

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(Amendment)

910 KAR 1:210. Kentucky Long-term Care Ombudsman Program.

RELATES TO: KRS 205.201, 209.030(5), (7), 216.510(1), 216.535, 216.540-216.543, 439.3401, 42 U.S.C. 3001 et seq. 35, 3027(a)(12)(C), 45 C.F.R. 1324 Subpart A

STATUTORY AUTHORITY: KRS 194A.050, 205.204

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3001 et seq. 35, the Older Americans Act of 1965, as amended, requires states to establish and operate, either directly or by contract, a long-term care ombudsman program to protect the rights of older individuals. KRS 194A.050 requires the secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law. KRS 205.204 designates the Cabinet for Health and Family Services as the state agency to administer the Older Americans Act of 1965, as amended, in Kentucky. This administrative regulation establishes a statewide long-term care ombudsman program.

Section 1. Definitions.

(1) "Access" means the right to enter a long-term care facility, meet with the residents, and review the records of a resident including the name and contact information of the resident representative.

(2) "Active" means program staff and volunteers actively participating in the program by performing program activities or cases at least quarterly.

(3) "Administrator" means any person charged with the general administration or supervision of a long-term care facility without regard to whether the person has an ownership interest in the facility or to whether the person's functions and duties are shared with one (1) or more other persons.

(4) "Advisory council member" means a non-certified volunteer who serves on the ombudsman advisory council to advise and support the program.

(5) ~~[(3)]~~ "Case" means each inquiry brought to, or initiated by, the ombudsman on behalf of a resident or group of residents involving one (1) or more complaints and includes an ombudsman investigation or strategy to resolve and follow-up.

(6) ~~[(4)]~~ "Certification" means the official notification by the Kentucky long-term care ombudsman that local long-term care ombudsman individual staff are qualified and acceptable to function in that capacity.

(7) ~~[(5)]~~ "Complaint" means an allegation filed by residents or on behalf of residents relating to the health, safety, welfare, and rights of a resident.

(8) ~~[(6)]~~ "Complaint resolution" means either corrective action taken in regard to an allegation or a determination as to the validity of the allegation.

~~[(7)] ["Complaint verification" means a determination through investigative means that allegations relating to the health, safety, welfare, and rights of a patient are generally accurate.]~~

(9) ~~[(8)]~~ "DAIL" means the Department for Aging and Independent Living.

(10) ~~[(9)]~~ "Designation" means formal notification by the Kentucky long-term care ombudsman that a district program meets requirements and shall be considered a subdivision of the state office.

(11) ~~[(10)]~~ "Designee" means an individual who is chosen to act on behalf of the KLTCO and who meets the same qualifications as the KLTCO pursuant to Section 8 of this administrative regulation.

(12) ~~((11))~~ "District ombudsman" means that individual certified by the Kentucky long-term care ombudsman to implement the ombudsman provisions of the approved contract agency plan.

(13) ~~((12))~~ "Educational or experiential equivalent" means:

- (a) Two (2) semesters totaling at least twenty-four (24) hours of course work; and
- (b) At least 400 documented hours of experience assisting aging or disabled individuals through:
 - 1. Practicum placement;
 - 2. Clinicals; or
 - 3. Volunteerism.

(14) ~~((13))~~ "Evaluation" means periodic analysis and review conducted by the Kentucky long-term care ombudsman of district, regional, and state ombudsman programs, including quality assurance and outcome measures pertaining to individual and programmatic performance.

(15) ~~((14))~~ "Friendly visitor" means a trained non-certified volunteer who visits residents in long-term care facilities to assist the district long-term care ombudsman program.

(16) ~~((15))~~ "Investigation" means the formal response by a long-term care ombudsman to complaints of issues involving the health, safety, welfare, and rights of a resident.

(17) ~~((16))~~ "Kentucky long-term care ombudsman" or "KLTCO" means the individual charged with the administration of the Kentucky Long-term Care Ombudsman Program under the provisions of the Older Americans Act of 1965, as amended.

(18) ~~((17))~~ "Long-term care facility" ~~["Long term care facility"]~~ is defined by KRS 216.510(1).

(19) ~~((18))~~ "Monitoring" means periodic review measuring ombudsman program's adherence to approved plans, including analysis of non-client specific data relating to program performance.

(20) "Office" means the designated state long-term care ombudsman.

(21) ~~((19))~~ "Referral" means the appropriate channeling of information ~~{so as}~~ to ~~affect~~~~{effect}~~ a desired outcome.

(22) ~~((20))~~ "Regional long-term care ombudsman" means ombudsmen who operate directly from the Kentucky Long-term Care Ombudsman Program and whose responsibilities include coordination of a multi-area development district area.

(23) ~~((21))~~ "Resident representative" is defined by 45 C.F.R. 1324.1.

