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DIVISION 1

PROCEDURAL RULES

- 114-001-0000 **Notice to Interested Persons**

Except as permitted by ORS 183.335(5), prior to adoption, amendment, or repeal of any rule, the Long Term Care Ombudsman shall give notice of the intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days prior to the effective date.
- (2) By mailing a copy of the notice to persons on the Long Term Care Ombudsman's mailing list established pursuant to ORS 183.33(7).
- (3) By mailing a copy of the notice to the following persons, organizations, or publications:
 - (a) United Press International;
 - (b) The Associated Press;

- (c) Capitol Press Room;
 - (d) Oregon Registered Care Providers;
 - (e) Long-Term Care Ombudsman Screening Committees;
 - (f) Oregon Association of Health Care;
 - (g) Oregon Association of Homes for the Aging;
 - (h) Oregon Area Agencies on Aging;
 - (i) Governor's Commission on Senior Services;
 - (j) Senior Services Division;
 - (k) United Seniors;
 - (l) Oregon State Council;
 - (m) Oregon Citizens for Better Nursing Care;
 - (n) American Association of Retired Persons.
- Stat. Auth.: ORS 441 & ORS 183
 Stats. Implemented:
 Hist.: LTCO 2-1988 f. 6-22-88, cert. ef. 7-1-88

114-001-0005

Model Rules of Procedure

Pursuant to ORS 183.341, the Long-Term Care Ombudsman adopts the Attorney General's Model Rules of Procedure under the Administrative Procedure Act as amended and effective March 3, 1988.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedures is available from the agency.]
 Stat. Auth.: ORS 441 & ORS 183
 Stats. Implemented:
 Hist.: LTCO 1-1988, f. 3-20-88, cert. ef. 6-1-88

Notices and Administrative Process

114-001-0010

Fee for Copies of Public Records

The Ombudsman shall provide within a reasonable time copies of any public records in its files upon written request from any person and may charge a fee reasonably calculated to cover its costs.

Stat. Auth.: ORS 441
 Stats. Implemented:
 Hist.: LTCO 1-1989, f. 1-19-89, cert. ef. 2-1-89

DIVISION 2

GOALS AND DEFINITIONS

114-002-0000

Goals

The goals of the Ombudsman Program are to identify and be responsive to citizen needs and concerns with respect to all aspects of Oregon's Long-Term Care System, including but not necessarily limited to the sufficient quality of provider service, government rules and regulations, and any administrative or other actions impacting Long-Term Care residents; to cause or promote such change in the Long-Term Care System that would be of benefit to Long-Term Care Residents.

Stat. Auth.: ORS 441
 Stats. Implemented:
 Hist.: LTCO 1-1989, f. 1-19-89, cert. ef. 2-1-89

114-002-0010

Definitions

The following definitions apply to all rules in Chapter 114:

- (1) "Administrative Action" means any action which may adversely affect a resident's health, safety, welfare or rights.
- (2) "Area Planning District" means the geographical areas designated by the Office of the Long Term Care Ombudsman for the purpose of local program development.
- (3) "Certified Ombudsman" means a designee.
- (4) "Conflict of Interest with the Ombudsman Program" means that a situation exists where an individual's personal interests may adversely influence the individual's decisions relating to the Ombudsman Program, except that a person presently residing in a long term care facility shall not have a conflict of interest with the Ombudsman Program. A conflict of interest with the Ombudsman Program exists when:

(a) A person or a member of the person’s immediate family has any financial or ownership interests in a long term care facility or is employed by a long term care facility;

(b) A person is an employee, agent, or officer of an Area Agency on Aging, type B, or the local state office of the Senior and Disabled Services Division;

(c) A person has been employed by a long term care facility within the last two years.

(5) “Designee” means an individual appointed by the Ombudsman to serve as a representative of the Ombudsman Program in order to carry out the purposes of ORS 441.100 to 441.153. A designee may also be referred to as a Certified Ombudsman.

(6) “District Facilitator” means an individual appointed by the Ombudsman to coordinate designee support activities and assist in the coordination of all program activities at the area planning district level including ongoing training, complaint investigation and back-up as well as other liaison responsibilities.

(7) “Legal Representative” means a legal guardian or person with a valid power of attorney to act on behalf of another person.

(8) “Local Screening Committee” means a committee established pursuant to ORS 441.131 to screen and recruit designees and to perform such other program publicity and support functions as authorized by the Ombudsman.

