OLDER AMERICANS ACT OF 1965
AS AMENDED IN 2006 (Public Law 109-365)

CHAPTER 2—OMBUDSMAN PROGRAMS

Section. 711. DEFINITIONS.

As used in this chapter:

(1) OFFICE.—The term ''Office'' means the office established in section 712(a)(1)(A).

(2) OMBUDSMAN.—The term ''Ombudsman'' means the individual described in section 712(a)(2).

(3) LOCAL OMBUDSMAN ENTITY.—The term ''local Ombudsman entity'' means an entity designated under section 712(a)(5)(A) to carry out the duties described in section 712(a)(5)(B) with respect to a planning and service area or other substate area.

(4) PROGRAM.—The term ''program'' means the State Long-Term Care Ombudsman program established in section 712(a)(1)(B).

(5) REPRESENTATIVE.—The term ''representative'' includes an employee or volunteer who represents an entity designated under section 712(a)(5)(A) and who is individually designated by the Ombudsman.

(6) RESIDENT.—The term ''resident'' means an older individual who resides in a long-term care facility.

(42 U.S.C. 3058f)

Section. 712. STATE LONG-TERM CARE OMBUDSMAN PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—In order to be eligible to receive an allotment under section 703 from funds appropriated under section 702 and made available to carry out this chapter, a State agency shall, in accordance with this section—

(A) establish and operate an Office of the State Long-Term Care Ombudsman; and

(B) carry out through the Office a State Long-Term Care Ombudsman program.

(2) OMBUDSMAN.—The Office shall be headed by an individual, to be known as the State Long-Term Care Ombudsman, who shall be selected from among individuals with expertise and experience in the fields of long-term care and advocacy.

(3) FUNCTIONS.—The Ombudsman shall serve on a fulltime basis, and shall, personally or through representatives of the Office—

(A) identify, investigate, and resolve complaints that—

(i) are made by, or on behalf of, residents; and

(ii) relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of—

(I) providers, or representatives of providers, of long-term care services;

(II) public agencies; or

(III) health and social service agencies;

(B) provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents;

(C) inform the residents about means of obtaining services provided by providers or agencies described in subparagraph (A)(ii) or services described in subparagraph (B);

(D) ensure that the residents have regular and timely access to the services provided through the Office and that the residents and complainants receive timely responses from representatives of the Office to complaints;

(E) represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(F) provide administrative and technical assistance to entities designated under paragraph (5) to assist the entities in participating in the program;

(G)

(i) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State;

(ii) recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and

(iii) facilitate public comment on the laws, regulations, policies, and actions;

(H)

(i) provide for training representatives of the Office;

(ii) promote the development of citizen organizations, to participate in the program; and

(iii) provide technical support for the development of resident and family councils to protect the well-being and rights of residents; and

(I) carry out such other activities as the Assistant Secretary determines to be appropriate.

(4) CONTRACTS AND ARRANGEMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B) the State agency may establish and operate the Office, and carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization.

(B) LICENSING AND CERTIFICATION ORGANIZATIONS; ASSOCIATIONS.—The State agency may not enter into the contract or other arrangement described in subparagraph (A) with—

(i) an agency or organization that is responsible for licensing or certifying long-term care services in the State; or

(ii) an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals.

(5) DESIGNATION OF LOCAL OMBUDSMAN ENTITIES AND REPRESENTATIVES.—

(A) DESIGNATION.—In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity.

(B) DUTIES.—An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency—

(i) provide services to protect the health, safety, welfare[14] and rights of residents;

(ii) ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;

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

(iv) represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(v)

(I) review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and

(II) facilitate the ability of the public to comment on the laws, regulations, policies, and actions;

(vi) support the development of resident and family councils; and

(vii) carry out other activities that the Ombudsman determines to be appropriate.

(C) ELIGIBILITY FOR DESIGNATION.—Entities eligible to be designated as local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall—

(i) have demonstrated capability to carry out the responsibilities of the Office;

(ii) be free of conflicts of interest and not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves;

(iii) in the case of the entities, be public or nonprofit private entities; and

(iv) meet such additional requirements as the Ombudsman may specify.

(D) POLICIES AND PROCEDURES.—

(i) IN GENERAL.—The State agency shall establish, in accordance with the Office, policies and procedures for monitoring local Ombudsman entities designated to carry out the duties of the Office.