(24) ~~((22))~~ "Volunteer ombudsman" means a certified unpaid individual serving within a district program to assist a district ombudsman.

Section 2. Responsibilities of Kentucky Long-term Care Ombudsman.

(1) The Kentucky Long-term Care Ombudsman Program shall be administered by a full time ombudsman operated by DAIL or through a contracted entity.

(2) The Kentucky long-term care ombudsman shall be responsible for the:

- (a) Design, implementation, and management of a statewide uniform system for receiving, investigating, resolving, and reporting complaints on behalf of residents in long-term care facilities and provide ongoing support to assist in the resolution of those complaints;
- (b) Investigation of complaints made by or on behalf of residents in long-term care facilities from areas of the state temporarily without local ombudsman programs if a local backup ombudsman is not available;
- (c) Development and implementation of policies and procedures for operation of the program, including those related to:
 - 1. Receipt, investigation, verification, and resolution of complaints;
 - 2. Protecting confidentiality of records and identity of complainants;

3. Establishing the right of public access to information regarding conditions in long-term care facilities; and
 4. Securing ombudsman access to long-term care facilities, residents, and residents' personal and medical records;
- (d) Development and management of a system for the operation of a statewide network of district programs, including:
1. Designation of district programs through:
 - a. Reviewing applications for designation of district ombudsman contained in their plans for operating either directly or under subcontract;
 - b. Providing written confirmation of the designation; and
 - c. Administration of certification and training requirements;
 2. Development of district program operating procedures and reporting requirements; and
 3. Establishment of a communications link between the Kentucky long-term care ombudsman and district programs;
- (e) Establishment and maintenance of program official files and adoption of procedures to protect the confidentiality of those files;
- (f) Provision of information and education concerning:
1. Program activities;
 2. The long-term care system; and
 3. The rights and concerns of residents and potential residents of long-term care facilities;
- (g) Provision of assistance to citizen organizations, consumer groups, and other interested community organizations to enhance the rights of residents in long-term care facilities;
- (h) Promotion of the development of citizen organizations at the state and local level to participate in the program;
- (i) Use of publicity and outreach efforts directed at long-term care residents and families, network staff, and the general public about the availability of the program to receive and investigate complaints;
- (j) Review of complaint, case, and issue data submitted by the district programs and analysis for trends, patterns, and issue identification;
- (k) Annual National Ombudsman Reporting System (NORS) report to the Administration on Community Living;
- (l) Assistance to the district ombudsman to establish, develop, and coordinate ombudsman activities;
- (m) Development of agreements and working relationships with relevant agencies to encourage their cooperation and assistance with the program at the state and local levels;
- (n) Development of agreements and working relationships with legal services programs, particularly those funded by the Older Americans Act of 1965, as amended;
- (o) Development of agreements and working relationships with the licensure and certification agencies;
- (p) Development and provision of training on an ongoing basis for regional and district ombudsman program staff and volunteers;
- (q) ~~(p)~~ Identification and development of additional funding and staffing resources for the long-term care ombudsman program;
- (r) ~~(q)~~ Support and promotion of the formation of resident councils in long-term care facilities;
- (s) ~~(r)~~ Development and provision of testimony and comment on proposed legislation, administrative regulations, policies, and rule changes affecting the long-term care residents;

- (t). ~~[(s)]~~ Conduction of other activities related to the protection and dignity of residents of long-term care facilities;
- (u). ~~[(t)]~~ Performance of other activities required by the Administration on Community Living;
- (v). ~~[(u)]~~ Policy that shall require the district ombudsman program to perform the functions and responsibilities of the ombudsman pursuant to 45 C.F.R. 1324.13 and adhere to the requirements of section 712 of the Older Americans Act of 1965, as amended;
- (w). ~~[(v)]~~ Policy and procedure clarifying the local ombudsman shall have access to the agency's ~~[agencies]~~ programmatic fiscal information; and
- (x). ~~[(w)]~~ Policy and procedure for the receipt and review of grievances received regarding the determination or action of the ombudsman and representatives.

Section 3. Responsibilities of the Regional Long-term Care Ombudsman. The regional long-term care ombudsman shall be staff of, and report directly to, the Kentucky long-term care ombudsman and shall have the following responsibilities:

- (1) Receive, investigate, and resolve complaints;
- (2) Provide technical assistance and coordination of district programs;
- (3) Assist in training of volunteers and local program personnel;
- (4) Provide information to public agencies regarding problems of long-term care residents;
- (5) Abide by established policies and procedures related to reporting and confidentiality; and
- (6) Perform other job duties as required by the Kentucky long-term care ombudsman.

Section 4. Designation of District Programs.