(9) “Long Term Care Facility” means any licensed skilled nursing facility or intermediate care facility as defined in rules adopted under ORS 442.015, adult foster care homes with residents over 60 years of age and residential care facility as defined in ORS 443.400.

(10) “Office of the Long Term Care Ombudsman” means the Ombudsman, the Deputy Ombudsman and other paid professional staff of the Ombudsman Program.

(11) “Ombudsman” means the State Long Term Care Ombudsman.

(12) “Ombudsman Program” means the state agency administered by the Ombudsman.

(13) “Person in Charge” means the Administrator, the Assistant Administrator or Director of Nursing of a long term care facility, or if none of those persons are available, then the nursing staff person in charge.

(14) “Screening Committee Member” means an individual who has been appointed by the Ombudsman to be a member of a local screening committee.

(15) “Specified Staff Person” means the first appropriate staff person, including receptionist, the first management or professional employee or the designated person in charge of a long term care facility.

Stat. Auth.: ORS 441
Stats. Implemented:
Hist.: LTCO 1-1989, f. 1-19-89, cert. ef. 2-1-89

DIVISION 3

APPOINTMENT AND DUTIES OF LOCAL SCREENING COMMITTEES

114-003-0000

Appointment of Screening Committee Members

(1) All screening committee members shall be appointed by the Ombudsman.

(2) There shall be at least one local screening committee in each area planning district.

(3) Except for individuals already appointed by the Ombudsman as screening committee members as of August 30, 1988, screening committee members shall be individuals who are concerned with the provisions of quality care in long term care facilities and who do not have a conflict of interest with the Ombudsman Program.

(4) Each local screening committee shall elect a chairman, vice-chairman, secretary and treasurer and shall meet, at a minimum, once a month. The chairman of the local screening committee may appoint a subcommittee to serve at the chairman’s pleasure which is responsible for screening and approving potential designees.

Stat. Auth.: ORS 441
Stats. Implemented:
Hist.: LTCO 1-1989, f. 1-19-89, cert. ef. 2-1-89

114-003-0010

Duties of the Local Screening Committee

(1) Duties of the local screening committee shall consist of the following:

(a) Publicizing the Ombudsman Program’s goals, needs and benefits;

(b) Recruiting potential designees;

(c) Screening potential designees, including checking references;

(d) Referring approved applicants for designees to the Ombudsman within seven days of approval by the local screening committee;

(e) Filing an annual report with the Ombudsman which includes, but is not limited to:

(A) General activities conducted by the local screening committee;

(B) The number of designee applicants screened;

(C) The number of designee applicants approved;

(D) The number of designees certified, assigned or serving as back up designees in the local screening committee’s area;

(E) Problems or concerns of the local screening committee and recommendations to bring about resolution; and

(F) Any other activities which have been approved by the Ombudsman and which promote the goals of the Ombudsman Program.

(2) The local screening committee shall:

(a) Interview applicants for designees within 21 days of the local screening committee’s receipt of application, whenever possible;

(b) Vote on whether a designee applicant is recommended to the Ombudsman for appointment as a designee. The majority of the local screening committee or its subcommittee responsible for screening designee applicants must approve an applicant before recommending the applicant to the Ombudsman; and

(c) Refer to the Ombudsman, the application of any designee applicant who is not approved by the local screening committee, with an explanation as to the reason for disapproval.

Stat. Auth.: ORS 441
Stats. Implemented:
Hist.: LTCO 1-1989, f. 1-19-89, cert. ef. 2-1-89

DIVISION 4

DESIGNEES

114-004-0000

Appointment of Designees

(1) The Ombudsman shall review each designee applicant approved by a local screening committee. The Ombudsman shall approve the applicant if the applicant meets the qualifications of a designee as set forth in OAR 114-004-0010.

(2) Once the Ombudsman approves the applicant, the applicant must meet the requirements set forth in OAR 114-004-0020(1).

(3) Upon successful completion of the requirements set forth in OAR 114-004-0020(1) by the designee applicant, the Ombudsman shall appoint the applicant as a designee.

Stat. Auth.: ORS 441
Stats. Implemented:
Hist.: LTCO 1-1989, f. 1-19-89, cert. ef. 2-1-89

114-004-0010

Designee Qualifications

(1) Designees shall not have a conflict of interest with the Ombudsman Program.