(ii) POLICIES.—In a case in which the entities are grantees, or the representatives are employees, of area agencies on aging, the State agency

shall develop the policies in consultation with the area agencies on aging. The policies shall provide for participation and comment by the agencies and for resolution of concerns with respect to case activity.

(iii) CONFIDENTIALITY AND DISCLOSURE.—The State agency shall develop the policies and procedures in accordance with all provisions of this subtitle regarding confidentiality and conflict of interest.

(b) PROCEDURES FOR ACCESS.—

(1) IN GENERAL.—The State shall ensure that representatives of the Office shall have—

(A) access to long-term care facilities and residents;

(B)(i) appropriate access to review the medical and social records of a resident, if—

(I) the representative has the permission of the resident, or the legal representative of the resident; or

(II) the resident is unable to consent to the review and has no legal representative; or

(ii) access to the records as is necessary to investigate a complaint if—

(I) a legal guardian of the resident refuses to give the permission;

(II) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and

(III) the representative obtains the approval of the Ombudsman;

(C) access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities; and

(D) access to and, on request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities.

(2) PROCEDURES.—The State agency shall establish procedures to ensure the access described in paragraph (1).

(c) REPORTING SYSTEM.—The State agency shall establish a statewide uniform reporting system to—

(1) collect and analyze data relating to complaints and conditions in long-term care facilities and to residents for the purpose of identifying and resolving significant problems; and

(2) submit the data, on a regular basis, to—

(A) the agency of the State responsible for licensing or certifying long-term care facilities in the State;

(B) other State and Federal entities that the Ombudsman determines to be appropriate;

(C) the Assistant Secretary; and

(D) the National Ombudsman Resource Center established in section 202(a)(21).

(d) DISCLOSURE.—

(1) IN GENERAL.—The State agency shall establish procedures for the disclosure by the Ombudsman or local Ombudsman entities of files maintained by the program, including records described in subsection (b)(1) or (c).

(2) IDENTITY OF COMPLAINANT OR RESIDENT.—The procedures described in paragraph (1) shall—

(A) provide that, subject to subparagraph (B), the files and records described in paragraph (1) may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files and records); and

(B) prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless—

(i) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing;

(ii) (I) the complainant or resident gives consent orally; and

(II) the consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or

(iii) the disclosure is required by court order.

(e) CONSULTATION.—In planning and operating the program, the State agency shall consider the views of area agencies on aging, older individuals, and providers of long-term care.

(f) CONFLICT OF INTEREST.—The State agency shall—

(1) ensure that no individual, or member of the immediate family of an individual, involved in the designation of the Ombudsman (whether by appointment or otherwise) or the designation of an entity designated under subsection (a)(5), is subject to a conflict of interest;

(2) ensure that no officer or employee of the Office, representative of a local Ombudsman entity, or member of the immediate family of the officer, employee, or representative, is subject to a conflict of interest;

(3) ensure that the Ombudsman—

(A) does not have a direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(B) does not have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;

(C) is not employed by, or participating in the management of, a long-term care facility; and

(D) does not receive, or have the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility; and

(4) establish, and specify in writing, mechanisms to identify and remove conflicts of interest referred to in paragraphs (1) and (2), and to identify and eliminate the relationships described in subparagraphs (A) through (D) of paragraph (3), including such mechanisms as—

(A) the methods by which the State agency will examine individuals, and immediate family members, to identify the conflicts; and

(B) the actions that the State agency will require the individuals and such family members to take to remove such conflicts.

(g) LEGAL COUNSEL.—The State agency shall ensure that—

(1)(A) adequate legal counsel is available, and is able, without conflict of interest, to—

(i) provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; and

(ii) assist the Ombudsman and representatives of the Office in the performance of the official duties of the Ombudsman and representatives; and

(B) legal representation is provided to any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the Ombudsman or such a representative; and

(2) the Office pursues administrative, legal, and other appropriate remedies on behalf of residents.