- (1) The Kentucky long-term care ombudsman shall designate district entities throughout the state to operate the long-~~term~~ care ombudsman program.
- (2) The district ombudsman program entity shall submit a plan that shall serve as the application for designation of a district ombudsman. The application shall include:
 - (a) Definition of program in terms of the following personnel:
 - 1. Program supervisor;
 - 2. Ombudsman advisory council;
 - 3. District ombudsman;
 - 4. Friendly visitors; and
 - 5. Volunteer ombudsman;
 - (b) Agency to conduct the program;
 - (c) Ability to receive, investigate, and resolve complaints on behalf of long-term care residents;
 - (d) Maintenance of a complaint documentation system;
 - (e) Ability to monitor the development and implementation of laws, policies, and regulations that apply to residential long-term care;
 - (f) Ability to recruit and provide standardized training for volunteers;
 - (g) Ability to respond in a timely fashion to requests from the Kentucky Long-term Care Ombudsman Program for statistical data and other information;
 - (h) Ability to receive training and continuing education from the Kentucky Long-term Care Ombudsman Program;
 - (i) Ability to assure confidentiality of files;
 - (j) Ability to inform and educate residents, sponsors, organizations, the long-term care industry, and the general public relative to issues affecting the long-term care system, the ombudsman program, and resident rights and concerns;
 - (k) Provision that an individual involved in the appointment of a subdivision of the office and that an officer, employee, or other representative of the office is not subject

to a conflict of interest;

(l) Provision that representatives of the Kentucky Long-term Care Ombudsman Program shall not be liable under state law for the good faith performance of official duties; and

(m) Provision of an annual written statement that the district ombudsman program and contracted entity shall ensure there is not a conflict of interest for the following:

1. Staff;
2. Volunteers;
3. Governing board members;
4. Advisory board members; or
5. Other parties representing or providing oversight to the long-term care ombudsman program.

(3) Designated ombudsmen shall be representatives of the Kentucky Long-term Care Ombudsman Program and shall be accorded rights and privileges of that office.

(4) The district ombudsman agency shall coordinate with the Kentucky long-term care ombudsman prior to hiring a district ombudsman to confirm eligibility through verification of:

(a) Qualifications as defined in section 8 of this administrative regulation; and

(b) Free of any conflict of interest.

Section 5. Responsibilities of the District Ombudsman. The district ombudsman shall:

(1) Provide services as follows:

- (a) There shall be a staff person, qualified by training and experience, responsible for administering each service and supervising assigned staff and volunteers;
- (b) There shall be designated staff who are trained and skilled in assessing and dealing with the needs of older adults and in the delivery of each service;
- (c) Volunteers and paid staff with the same responsibilities shall meet comparable requirements for training and skills;
- (d) New staff shall receive an orientation and shall be trained and certified prior to assuming responsibilities;
- (e) Staff shall attend required training and provide in-service training for staff and volunteers of local programs;
- (f) Staff and volunteers shall not accept personal gifts or money from participants or vendors; and
- (g) Staff and volunteers shall not pay bills or cash checks for clients or participants;

(2) Assure services are accessible to older persons by telephone, correspondence, or person-to-person contact;

(3) Represent residents residing in long-term care facilities within the assigned geographical areas;

(4) Assure residents' rights are upheld and promote quality care in long-term care facilities;

(5) Investigate and work to resolve complaints on behalf of long-term care residents;

(6) Promote community involvement in the program by:

- (a) Publicizing the existence and function of the local and state programs;
- (b) Advising the public about the availability of current state, local, and federal inspection reports, statements of deficiency, and plans for correction for individual long-term care facilities in the service area;
- (c) Organizing and implementing an active volunteer program;
- (d) Assisting in the development of resident or family and friends councils;
- (e) Sponsoring community education and training programs for long-term care facilities, human service workers, families, and the general public about long-term care and residents' rights issues; and

- (f) Promoting citizen involvement in order to ensure regular visitations, especially for those residents without available family or friends;~~[-and]~~
- (7) Implement accurate recordkeeping procedures to assure that:
 - (a) An accurate record shall be maintained on each participant that documents:
 - 1. Participant identification data;
 - 2. Requests for assistance;
 - 3. Eligibility for services provided;
 - 4. Follow-up; and
 - 5. Closure;
 - (b) Reports for the Kentucky long-term care ombudsman are prepared and submitted in a format and time frame as directed;
 - (c) Procedures are followed to protect the identity, confidentiality, and privacy of clients; and
 - (d) Nonclient-specific statistical and financial data is submitted as required;~~and[-]~~
- (8) Ensure staff and volunteers remain active.

Section 6. Responsibilities of the Volunteer Ombudsman. The volunteer ombudsman shall:

- (1) Complete required training, including training and certification requirements for those involved in complaint investigation;
- (2) Provide regular visitation of residents in long-term care facilities;
- (3) Adhere to guidelines provided by the Kentucky long-term care ombudsman and district ombudsmen; and
- (4) Complete required paperwork.

Section 7. Ombudsman Advisory Council.

