman and Regional Ombudsmen are classified service positions. Matters of discipline, suspension or termination of the State Ombudsman or Regional Ombudsmen by the host agency shall be governed by state laws that apply to such classified service positions.

(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 resident's legal representative; or
(B) 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 when an individual is initially designated a Regional Ombudsman or VRA 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 Regional Ombudsmen, screen new applicants for VRA designation for potential conflicts of interest. Subsequent annual screenings of VRAs shall be done by Regional Ombudsmen.

(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, on 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, a 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 as a Regional Ombudsman or VRA.

(D) An acting Regional Ombudsman or VRA shall lose the designation if the individual fails to comply with the terms of the agreement within the 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:

(1) Provide advice and consultation needed to protect the health, safety, welfare and rights of residents;
(2) pursue administrative, legal and other remedies on behalf of residents;
(3) assist representatives of the state office in the performance of their duties; and

(4) 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.

Statement of Purpose

Pursuant to CGS Section 4-170(b)(3), "Each proposed regulation shall have a statement of its purpose following the final section of the regulation." Enter the statement here.

Statement of Purpose: The purpose of the regulation is to adopt new sections 17b-411-1 to 17b-411-6, inclusive of the Regulations of Connecticut State Agencies and repeal sections 17-136d-1 to 17-136d-5, inclusive, of the Regulations of Connecticut State Agencies. The proposed regulation updates the regulation for the Long-Term Care Ombudsman Program and bring the program into compliance with the Older Americans Act, 42 USC §3058g, and sections 17b-400 to 17b-1-406, inclusive, of the Connecticut General Statutes. In addition, the regulation makes technical corrections to comply with Public Act 12-1 of the June 12 Special Session.

The issues that the regulations propose to address include; (1) An outline of the responsibilities of the State Ombudsman and Regional Ombudsmen; (2) define the organization of the program within the Department on Aging; (3) set forth the program's advocacy role for long-term care residents; (4) the requirements for training and the curriculum for Volunteer Resident Advocates; (5) establish conflict of interest guidelines; (6) prohibits long-term care facilities from interfering with contacts between residents and program representatives; and (7) amends references to the "Department of Social Services" to the "Department on Aging."

The main provisions of the regulation provide: (1) Definitions; (2) organization and administration of program; (3) program requirements; (4) establishment of a course of training for volunteer resident advocates; (5) conflict of interest guidelines; and (6) prohibits interference of long-term care facilities between residents and program representatives.

R-39 Rev. 03/2012
(Certification page—see Instructions on back)

CERTIFICATION

This certification statement must be completed in full, including items 3 and 4, if they are applicable.

1) **I hereby certify that the above** *(check one)* ☒ Regulations ☐ Emergency Regulations

2) **are** *(check all that apply)* ☒ adopted ☐ amended ☒ repealed **by this agency pursuant to the following authority(ies):** *(complete all that apply)*

   a. *Connecticut General Statutes* section(s) 17b-411.

   b. Public Act Number(s) _____.
   (Provide public act number(s) if the act has not yet been codified in the Connecticut General Statutes.)

3) **And I further certify that notice of intent to adopt, amend or repeal said regulations was published in the *Connecticut Law Journal* on** 5/15/12;
(Insert date of notice publication if publication was required by CGS Section 4-168.)

4) **And that a public hearing regarding the proposed regulations was held on** _____;
(Insert date(s) of public hearing(s) held pursuant to CGS Section 4-168(a)(7), if any, or pursuant to other applicable statute.)

5) **And that said regulations are EFFECTIVE** *(check one, and complete as applicable)*
   ☒ When filed with the Secretary of the State

   OR ☒ on *(insert date)* 1/1/13

DATE	SIGNED *(Head of Board, Agency or Commission)*	OFFICIAL TITLE, DULY AUTHORIZED
12/27/2012		Commissioner

*APPROVED by the **Attorney General** as to legal sufficiency in accordance with CGS Section 4-169, as amended*

DATE	SIGNED *(Attorney General or AG's designated representative)*	OFFICIAL TITLE, DULY AUTHORIZED
1/3/13	Joseph Rubin	ASSOCIATE ATTORNEY GENERAL