(h) ADMINISTRATION.—The State agency shall require the Office to—

(1) prepare an annual report—

(A) describing the activities carried out by the Office in the year for which the report is prepared;

(B) containing and analyzing the data collected under subsection (c);

(C) evaluating the problems experienced by, and the complaints made by or on behalf of, residents;

(D) containing recommendations for—

(i) improving quality of the care and life of the residents; and

(ii) protecting the health, safety, welfare, and rights of the residents;

(E)(i) analyzing the success of the program including success in providing services to residents of board and care facilities and other similar adult care facilities; and

(ii) identifying barriers that prevent the optimal operation of the program; and

(F) providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers;

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

(3)(A) provide such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding—

(i) the problems and concerns of older individuals residing in long-term care facilities; and

(ii) recommendations related to the problems and concerns; and

(B) make available to the public, and submit to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities, each report prepared under paragraph (1);

(4)(A) not later than 1 year after the date of the enactment of this title, establish[15] procedures for the training of the representatives of the Office, including unpaid volunteers, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs, in consultation with representatives of citizen groups, long-term care providers, and the Office, that—

(A) specify a minimum number of hours of initial training;

(B) specify the content of the training, including training relating to—

(i) Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State;

(ii) investigative techniques; and

(iii) such other matters as the State determines to be appropriate; and

(C) specify an annual number of hours of in-service training for all designated representatives;

(5) prohibit any representative of the Office (other than the Ombudsman) from carrying out any activity described in subparagraphs (A) through (G) of subsection (a)(3) unless the representative—

(A) has received the training required under paragraph (4); and

(B) has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office;

(6) coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses established under—

(A) subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000[16]; and

(B) the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.);

(7) coordinate, to the greatest extent possible, ombudsman services with legal assistance provided under section 306(a)(2)(C), through adoption of memoranda of understanding and other means;

(8) coordinate services with State and local law enforcement agencies and courts of competent jurisdiction; and

(9) permit any local Ombudsman entity to carry out the responsibilities described in paragraph (1), (2), (3), (6), or (7).

(i) LIABILITY.—The State shall ensure that no representative of the Office will be liable under State law for the good faith performance of official duties.

(j) NONINTERFERENCE.—The State shall—

(1) ensure that willful interference with representatives of the Office in the performance of the official duties of the representatives (as defined by the Assistant Secretary) shall be unlawful;

(2) prohibit retaliation and reprisals by a long-term care facility or other entity with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of, the Office; and

(3) provide for appropriate sanctions with respect to the interference, retaliation, and reprisals.

(42 U.S.C. 3058g)

OLDER MICHIGANIANS ACT Act 180 of 1981

AN ACT to create a commission on services to the aging within the executive office of the governor; to create an office of services to the aging as an autonomous entity within the department of management and budget; to authorize the designation of area agencies on services to the aging and to prescribe their powers and duties; to establish certain programs relating to older persons; to prescribe the powers and duties of certain state departments, officers, and agencies; to create funds; to provide penalties; to repeal certain acts and parts of acts; and to repeal certain parts of this act on specific dates.

History: 1981, Act 180, Imd. Eff. Dec. 15, 1981;–Am. 1986, Act 259, Imd. Eff. Dec. 9, 1986;–Am. 1987, Act 35, Imd. Eff. May 27, 1987;–Am. 1988, Act 235, Eff. Oct. 7, 1988.

Popular name: Act 180

The People of the State of Michigan enact:

400.581 Short title.

Sec. 1. This act shall be known and may be cited as the “older Michiganians act”.

History: 1981, Act 180, Imd. Eff. Dec. 15, 1981.

Compiler's note: For transfer of powers and duties of the office of services to the aging from the department of management and budget to the department of community health, see E.R.O. No. 1997-5, compiled at MCL 400.224 of the Michigan Compiled Laws.

Popular name: Act 180

400.582 Definitions.

Sec. 2. As used in this act:

(a) “Area agency on aging” means an agency designated by the commission under section 4(i).

(b) “Chief elected official administrative officer” means any of the following:

(*i*) The president of a village.

(*ii*) The mayor of a city.

(*iii*) The supervisor of a township.

(*iv*) The elected county executive or appointed county manager of a county; or if the county has not adopted an optional unified form of county government, the chairperson of the county board of commissioners of the county.

(c) “Commission” means the commission on services to the aging established under section 3.

(d) “Director” means the director of the office of services to the aging.

(e) “Long-term care facility” means 1 or more of the following:

(*i*) A home for the aged as defined in section 20106(3) of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.20106 of the Michigan Compiled Laws.

(*ii*) An adult foster care facility as defined in section 3(4) of the adult foster care facility licensing act, Act No. 218 of the Public Acts of 1979, being section 400.703 of the Michigan Compiled Laws.