- (1) The designated district ombudsman program shall have an advisory council whose functions are to:
 - (a) Review and advise programs on policies and procedures;
 - (b) Provide ongoing support and leadership; and
 - (c) Identify and generate funding resources for program viability.
- (2) The advisory council shall be comprised as follows:
 - (a) Members shall be persons with a strong interest in improving the quality of life for the long-term care residents and for protecting their rights;
 - (b) Group size and composition shall be individualized to the needs of the local program but shall not be less than seven (7); and
 - (c) One-third (1/3) of the members shall be consumers or family members of consumers.
- (3) Advisory council members shall not:
 - (a) Be responsible for certifying or licensing long-term care facilities;
 - (b) Be a provider of long-term care services or part of an association of providers;
 - (c) Have any interest or association that may impair the ability of the ombudsman to objectively and independently investigate and resolve complaints;
 - (d) Gain economically or receive any compensation from a long-term care facility or association;
 - (e) Be on the Vulnerable Adult Maltreatment~~[-Adult Protective Services-Caregiver Misconduct]~~ Registry or the Kentucky Nurse Aide registry; or
 - (f) Have been found guilty of the following:
 - 1. A violent crime as defined by KRS 439.3401;
 - 2. Abuse, neglect, or exploitation of another person, including assault;
 - 3. Felony theft offense; or
 - 4. Felony drug offense.

Section 8. Qualifications, Certification, and Training of Long-Term Care Ombudsmen.

(1) The Kentucky long-term care ombudsman, regional long-term care ombudsman, and district long-term care ombudsman shall:

(a) Possess a minimum of a bachelor's degree in a health or human services profession from an accredited college or university with:

1. One (1) year experience in health or human services; or
2. The educational or experiential equivalent in the field of aging or physical disabilities; or

(b) Be a certified regional or district ombudsman~~[with no lapse in certification prior to October 19, 2016].~~

(2) The Kentucky long-term care ombudsman shall meet the qualifications of subsection (1)(a) or (b) of this section and have expertise in:

- (a) Long-term services and supports or other direct services for older persons or individuals with disabilities;
- (b) Consumer-oriented public policy advocacy;
- (c) Leadership and program management skills; and
- (d) Negotiation and problem solving skills.

(3) The Kentucky long-term care ombudsman, a district, regional, or volunteer ombudsman, advisory council member, and a friendly visitor shall have a completed background check conducted prior to hire using the following:

(a) The Vulnerable Adult Maltreatment~~[Adult Protective Services Caregiver Misconduct]~~ Registry;

(b) The Kentucky Nurse Aide registry; and

(c) A criminal record check utilizing the Kentucky Administrative Office of the Courts or the Kentucky Justice and Public Safety Cabinet and not have been found guilty of the following:

1. A violent crime as defined by KRS 439.3401;
2. Abuse, neglect, or exploitation of another person, including assault;
3. Felony theft offense; or
4. Felony drug offense.

(4) Program sponsors, sub-contract agency directors, and directors of other sponsoring agencies shall receive basic training whenever possible.

(5) The long-term care ombudsman, program staff, and volunteers shall receive a minimum of thirty-six (36)~~[twenty-four (24)]~~ hours of training in order to be eligible for certification as a long-term care ombudsman, including at least the following areas:

(a) Governing statutes and regulations, the Older Americans Act, Ombudsman program federal rule at 45 C.F.R. 1324 ~~[The Older Americans Act of 1965, as amended, and the aging network];~~

(b) Ombudsman program organization and structure ~~[Characteristics, special needs, and problems of the long-term care resident];~~

(c) Roles, functions, and responsibilities of the state ~~[Characteristics of long-term care facilities including:]~~

~~[1.] [Numbers of beds;]~~

~~[2.] [Levels of care;]~~

~~[3.] [Services; and]~~

~~[4.] [Costs];~~

(d) Duties of designated representative of the office ~~[The long-term care reimbursement system including:]~~