*Proposed regulations are **DEEMED APPROVED** by the Attorney General in accordance with CGS Section 4-169, as amended, if the attorney General fails to give notice to the agency of any legal insufficiency within thirty (30) days of the receipt of the proposed regulation.*

(For Regulation Review Committee Use ONLY)

☐ Approved ☐ Rejected without prejudice

☐ Approved with technical corrections ☐ Disapproved in part, *(Indicate Section Numbers disapproved only)*

☐ Deemed approved pursuant to CGS Section 4-170(c)

By the Legislative Regulation Review Committee in accordance with CGS Section 4-170, as amended	DATE	SIGNED *(Administrator, Legislative Regulation Review Committee)*

Two certified copies received and filed and one such copy forwarded to the Commission on Official Legal Publications in accordance with CGS Section 4-172, as amended.

DATE	SIGNED *(Secretary of the State)*	BY

(For Secretary of the State Use ONLY)

GENERAL INSTRUCTIONS

1. All regulations proposed for adoption, amendment or repeal, *except* emergency regulations, must be presented to the Attorney General for his/her determination of legal sufficiency. (See CGS Section 4-169.)

2. After approval by the Attorney General, the original and one electronic copy (in Word format) of all regulations proposed for adoption, amendment or repeal must be presented to the Legislative Regulation Review Committee for its action. (See CGS Sections 4-168 and 4-170 as amended by Public Act 11-150, Sections 18 and 19.)

3. Each proposed regulation section must include the appropriate regulation section number and a section heading. (See CGS Section 4-172.)

4. New language added to an existing regulation must be in underlining or CAPITAL LETTERS, as determined by the Regulation Review Committee. (See CGS 4-170(b).)

5. Existing language to be deleted must be enclosed in brackets [ ]. (See CGS 4-170(b).)

6. A completely new regulation or a new section of an existing regulation must be preceded by the word "(NEW)" in capital letters. (See CGS Section 4-170(b).)

7. The proposed regulation must have a statement of its purpose following the final section of the regulation. (See CGS Section 4-170(b).)

8. The Certification Statement portion of the form must be completed, including all applicable information regarding *Connecticut Law Journal* notice publication date(s) and public hearing(s). (See more specific instructions below.)

9. Additional information regarding rules and procedures of the Legislative Regulation Review Committee can be found on the Committee's web site: http://www.cga.ct.gov/rr/ .

10. A copy of the Legislative Commissioners' Regulations Drafting Manual is located on the LCO website at http://www.cga.ct.gov/lco/pdfs/Regulations_Drafting_Manual.pdf.

CERTIFICATION STATEMENT INSTRUCTIONS

(Numbers below correspond to the numbered sections of the statement)

1. Indicate whether the regulation is a regular or an emergency regulation adopted under the provisions of CGS Section 4-168(f).

2. a) Indicate whether the regulations contains newly adopted sections, amendments to existing sections, and/or repeals existing sections. Check all cases that apply.

   b) Indicate the specific legal authority that authorizes or requires adoption, amendment or repeal of the regulation. If the relevant public act has been codified in the most current biennial edition of the *Connecticut General Statutes*, indicate the relevant statute number(s) instead of the public act number. If the public act has not yet been codified, indicate the relevant public act number.

3. Except for emergency regulations adopted under CGS 4-168(f), and technical amendments to an existing regulation adopted under CGS 4-168(g), an agency must publish notice of its intent to adopt a regulation in the *Connecticut Law Journal*. Enter the date of notice publication.

4. CGS Section 4-168(a)(7) prescribes requirements for the holding of an agency public hearing regarding proposed regulations. Enter the date(s) of the hearing(s) held under that section, if any; also enter the date(s) of any hearing(s) the agency was required to hold under the provisions of any other law.

5. As applicable, enter the effective date of the regulation here, or indicate that it is effective upon filing with the Secretary of the State. Please note the information below.

   Regulations are effective upon filing with the Secretary of the State or at a later specified date. See CGS Section 4-172(b) which provides that each regulation is effective upon filing, or, if a later date is required by statute or specified in the regulation, the later date is the effective date. An effective date may not precede the effective date of the public act requiring or permitting the regulation. Emergency regulations are effective immediately upon filing with the Secretary of the State, or at a stated date less than twenty days thereafter.