(*iii*) A nursing home as defined in section 20109(1) of Act No. 368 of the Public Acts of 1978, being section 333.20109 of the Michigan Compiled Laws.

(*iv*) A county medical care facility as defined in section 20104(4) of Act No. 368 of the Public Acts of 1978, being section 333.20104 of the Michigan Compiled Laws.
(*v*) A hospital long-term care unit as defined in section 20106(6) of Act No. 368 of the Public Acts of 1978.
(f) “Office” means the office of services to the aging created by section 5.
(g) “Older person” means a state resident who is 60 years of age or older, and the spouse of the older person, regardless of age.

History: 1981, Act 180, Imd. Eff. Dec. 15, 1981;–Am. 1987, Act 35, Imd. Eff. May 27, 1987.
Popular name: Act 180

400.586 Office of services to the aging; duties.
Sec. 6. The office of services to the aging shall do all of the following:
(aa) Establish a long-term care ombudsman program consisting of a state long-term care ombudsman and a system of local or regional ombudsman offices having the duties and powers described in section 6g. The local or regional ombudsman programs shall be funded through area agencies on aging.

History: 1981, Act 180, Imd. Eff. Dec. 15, 1981;–Am. 1987, Act 35, Imd. Eff. May 27, 1987;–Am. 2014, Act 78, Imd. Eff. Mar. 28, 2014.

Popular name: Act 180

***** *400.586a THIS SECTION DOES NOT APPLY AFTER MARCH 29, 1988: See (3) of 400.586a* *****

400.586g State long-term care ombudsman; job qualifications; operation; duties; immunity from liability; rebuttable presumption.
Sec. 6g. (1) Job qualifications for the state long-term care ombudsman established pursuant to section 6(2)(aa) shall include, but not be limited to, experience in all of the following:
(*i*) The field of aging.
(*ii*) Health care.
(*iii*) Working with community programs.
(*iv*) Long-term care issues, both regulatory and policy.
(2) The state long-term care ombudsman may operate either directly or by contract with any public agency or other appropriate private nonprofit organization other than an agency or organization which is responsible for licensing or certifying long-term care facilities or which is an association of long-term care facilities.
(3) The state long-term care ombudsman shall do all of the following:
(a) Establish and implement confidential complaint, investigatory, informational, educational, and referral procedures and programs.
(b) Establish a statewide uniform reporting system to collect and analyze complaints about the health, safety, welfare, and rights of residents of long-term care facilities for the purpose of publicizing improvements and significant problems.
(c) Assist in the development of and monitor the implementation of state and federal laws, rules, and regulations concerning the delivery of services to older persons.
(d) Annually report to the governor and legislature on the long-term care ombudsman

program and make recommendations for improving the health, safety, welfare, and rights of residents of long-term care facilities.
(e) Recommend changes in state and federal law, rules, regulations, policies, guidelines, practices, and procedures to improve the health, safety, welfare, and rights of residents of long-term care facilities.
(f) Cooperate with persons and public or private agencies and undertake or participate in conferences, inquiries, meetings, or studies which may lead to improvements in the health, safety, welfare, and rights of residents and the functioning of long-term care facilities.
(g) Widely publicize the long-term care ombudsman program.
(h) Provide training for local and regional long-term care ombudsmen, which shall include, but not be limited to, familiarity with all of the following:
(*i*) Relevant state and federal regulatory and enforcement agencies.
(*ii*) The common characteristics, conditions, and treatments of long-term care residents.
(*iii*) Long-term care facility operations.
(*iv*) Long-term care facility licensing and certification requirements.
(*v*) Titles XVIII and XIX of the social security act, 42 U.S.C. 1395 to 1396s.
(*vi*) Interviewing, investigating, mediation, and negotiation skills.
(*vii*) Management of volunteer programs.
(i) Recommend that the attorney general institute actions for injunctive relief or civil damages relative to complaints.
(4) If acting in good faith and within the authority granted by this act, the state long-term care ombudsman is immune from any civil or criminal liability that otherwise might result by reason of taking, investigating, or pursuing a complaint under this section. For purposes of any civil or criminal proceeding, there is a rebuttable presumption that when acting under the authority of this act, the state long-term care ombudsman does so in good faith.

History: Add. 1987, Act 35, Imd. Eff. May 27, 1987.