~~[1.] [Medicaid;]~~

~~[2.] [Medicare;]~~

~~[3.] [SSI; and]~~

~~[4.] [State supplementation];~~

- (e) Individual and organizational conflicts of interest ~~{The regulation of facilities and the enforcement of regulations};~~
 - (f) Introduction to common health issues individuals may experience using long-term services and supports ~~{Complaint investigation and resolution};~~
 - (g) Resident living experience in a long-term care situation ~~{Guardianship};~~
 - (h) Residents' rights;
 - (i) The long-term care setting and levels of care ~~{Development of resident and family councils};~~
 - (j) Myths and stereotypes about older adults and persons with disabilities ~~{Recruiting, screening, selecting, training, placing, and supporting volunteers}; {and}~~
 - (k) Assessment, care planning, and person-centered care; ~~{Use of public funds.}~~
 - (l) Transfer and discharge requirements and challenges;
 - (m) Licensing survey and certification process;
 - (n) Resident and family councils;
 - (o) Confidentiality;
 - (p) Access to residents, facilities, and records;
 - (q) Disclosure of resident information and ombudsman program records;
 - (r) Resident decision-making;
 - (s) Guardianship and third-party decision makers;
 - (t) Complaint investigation;
 - (u) Problem solving including verification and resolution;
 - (v) Abuse, neglect, exploitation, and the role of the ombudsman program;
 - (w) Program policies and procedures;
 - (x) Resources and agencies;
 - (y) Documentation; and
 - (z) Communication.
- (6) District ombudsmen shall attend training meetings as established by the Kentucky long-term care ombudsman.
- (7) All certified long-term care ombudsmen ~~{and volunteers}~~ shall be:
- (a) Certified within thirty (30) days of hire or prior to providing services; ~~{and}~~
 - (b) Re-certified every four (4) ~~{two (2)}~~ years prior to the expiration of the current certification; ~~and {-}~~
 - (c) Complete a minimum of eighteen (18) training hours per year, based on the date certification was issued.
- (8) Certification shall be awarded after submitting certification documentation of:
- (a) Verification of completion of minimum training requirements; and
 - (b) A score of at least eighty (80) percent on the certification examination.
- (9) A maximum of twenty percent (20%) of the certification training may involve independent study, while a minimum of ten (10) hours shall be spent in the field.
- (10) Long-term care ombudsman program volunteers who are not certified ombudsmen shall:
- (a) Receive a minimum of two (2) hours initial training from the district ombudsman; and
 - (b) Complete a minimum of four (4) hours of continuing education annually based on the volunteer's start date.

Section 9. Confidentiality. Investigatory files, complaints, responses to complaints, and other information related to complaints or investigations maintained by the ombudsman program shall be considered confidential information in accordance with the Older Americans Act of 1965, 42 U.S.C. 3027(a)(12)(C). Confidentiality shall be maintained using the criteria established in this section.

- (1) Persons who gain access to a resident's records shall not discuss or disclose information in the records or disclose a resident's identity outside of the program.
- (2) The Kentucky long-term care ombudsman shall release information only with:
 - (a) A resident or resident representative who communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented. The disclosure of identifying information of any complainant shall not be disclosed without informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented ~~Written consent of the resident~~; or
 - (b) A court order to disclose.
- (3) Information shall be secured as follows:
 - (a) Complaint files shall be contained in a locked file cabinet;
 - (b) Computerized systems shall have secured access codes; and
 - (c) Computer software containing confidential information shall be stored in a locked file.
- (4) The confidentiality and disclosure criteria shall not preclude the ombudsman's use of otherwise confidential information in the files for preparation and disclosure of statistical, case study, and other data if the ombudsman does not disclose the identity of persons otherwise protected in this section.

Section 10. Rights of Access.

- (1) Kentucky, regional, volunteer, and district ombudsmen shall have unrestricted access to long-term care facilities:
 - (a) Without prior notice;
 - (b) To meet with one (1) or more residents; and
 - (c) To observe the operation of the facility as it affects the patient.
- (2) ~~Volunteer~~ Ombudsmen shall have access to the:
 - (a) Residents' dining area;
 - (b) Residents' living area;
 - (c) Residents' recreational area;
 - (d) Lounges; and
 - (e) Areas open to the general public.
- (3) Certified representatives of the Kentucky Long-term Care Ombudsman Program shall have access to a resident's medical and social records with permission of the resident or his legal guardian, except as provided for under KRS 209.030(7).
- (4) Access shall not include the right to examine the financial records of the facility without the consent of the administrator.
- (5) If the ombudsman is denied entry to a long-term care facility, or denied upon a request for copies of all licensing and certification records maintained by the state with respect to long-term care facilities, the ombudsman shall inform the ~~the~~
 - ~~(a)~~ administrator or operator of the statutory authority for access. If access is still denied, the ombudsman shall inform the:
 - ~~(a)~~ ~~(b)~~ Kentucky long-term care ombudsman;
 - ~~(b)~~ ~~(e)~~ Office of Inspector General, Division of Health Care; and
 - ~~(c)~~ ~~(d)~~ Local law enforcement officials to secure assistance for entry if entry into a facility is denied.
- (6) ~~Â~~
 - (a) Willful interference, as governed by KRS 216.541(3), with representatives of the Kentucky Long-term Care Ombudsman Program in the performance of official duties shall be unlawful and result in a fine of \$100 to \$500 for each violation.
 - (b) Each day the violation continues shall constitute a separate offense.

Section 11. Referrals.