(2) Designees shall have experience with long term care facilities or residents thereof or elderly individuals at risk of institutionalization or requiring assistance with the activities of daily living including the ability to communicate well with the elderly as well as

long term care facility staff, to understand laws, rules and regulations, and to be assertive, yet objective.

(3) Designees with experience in either social service, gerontology, nursing or paralegal work shall be preferred.

(4) Designees must be willing to donate 16 hours of their time per month to perform the duties of a designee.

Stat. Auth.: ORS 441

Stats. Implemented:

Hist.: LTCO 1-1989, f. 1-19-89, cert. ef. 2-1-89

114-004-0020

Designee Training

(1) A designee applicant who has been approved by the local screening committee and by the Ombudsman shall, before being appointed as a designee by the Ombudsman:

(a) Complete 48 hours of training provided, sponsored or approved by the Ombudsman Program;

(b) Maintain a log of all training hours completed including but not limited to:

(A) Training hours provided by the Ombudsman Program;

(B) Approved home study hours; and

(C) Approved training relating to Long Term Care issues, but not directly provided by the Ombudsman Program such as community workshops, seminars and association meetings.

(c) Take a certification assessment examination covering training areas upon completion of the 48 hours of training; and

(d) Receive a passing score of at least 70 percent on the certification assessment examination.

(2) Designees must attend a minimum of four hours of continuing education seminars or workshops on a quarterly basis which are offered by the Ombudsman, subject to the availability of funds, or which have been approved by the Ombudsman and are offered by another organization. Training sessions which may be approved by the Ombudsman include programs offered by the Senior Services Division, the local health department, local Legal Aid, and the Area Agency on Aging. If a designee attends training not offered by the Ombudsman Program, the designee must submit verification to the Ombudsman that the quarterly training requirements were met by the designee.

(3) Training subjects may include:

(a) Patients' rights;

(b) Patient abuse and protective services;

(c) The long term care system, including involved governmental agencies;

(d) Communicating with the frail elderly;

(e) The goals of the Ombudsman Program and the role of the Ombudsman and designees;

(f) Investigation procedures;

(g) Complaint investigation and resolution;

(h) Regulatory law and rules;

(i) Reporting techniques;

(j) Techniques on mediation, conciliation and persuasion;

(k) Appropriate referrals to state agencies; and

(l) Other related topics to the long term care system.

Stat. Auth.: ORS 441

Stats. Implemented:

Hist.: LTCO 1-1989, f. 1-19-89, cert. ef. 2-1-89

114-004-0030

Designee Contracts

(1) Prior to being assigned to a long term care facility, a designee shall sign a contract with the Ombudsman Program which meets the requirements of ORS 441.131(3) and (6).

(2) Noncompliance with the terms of the contract is cause for immediate termination of the contract.

(3) Termination of a designee's contract may be initiated by the Ombudsman or the designee in writing for any or no cause, without prior notice.

(4) Upon termination of a designee's contract, the designee must return all designee identification, manuals, confidential material and reports to the Ombudsman.

(5) Each designee's job performance may be reviewed at any time by the Ombudsman Program for the following purposes:

(a) To assure designee compliance with contractual commitment;

(b) To assess and review job performance; and

(c) To assure compliance with the rules and Ombudsman Program goals and philosophy.

Stat. Auth.: ORS 441

Stats. Implemented:

Hist.: LTCO 1-1989, f. 1-19-89, cert. ef. 2-1-89

114-004-0040

Designee Assignments

(1) The Ombudsman shall assign a designee to particular long term care facilities or to act as a back-up designee. Designees shall not be assigned to a long term care facility where an immediate family member is a resident.

(2) Each designee's contract shall identify the long term care facility or facilities specifically assigned to that designee, unless the designee is assigned as a back-up designee. A designee shall not have access, as a designee, to any long term care facility other than the ones specifically named in the designee's contract, unless the designee is requested to enter another long term care facility by that facility's assigned designee, the District Facilitator or the Office of the Long Term Care Ombudsman.

(3) A back-up designee's contract shall allow the designee access, as a designee, to any long term care facility when requested to by the assigned designee, the District Facilitator or the Office of the Long Term Care Ombudsman.

Stat. Auth.: ORS 441

Stats. Implemented:

Hist.: LTCO 1-1989, f. 1-1989, cert. ef. 2-1-89

114-004-0050

Duties of Designees

A designee shall:

(1) Visit each assigned long term care facility on a regular basis:

(a) Upon arrival and departure, inform a specified staff member;

(b) Review any problems or concerns relating to the assigned long term care facility with administrators or persons in charge or their representatives provided that confidentiality requirements are met; and

(c) Visit individual residents and resident councils.