Popular name: Act 180

400.586h Local or regional long-term care ombudsman programs; requirements.
Sec. 6h. The local or regional long-term care ombudsman programs established pursuant to section 6(2)(aa) shall do all of the following:
(a) Accept, investigate, verify, and work to resolve complaints, whether reported to or initiated by an ombudsman, relating to any action which may adversely affect the health, safety, welfare, and rights of a resident of a long-term care facility.
(b) Provide information about long-term care facilities, the rights of residents, sources of payment for care, and guidelines in selecting a long-term facility or other service to residents and the public.
(c) Make referrals to appropriate government and private agencies.
(d) Recruit, train, and supervise volunteers to assist ombudsmen in providing services.
(e) Educate residents and the public about abuse of long-term care residents and coordinate with licensing and enforcement agencies to assure appropriate investigation of abuse complaints and corrective actions.
(f) Assist in the development and work of resident councils when invited by residents or the long-term care facility. As used in this subdivision, “resident council” means a forum in which residents of long-term care facilities exercise their rights and communicate their views on the operations of a long-term care facility, the quality of care and life provided,

and any other issue of interest to the council.

(g) Assist the state long-term care ombudsman in identifying needed regulatory changes in long-term care. **History:** Add. 1987, Act 35, Imd. Eff. May 27, 1987.

Popular name: Act 180

400.586i State, local, or regional long-term care ombudsman and trained volunteers; access to long-term care facility; purpose; time; "access" defined.

Sec. 6i. The state long-term care ombudsman, the local or regional long-term care ombudsmen, and their trained volunteers shall be granted access to any long-term care facility for the purpose of carrying out section 6h of this act. For the state long-term care ombudsman and the local or regional long-term care ombudsmen, access shall be allowed each day from 8 a.m. to 8 p.m. For ombudsman trained volunteers, access shall be allowed to nursing homes during regular visiting hours each day as required by section 20201(3)(b) of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.20201 of the Michigan Compiled Laws. For ombudsman trained volunteers, access shall be allowed to homes for the aged, hospital Rendered Friday, May 16, 2014 long-term care units, and adult foster care homes each day from 11 a.m. to 7 p.m. As used in this section, "access" means the right to do all of the following:

(a) Enter any facility and identify himself or herself.
(b) Seek consent from a resident to communicate privately and without restriction with that resident.
(c) Communicate privately and without restrictions with any resident who consents to communication.
(d) Observe all resident areas of the facility except the living area of any resident who protests the observation.

History: Add. 1987, Act 35, Imd. Eff. May 27, 1987.

Popular name: Act 180

400.586j Retaliation or discrimination as misdemeanor; unlawful conduct; fine.

Sec. 6j. (1) A person who retaliates or discriminates against any of the following individuals due to that individual's registration of a complaint or assistance in the investigation of a complaint is guilty of a misdemeanor:
(a) An officer, employee, resident, or visitor to a long-term care facility.
(b) A family member or guardian of a resident in a long-term care facility.
(c) An ombudsman described by this act.
(d) A volunteer at a long-term care facility.

(2) A person who willfully does any of the following in connection with an ombudsman described by this act is subject to a fine of not more than $1,500.00:
(a) Hinders the work of an ombudsman or an ombudsman program.
(b) Refuses to comply with a lawful request of an ombudsman.
(c) Offers compensation or other promises to improperly influence the outcome of a matter being investigated by an ombudsman.

History: Add. 1987, Act 35, Imd. Eff. May 27, 1987.

Popular name: Act 180

SERVICE NAME	Long Term Care Ombudsman/Advocacy
SERVICE NUMBER	C-11
SERVICE CATEGORY	Community
SERVICE DEFINITION	Provision of assistance and advocacy services to residents of long term care facilities to resolve complaints through problem identification and definition, education regarding rights, provision of information on appropriate rules, and referrals to appropriate community resources. The service also involves assistance to prospective long term care facility residents and their families regarding placement, financing and other long term care options. Identification and sharing of best practices in long term care service delivery, with an emphasis on promotion of culture change, is also part of the service. Each program must provide the following elements. **Consultation/Family Support**. Provision of assistance to older adults and their families in understanding, identifying, locating, evaluating and/or obtaining long term care services. **Complaint Investigation/Advocacy**. Receipt, investigation, verification and attempted resolution of individual complaints from residents or others acting on their behalf regarding any action which may adversely affect the health, safety, welfare and rights of a long term care facility resident. Complaint resolution processes include negotiation, mediation, and conflict resolution skills. This component also includes activities related to identifying obstacles and deficiencies in long term care delivery systems and developing recommendations for addressing identified problems. **Non-Complaint Related Facility Visits.** Quarterly visits to each long term care facility in the project area. More frequent visits may occur where problems exist. **Community Education**. Provision of information to the public including long term care facility residents, regarding all aspects of the long term care system elder abuse, neglect and exploitation. This component includes formal presentations, licensed facility and agency consultation, activities with the print and electronic media, development of consumer information materials. **Volunteer Support**. Conduct of recruitment, training, supervision, and ongoing support activities related to volunteer advocates assigned to assist residents of identified long term care facilities.
UNIT OF SERVICE	Each hour of family support, complaint investigation/advocacy, community education or volunteer support activities, including travel time to and from long term care facilities.