- (1) Representatives of the long-term care ombudsman program shall be exempt from making reports of abuse, neglect, or exploitation~~[-, or spouse abuse]~~ to the Department for Community Based Services, Division of Protection and Permanency, and, if appropriate, the Office of Inspector General, Division of Health Care, for investigation without appropriate consent or court order pursuant to 45 C.F.R. Part 1324~~[Parts 1321 and] 1324~~.
- (2) The ombudsman shall seek consent of the resident:
 - (a) To work to resolve complaints and make referrals to agencies; or
 - (b) When the ombudsman personally witnesses abuse, gross neglect, or exploitation of the resident.
- (3) Communication of consent to reveal the identity of the resident or complainant may be made in writing, orally, or visually.
- (4) When the resident is unable to communicate consent and has no resident representative, the ombudsman shall:
 - (a) Take steps to investigate complaints that adversely affect the health, safety, welfare, or rights of the resident; and
 - (b) Refer the matter and disclose identifying information of the resident to the management of the facility in which the resident resides or the appropriate agencies in the following circumstances:
 1. The ombudsman personally witnesses suspected abuse, gross neglect, or exploitation of a resident and has no evidence indicating that the resident would not wish a referral to be made; and
 2. The ombudsman has reasonable cause to believe that disclosure would be in the best interest of the resident.
- (5) If the resident is unable to communicate consent and has a resident representative, the ombudsman shall contact the resident representative for consent.
- (6) If there is reasonable cause to believe the resident representative through their action, inaction, or decision making may adversely affect the health, safety, welfare, or rights of the resident, the ombudsman shall:
 - (a) Seek permission of the KLTCO or designee during an investigation if a resident is unable to give consent and the resident representative is not acting in the best interest of the resident; and
 - (b) Make a referral to the appropriate agencies upon approval of the KLTCO or designee.
- (7) Referrals under this section shall not affect the continuing duty, full freedom, and independence of the ombudsman to:
 - (a) Ensure the continued adequacy and responsiveness of complaint investigation and resolution, monitoring, and data collection systems consistent with the Older Americans Act of 1965, as amended;
 - (b) Maintain an independent capacity to investigate and resolve complaints as governed by Section 13 of this administrative regulation;
 - (c) Receive and process, on a regular basis, information related to the number, type, and source of complaints, facilities involved, and the manner of complaint resolution; and
 - (d) Maintain by specific agreement the power, ability, and right to monitor the agency's complaint processing performance and take action necessary to correct and improve deficiencies.
- (8) District ombudsmen shall address concerns regarding the investigation or resolution of complaints to the Kentucky long-term care ombudsman or designee.
- (9) District ombudsmen shall make referrals to county attorneys, legal aid agencies, and legal assistance offices.
- (10) District ombudsman shall report to the Kentucky long-term care ombudsman a referral to the Office of the Attorney General or any federal agency.

Section 12. Receiving Reports.

- (1) The Kentucky long-term care ombudsman, regional ombudsmen, district ombudsmen, and persons identified and approved by these ombudsmen shall have the authority to provide intake of a complaint.
- (2) The person receiving a report shall obtain as much information as possible, making a reasonable effort to obtain the:
 - (a) Name and location of the long-term care facility involved;
 - (b) Name and location of the resident;
 - (c) Name, address, and telephone number of the person responsible for the resident;
 - (d) Nature of the complaint as specifically as possible;
 - (e) Name and location of the alleged perpetrator; and
 - (f) Identity of the reporting source, though reports may be made anonymously.
- (3) The person receiving the report may contact other agencies or individuals to secure additional information relevant to the investigation.

Section 13. Complaint Investigation.

- (1) A long-term care facility resident shall have the right to:
 - (a) Voice grievances and recommend changes in policies and services to facility staff and outside representatives of the resident's choice, free from restraint, interference, coercion, discrimination, or reprisal;
 - (b) Associate and communicate privately with persons of the resident's choice; and
 - (c) Private meetings with the appropriate long-term care facility inspectors from the Cabinet for Health and Family Services.
- (2) A long-term care ombudsman shall investigate and resolve complaints~~[-]~~
~~[(a)] made by or on behalf of an individual[an older individual] who is a resident of a long-term care facility relating to action that may adversely affect the health, safety, welfare, or[and] rights of the resident[-; and]~~
~~[(b)] [Made by or on behalf of a younger long-term care facility resident if actions will:]~~
~~[1.] Â~~
~~[a.] [Benefit an older individual residing in the long-term care facility or older individuals residing in long-term care facilities generally; or]~~
~~[b.] [Be the only viable avenue of assistance available to the resident; and]~~
~~[2.] [Not significantly diminish the Long-term Care Ombudsman Program's efforts on behalf of long-term care residents].~~
- (3) District and volunteer ombudsmen shall not investigate complaints unless certified by the Kentucky Long-term Care Ombudsman Program.
- (4) The Kentucky and regional ombudsmen shall inform the district ombudsmen of on-site investigations conducted in their districts.
- (5) The investigation shall be conducted according to the criteria established in this subsection.
 - (a) Investigation shall include contact with the resident, staff of the long-term care facility, and collateral contacts.
 - (b) A representative of the program shall, upon entering the facility, promptly notify the administrator or his designated representative of his presence.
 - (c) A representative of the program shall not enter the living area of a resident without identifying himself to the resident.
- (6) The investigating ombudsman, with permission of the resident or resident representative, shall take steps to investigate a complaint and attempt to resolve the complaint to the resident's satisfaction. Resolution may include:
 - (a) Collaborating or negotiating at the nursing home administrative level to change particular nursing home behavior, pattern, or practice affecting the resident;