(2) Maintain liaison with appropriate agencies and the Ombudsman Program;

(3) Submit in writing monthly reports to the Ombudsman Program on forms provided by the Ombudsman Program;

(4) Keep residents and long term care staff informed of the Ombudsman Program;

(5) Periodically review the patient's bill of rights with residents, families, guardians, administrators and staff;

(6) Investigate complaints made by residents or for residents of long term care facilities about administrative actions that may adversely affect a resident's health, safety, welfare or rights;

(7) Attempt to resolve problems between residents and the long term care facility through mediation, negotiation, persuasion and referral;

(8) Report all apparent cases of patient abuse pursuant to ORS 441.630; and

(9) Perform other related duties as specified by the Office of the Long Term Care Ombudsman.

Stat. Auth.: ORS 441

Stats. Implemented:

Hist.: LTCO 1-1989, f. 1-19-89, cert. ef. 2-1-89

114-004-0060

Complaints Against Designees and Rights of Designees

(1) Any complaints regarding inappropriate actions or inactions relating to the official conduct of designees shall be referred to the Ombudsman.

(2) The ombudsman shall investigate any complaint concerning designees. If the Ombudsman finds reasonable cause to believe that a designee has acted inappropriately or contrary to law and rule, the Ombudsman shall take appropriate action. Appropriate action

may include a reprimand, requiring additional training, temporary suspension, or termination of the designee.

(3) A designee, who is not satisfied with any action taken against the designee by the Ombudsman as a result of a complaint against the designee, may request, in writing, an informal conference with the Ombudsman to discuss and refute the complaint, findings and action taken by the Ombudsman. An informal conference shall be held within 14 days of receipt of the written request made by the designee to the Ombudsman. After considering the information submitted at the informal conference the Ombudsman may affirm, modify or rescind the initial action taken against the designee.

Stat. Auth.: ORS 441

Stats. Implemented:

Hist.: LTCO 1-1989, f. 1-19-89, cert. ef. 2-1-89

DIVISION 5

ACCESS, INVESTIGATION AND REPORTING PROCEDURES

114-005-0000

Access to Long-Term Care Facilities

(1) Upon entering a long-term care facility, the Ombudsman or designee shall present identification provided by the Ombudsman Program to the specified staff person and request that the Ombudsman or designee be directed to the person in charge. The Ombudsman or designee shall show I.D. to the person in charge. If the person in charge is not available, the Ombudsman or designee may proceed to fulfill the Ombudsman or designee's duties.

(2) The Ombudsman or designee is not required to inform the long-term care facility of the specific nature of the visit. The Ombudsman or designee may generally inform the long term care facility as to whether or not the visit is a routine visit or complaint investigation, but shall not offer any information that would enable a person to determine the name of the complainant, witness or witnesses or alleged victims.

(3) The Ombudsman or designee is not required to give prior notification before visiting a long-term care facility.

(4) The Ombudsman or designee is not required to conform to any policy of a long-term care facility that in any way limits access rights established by ORS 441.117 and this rule.

(5) During any visit to a long-term care facility, the Ombudsman or designee shall have access, without accompaniment of long term care facility staff, to all public or common areas and to resident rooms with the consent of the resident or the resident's legal guardian. For the purpose of investigating or resolving complaints, the Ombudsman or designee shall have access to laundry rooms, kitchens, linen closets, shower rooms and other service areas of a long term care facility that are relevant to any matter under investigation.

(6) The Ombudsman or designee may obtain access to a long-term care facility at any time considered necessary and reasonable by the Ombudsman or designee for the purpose of performing the duties of the Ombudsman or designee.

Stat. Auth.: ORS 441

Stats. Implemented:

Hist.: LTCO 1-1989, f. 1-19-89, cert. ef. 2-1-89

114-005-0010

Access to Resident

(1) The Ombudsman or designee may communicate privately with any consenting resident. The Ombudsman and designee shall have access to each resident in private to determine if the resident wishes to communicate with the Ombudsman or designee. The resident's refusal to communicate with the Ombudsman or designee shall not be relayed by an intermediary. In a multi-bed room, a resident's refusal to communicate with the Ombudsman or designee shall not keep the Ombudsman or designee from entering or communicating with other residents. If the resident's room does not permit private consultation to occur between the Ombudsman or designee and resident, or if such consultation infringes upon the rights of roommates, then the facility shall provide an appropriate pri-

vate place for such meetings. The resident(s) and the Ombudsman or designee may also meet in any common area of the facility unless their presence there would infringe upon the privacy or other rights of other residents.