Minimum Standards

1. Each program shall be capable of providing assistance to residents of each long term care facility in the service target area.

2. Each entity desiring to operate a local Ombudsman program shall be designated by the State Long Term Care Ombudsman (SLTCO) to provide services in the State of Michigan. Individuals employed by local Ombudsman providers must be certified as local ombudsman by the SLTCO.

3. Each designated local ombudsman program will adhere to program directions, instructions, guidelines, and Ombudsmanager reporting requirements issued by the SLTCO in the following areas:

    a. Recruiting, interviewing and selection, initial training, apprenticeship and assessment of job readiness and credentialing of new local ombudsman staff and ombudsman volunteers;
    b. Ongoing education, professional development, performance evaluation, as related to the annual certification and designation process;
    c. Assignment to workgroups, task forces, special projects, meetings, both internal and external;
    d. Conduct of local ombudsman work and activities;
    e. Attendance at training/professional development events, staff meetings, quarterly training sessions and other educational events, or attendance as a presenter, as necessary;
    f. Implementation and operation of the ombudsman volunteer program.

4. Each program shall maintain the confidentiality of client identity and client records in accordance with policies issued by the SLTCO.

5. Each program shall establish linkage with Legal Assistance and Medicare/Medicaid Assistance Programs (MMAP) operating in the project service area and be able to assist clients in gaining access to available services, as necessary.

6. Each program shall maintain working relationships with OSA funded Care Management and Michigan Department of Community Health HCBS/ED Waiver projects operating in the project service area.

7. Each program shall work to prevent elder abuse, neglect and exploitation by conducting professional/paraprofessional training, community outreach, public education, case consultation, and/or interdisciplinary teams shall be implemented through a coordinated, interagency approach.

8. Each program shall participate in coordinated, collaborative approaches to prevent elder abuse, neglect and exploitation which shall include the participation of, at a minimum, adult protective services staff of local Department of Human Services, long term care ombudsman/advocacy programs, and legal assistance programs operating in the project service area.

9. Each program shall develop and maintain, for the purposes of coordination, relationships with state and local law enforcement agencies and courts of competent jurisdiction.

10. Each program shall develop and maintain an effective working relationship with the local nursing home closure team for their area as designated by the Department of Community Health, Bureau of Health Systems.

11. Each program shall be able to demonstrate working relationships with local offices of the Department of Human Services, and local county public health agencies.

12. Program staff shall be familiar with the complaint resolution processes of the Michigan Department of Community Health's Bureau of Health Systems; Department of Human Services, Bureau of Child and Adult Licensing; MPRO; and the Michigan Office of the Attorney General's Health Care Fraud Unit.

13. Program staff shall receive training in the following areas: common characteristics, conditions and treatments of long term care residents; long term care facility operations; long term care facility licensing and certification requirements; Titles XVIII and XIX of the Social Security Act; interviewing, investigating, mediation and negotiation skills; culture change, management of volunteer programs, and other areas as designated by the SLTCO.

14. Each program shall operate in compliance with Long Term Care Ombudsman program instructions, issued by the SLTCO, as required by federal and state authorizing legislation.

15. Each program shall maintain a financial management system that fully and accurately tracks, and accounts for the use of, all funds received from OSA and area agencies on aging.

16. Each program shall comply with Long Term Care Ombudsman/Advocacy Operating Standards and SLTCO program policy standards.