- (b) Consulting with a resident, relative, or nursing home staff member to resolve a problem;
 - (c) Effecting positive enforcement action by a regulatory agency;
 - (d) Proposing regulatory or statutory changes or additions;
 - (e) Communicating with community groups and professional organizations; and
 - (f) Encouraging the utilization of legal services assistance.
- (7) Documentation shall be completed on complaint investigations and incorporated into the ombudsman data system as follows:
- (a) The documentation entered into the data system shall be entered by the 15th of the month for all cases completed the prior month; and
 - (b) Documentation of the investigation shall include the:
 - 1. Identity of the resident on whom the report is made;
 - 2. Date the face-to-face visit with the resident was completed;
 - 3. Identity of the long-term care facility;
 - 4. Complaint;
 - 5. Identity of persons interviewed and records or documents reviewed during the course of the investigation;
 - 6. Factual information used to support findings and conclusions; and
 - 7. Actions taken and services provided.
- (8) Resolution shall include documented follow-up and ongoing monitoring of the situation for a reasonable period of time, depending on the complexity of the situation, through contact with the complainant or resident or, if appropriate, for the purpose of determining that the causes giving rise to the complaint have not been repeated and have not recurred.
- (9) ^Â
- (a) In accordance with KRS 216.541(2) and (3), retaliation and reprisals by a long-term care facility or other entity against an employee or resident for having filed a complaint or having provided information to the Kentucky Long-term Care Ombudsman Program shall be unlawful and shall result in a fine of \$100 to \$500 for each violation.
 - (b) Each day a violation continues shall constitute a separate offense.

Section 14. Reporting Requirements. The Kentucky Long-Term Care Ombudsman Program shall maintain a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems.

- (1) The contracted agency providing the district long-term care program shall submit quarterly reports to the Kentucky long-term care ombudsman according to the contractual agreement.
- (2) The district ombudsman shall submit an annual report to the Kentucky long-term care ombudsman no later than determined in the contractual agreement for inclusion in the annual state ombudsman report.

Section 15. Monitoring and Evaluation.

- (1) District long-term care ombudsman programs shall be monitored annually by the contract agency or the Kentucky long-term care ombudsman according to contract or, if services are provided directly by the Kentucky long-term care ombudsman, by the DAHL.
- (2) Formal evaluations of the district ombudsman program shall be conducted at regular intervals, at least annually, by the Kentucky long-term care ombudsman.
- (3) The results of the evaluation, omitting client identifying information, shall be made available to the district long-term care ombudsman contracting agency to be used to plan and implement program changes to meet participant needs.
- (4) The Kentucky long-term care ombudsman and district long-term care ombudsman contracting agency shall permit staff of the Cabinet for Health and Family Services,

persons acting for the Cabinet for Health and Family Services, or staff designated by appropriate federal agencies to:

(a) Monitor and evaluate programs and activities initiated under the Older Americans Act of 1965, as amended, and other programs for which the department has administrative responsibility; and

(b) Interview clients by persons and agencies listed in this subsection, except if confidentiality requirements are applicable.

(18 Ky.R. 2077; Am. 2577; eff. 3-7-1992; Recodified from 905 KAR 8:210, 10-30-1998; Recodified from 923 KAR 1:210, 7-8-1999; 41 Ky.R. 2150; 2578; eff. 6-17-2015; 43 Ky.R. 136, 421, 550; eff. 10-19-2016; 43 Ky.R. 2070; eff. 7-17-2017; 51 Ky.R. 1004; eff. 2-13-2025.)

VICTORIA ELDRIDGE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 18, 2024

FILED WITH LRC: October 9, 2024 at 1:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by December 16, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Phyllis Sosa and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the requirements for the operations of the state long-term care ombudsman program.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary for the Cabinet to administer the procedures and operations of the state long-term care ombudsman program.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statutes by establishing cabinet procedures for operations of the state long-term care ombudsman program, required by the Older Americans Act of 1965 as amended and as required by KRS 205.204.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation currently assists in the effective administration of the statutes through its establishment of cabinet procedures for the operation and administration of the state Long-term Care Ombudsman Program

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment updates definitions, requires the state Long-term Care Ombudsman to establish agreements and working relationships with the licensure and certification agencies, ensures individuals being considered for hire meet eligibility requirements, adds advisory council members must have background checks completed, increases the minimum training hours for certification of ombudsmen, increases the minimum annual training requirements of certified ombudsmen and volunteers, and extends the certification period from 2 to 4 years.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to operate the state long-term care ombudsman program in compliance with the Older Americans Act of 1965 as amended and the final rule 42 C.F.R. 3058.