(2) When encountering a closed door the Ombudsman or designee shall knock and listen for a response. If there is no response, the Ombudsman or designee may open the door and announce his/her presence as entering. If residents are observed in a situation or condition requiring privacy, the Ombudsman or designee shall excuse themselves and close the door upon exiting.

(3) When encountering a closed privacy curtain, the Ombudsman or designee shall request permission from the resident to enter the curtained area. If the resident does not respond, the Ombudsman or designee shall request that staff of the long-term care facility determine if the resident is asleep or receiving treatment or services. If the resident is sleeping or receiving treatment or services, the Ombudsman or designee may not enter the curtained area. If the resident is not sleeping or receiving treatment or services, the Ombudsman or designee may enter the curtained area to determine if the resident wishes to communicate with the Ombudsman or designee.

Stat. Auth.: ORS 441

Stats. Implemented:

Hist.: LTCO 1-1989, f. 1-19-89, cert. ef. 2-1-89

114-005-0020

Reporting the Investigation

Upon completion of an investigation, the Ombudsman or designee shall report, either verbally or in writing, opinions or recommendations to the administrator or other staff in charge, his/her designated representative, and affected parties. Findings and conclusions from the investigation may be reported, verbally or in writing, provided the report complies with all confidentiality requirements and does not jeopardize the integrity of any related investigation.

Stat. Auth.: ORS 441

Stats. Implemented:

Hist.: LTCO 1-1989, f. 1-19-89, cert. ef. 2-1-89

114-005-0030

Access to Records

(1) The Ombudsman or designees shall have access to any resident's records with the written authorization of the resident or the resident's legal guardian. If the resident has no legal guardian and is unable to consent, the Office of the Long-Term Care Ombudsman may subpoena the resident's records for the purpose of complaint investigation and resolution.

(2) The Ombudsman and designee shall have access to long-term care facility records that relate to an investigation. Such records include:

- (a) Incident reports;
- (b) Staff plans;
- (c) Survey inspection reports;
- (d) Time Cards;
- (e) Facility licenses;
- (f) Staff licenses; and
- (g) Employee schedules.

(3) When the Ombudsman or designee is investigating a complaint and is refused access to records authorized by this rule, the Office of the Long-Term Care Ombudsman may issue a subpoena which requires a person to appear to give testimony or to produce documents. If a person fails to comply with the subpoena, the Office of the Long-Term Care Ombudsman may request a court to take appropriate action.

Stat. Auth.: ORS 441

Stats. Implemented:

Hist.: LTCO 1-1989, f. 1-19-89, cert. ef. 2-1-89

114-005-0040

Confidentiality of Records

(1) The identity of residents, complaints or person providing information on behalf of the resident or complainant shall be confidential and shall not be disclosed unless:

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(a) The resident or resident's legal representative gives written consent that the resident's identity may be disclosed and specifies to whom the disclosure may be made;

(b) The complainant or the complainant's legal representative gives written consent that the complainant's identity may be disclosed and specifies to whom the disclosure may be made;

(c) The person providing information on behalf of the resident or complainant gives written consent which states that the person's identity may be disclosed and specifies to whom the disclosure may be made; or

(d) A court orders disclosure.

(2) No Ombudsman or designee who gains access to a resident's records shall discuss or disclose information in the records or disclose the identity of a resident, a complainant or a person providing information on behalf of a resident to any person not associated with the Ombudsman Program unless the conditions of section (1) of this rule are met.

(3) Information obtained by the Ombudsman Program may be used by the Ombudsman Program for the preparation and disclosure of statistical, case study, or other data provided that the identities of specific individuals are not disclosed.

Stat. Auth.: ORS 441

Stats. Implemented:

Hist.: LTCO 1-1989, f. 1-19-89, cert. ef. 2-1-89

DIVISION 6

PROGRAM INTERFERENCE

114-006-0000

Interference with Ombudsman Program

(1) No person shall willfully interfere with the performance of the Ombudsman or a designee's official duties.

(2) Individuals interfering with the Ombudsman or designee's official duties will be referred to the appropriate agency for sanctions