MICHIGAN LONG TERM CARE OMBUDSMAN POLICY

Subject: Designation of Local Ombudsman Program Provider

Date: April 15, 2011

1.0 The State Long Term care Ombudsman (SLTCO) has responsibility to designate entities as providers of long term care ombudsman services

2.0 Eligibility requirement's for designation as a provider

A Local Long Term Care Ombudsman (LLTCO) provider must:

2.1 Be a public or nonprofit entity

2.2 Not be an agency or organization responsible for licensing or certifying long-term care facilities or services.

2.3 Not be an association (or an affiliate of an association) of providers of long-term care or residential services.

2.4 Have no financial interest in a long-term care facility.

2.5 Have apparent capability to carry out the responsibilities of a LLTCO provider.

2.6 Have no un-remedied conflict of interest.

2.7 Adhere to OSA Service Standards, and instructions and guidelines issued by the SLTCO.

3.0 Each provider shall be capable of providing assistance to residents of each licensed long-term care facility in the planning service area (PSA)

4.0 Where a Area Agency on Aging (AAA), contracts with a provider, the designation of a provider shall occur as follows:

4.1 The AAA shall issue a request for proposal (RFP) seeking an entity to provide long term care ombudsman services within its service area. The RFP shall identify the criteria for designation as a provider and shall request submission of documents supporting the entity's claim of satisfying these criteria.

4.2 The AAA shall require all the responding entities that meet the criteria for designation develop an Ombudsman Services Plan setting forth all the following:

a. The goals and objectives of such entity in providing LLTCO services

b. Staffing plan

c. Plan for criminal background checks of ombudsman staff and volunteers

d. Ability to recruit, train, and manage a volunteer program using SLTCO approved curriculum

e. Organizational capacity to manage financial and human resource needs

f. A coordinated plan with other local agencies, including AAA's, Centers for Independent Living Services, Department of Human Services and Community Mental Health to promote the health, safety, welfare, and right of residents

g. Proof of necessary insurance, including volunteer liability coverage; and

h. A description of resources the entity will provide to assist in the operation of the program

4.3 The AAA shall send all of the RFP responses to the SLTCO.

4.4 The AAA shall recommend an entity for designation as a provider and shall provide the SLTCO with information supporting its recommendation.

4.5 The SLTCO shall review the RFP responses and the recommendation of the AAA .

4.6 The SLTCO may designate one or more of the applicants that have submitted an RFP response as eligible to be a provider of long term care ombudsman services.

4.7 The SLTCO shall notify the AAA of its determination within thirty (30) days of receiving the RFP responses..

4.8 The AAA shall notify all applicants of the SLTCO decision within fifteen (15) days of receiving such notification. The AAA notification shall include notice of the right to request a hearing, following the OSA Appeal Procedure, to appeal the SLTCO's determination.

4.9 Upon designation by the SLTCO, the AAA shall enter into a contract (up to 3 years to coincide with the OSA multi-year plan) with a designated provider for the provision of local long term care ombusdman services in the PSA. Such contract must:

a. Specify the PSA;

b. Require the provider to adhere to all applicable federal, state laws, regulations, and policies; and

c. Include a termination clause

4.10 At any time during the contract period the SLTCO can review the contract to ensure compliance with OSA Service Standards, instructions and guidelines.

4.11 If the contract between the provider and the AAA to provide long term care ombudsman services is not renewed or is terminated for any reason, the AAA shall:

a. Immediately notify the SLTCO;

b. Recruit new applicants for designation as LLTCO; and

c. Ensure continuation of ombudsman services.

5.0 Where the Area Agency on Aging (AAA) applies to serve as the provider, the designation of a provider shall occur as follows:

5.1 The AAA may be considered as a provider agency where the SLTCO determines that:

a. Designation of the AAA as the provider agency is necessary to ensure an adequate supply of ombudsman services per OSA Service Standard, Long-Term Care Ombudsman/Advocacy, C-11;

or

b. Ombudsman services can be provided more economically by the AAA;

or

c. The AAA has successfully operated a local ombudsman program within the previous three years.