(c) How the amendment conforms to the content of the authorizing statutes:

This amended administrative regulation conforms to KRS 205.204, which designates the Cabinet for Health and Family Services to administer the Older American Act of 1965 as amended.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment clarifies terminology through definitions, provides clarity on hiring and training requirements, and provides additional safeguards by requiring background checks on advisory council members

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation directly affects the state long-term care ombudsman provider agencies operating within the 15 Area Development Districts (ADDs), the office of the state long-term care ombudsman, and the advisory councils. The office of the state long-term care ombudsman has one (1) state long-term care ombudsman, and two (2) regional ombudsmen. There are 15 district ombudsmen located in the ADDs, and 87 certified ombudsmen. There are 15 advisory councils located in the ADDs and 97 council members.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

The state long-term care ombudsman (SLTCO) will need to develop a working relationship with the licensing agency, including meeting with the agency representatives to establish roles, responsibilities, and reporting. The ombudsmen and volunteers will complete the required initial and annual training as established by the SLTCO, and council members will agree to having a background check.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The establishment of working relationships is a normal part of doing business and should not incur additional costs. The additional training for ombudsmen and volunteers will not have a budgetary increase but will be a normal cost of doing business. The cost will be in staff time. The training can be completed online or virtually.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The SLTCO will have better working relationships and contacts for issues that need assistance in being resolved. The ombudsmen and volunteers will be better prepared to provide services to residents of long-term care facilities, and having council members that have cleared background checks provides a more professional and conflict-free oversight to the program.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

Initially, the cost of implementation will be approximately \$175.00 to complete background checks on current council members. Each background check costs approximately \$25, and the average council has seven (7) members.

(b) On a continuing basis:

On a continuing basis, the provider agency will have to pay for background checks on new council members. Council members regularly rotate off and on the council, so the cost is dependent on the number of new council members being appointed to replace members rotating off. On average, each council will have two (2) new members annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The SLTCO program is funded in part through the Older Americans Act of 1965 as amended, State General Funds, and local donations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There are no fees in the administration of this administrative regulation. No funding increase is necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied?

Tiering is not applied, because this administrative regulation will be implemented in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

42 U.S.C. 3001 et seq 35(3058f-h)

(2) State compliance standards.

KRS 194A.050; 205.204

(3) Minimum or uniform standards contained in the federal mandate.

42 U.S.C. 3001 et seq 35(3058f-h)

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This administrative regulation does not impose stricter requirements, or additional or different responsibilities of requirements, than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

This administrative regulation does not impose stricter requirements, or additional or different responsibilities of requirements, than those required by the federal mandate.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 194A.505, 205.204, 42 U.S.C. 3001 et seq 45.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

Department for Aging and Independent Living

(a) Estimate the following for the first year:

Expenditures:None

Revenues:None

Cost Savings:None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

No change is expected.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

Area Development Districts (ADDs)

(a) Estimate the following for the first year:

Expenditures:There will only be expenditures for completing background checks for advisory council members. The cost is determined by the background check company/source the provider chooses to utilize. The initial cost to each ADD will be approximately \$175.00 based on the cost of each background check being \$25.00 for each of the seven (7) council members.

Revenues:None

Cost Savings:None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The cost will reduce in subsequent years since only new council members will have to have background checks completed. On average there will be two (2) new council members annually per ADD. The annual cost to the ADDs is approximately \$50.00.

(4) Identify additional regulated entities not listed in questions (2) or (3):

There are no additional regulated entities affected by this amended regulation.

(a) Estimate the following for the first year:

Expenditures:None

Revenues:None

Cost Savings:None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

There are no changes expected in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

There is minimal fiscal impact to the agencies required to complete background checks on advisory council members. The cost of a background check is determined by the provider agency based on their contract with the average cost being \$25.

(b) Methodology and resources used to determine the fiscal impact:

Each agency negotiates their own contract with an entity to conduct background checks on staff and volunteers. The advisory council members will now be included in those receiving a background check. The average cost of a background check is \$25, and on average there are seven (7) members on the advisory council, making the initial cost for compliance \$175.00 per ADD.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

This amended administrative regulation will not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion:

The number of advisory council members multiplied by the cost of a background check would result in a minimal impact to the ADD. $\$25 \times 7$ council members = \$175.00 for the first-year $\times 15$ ADDs = \$2,625 total cost for the initial implementation, and for subsequent years the cost is reduced as background checks will be conducted on new council members. $\$25$ cost of background check $\times 2$ average new council members = \$50.00 $\times 15$ ADDs = \$750 annual cost statewide.