5.2 The AAA shall request consideration to be designated as a provider and submit an Ombudsman Services Plan to the SLTCO setting forth all the following:

a. The goals and objectives of such entity in providing LTCO services

b. Staffing plan

c. Plan for criminal background checks of ombudsman staff and volunteers

d. Ability to recruit, train, and manage a volunteer program using SLTCO approved curriculum

e. Organizational capacity to manage financial and human resource needs

f. A coordinated plan with other local agencies, including Centers for Independent Living Services, Department of Human Services and Community Mental Health to promote the health, safety, welfare, and right of residents

g. Proof of necessary insurance, including volunteer liability coverage; and

h. A description of resources the entity will provide to assist in the operation of the program

5.3 The SLTCO may designate the AAA as the provider if:

a. The AAA meets the criteria for designation;

b. The AAA submits an acceptable Ombudsman Services Plan meeting OSA Service Standard, Long-Term Care Ombudsman/Advocacy, C-11; and

c. The AAA is not otherwise prohibited from fulfilling the duties of the provider

5.4 The SLTCO shall notify the AAA within thirty (30) days of the receipt of the Ombudsman Services Plan of its decision. If the SLTCO declines to designate the AAA as the provider, the notice shall include notice of the right to request a hearing, following the OSA Appeal Procedure, to appeal the SLTCO's determination .

5.5 If the SLTCO designates the AAA, the SLTCO program shall enter into a contract (up to 3 years to coincide with the OSA multi-year plan) with the AAA for the provision of long term care ombusdman services in the PSA. Such contract must:

a. Require the AAA to adhere to all applicable federal, state laws, regulations, and policies; and

b. Include a termination clause, whereby the SLTCO can terminate the designation at any time the AAA ceases to meet the designation requirements.

5.6 The execution date of the AAA's contract with the SLTCO Program to provide local ombudsman services shall be the effective date of the designation. The contract may serve up to a three-year period to coincide with the OSA multi-year plan. The SLTCO can review the contract at anytime to assure compliance with OSA Service Standards, instructions and guidelines.

MICHIGAN LONG TERM CARE OMBUDMAN POLICY

Subject: **Conflict of Interest**

Date: **June 22, 2009**

A. Conflicts of interest

To serve as an ombudsman, volunteer ombudsman, or member of the state long term care ombudsman staff, an individual and members of her or his family must have no conflict of interest known to him or her, or an approved plan to sufficiently resolve any conflict of interest.

An individual shall not:

(1) Have an ownership or investment interest in, or other financial relationship with, a long-term care facility or a long-term care service, including participation in a mutual fund whose long-term care investments are substantial;

(3) Be employed by a licensed or unlicensed long-term care facility;

(4) Receive, directly or indirectly, money or other things of financial value from an owner or operator of a licensed or unlicensed long-term care facility or long term care service;

(5) Provide ombudsman services to residents of a facility or another facility within the corporation if the individual has been an employee of that long-term care facility or corporation within the previous year;

(6) Provide ombudsman services to residents of a facility in which the individual has a spouse, child, parent, grandparent, sibling, aunt, uncle or significant other residing.

(7) Sell services or products to residents or to licensed long-term care facilities;

(8) Serve as a resident's guardian, patient advocate, conservator, attorney-in-fact or other legal representative, except when the relationship originates outside the role of ombudsman (for example, a family member) and the individual does not provide ombudsman services to any resident in that resident's facility.

(9) Be employed by the Department of Community Health, the Department of Human Services, a probate court or a guardianship entity.

B. Remedying a conflict of interest

(1) An individual has a continuing duty to notify the State Long Term Care Ombudsman of any actual or potential conflict of interest.

(2) Upon report of a possible conflict of interest, the SLTCO shall determine whether an actual or potential conflict exists and whether actions can be taken to sufficiently resolve the conflict.

(3) A conflict can be sufficiently resolved only when the conflict does not interfere with any duties of the SLTCOP and is not likely to threaten the public perception of the SLTCOP as an independent advocate for residents.

C. Statement concerning conflicts of interest

(Complete either paragraph A or paragraph B)

(A) I, _____, have carefully read the information above. Neither I nor any of the following - spouse, child, parent or sibling - has any conflict of interest or potential conflict of interest.

I have a continuing obligation to immediately bring any conflict of interest or potential conflict of interest to the attention of the State Long Term Care Ombudsman.

(B) I, _____, have a conflict of interest or potential conflict of interest because
_____

I recognize this conflict or potential conflict must be successfully resolved before I can serve as an ombudsman, ombudsman volunteer, or employee.

_____ _____
Signature

_____ _____
Sarah Slocum. STLCO

Exhibit #5

MICHIGAN LONG TERM CARE OMBUDSMAN POLICY

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Exhibit #5

Hand Out #1

MICHIGAN LONG TERM CARE OMBUDSMAN POLICY

INTRODUCTION

This binder contains program policies of the Michigan Long Term Care Ombudsman Program. They are arranged alphabetically by topic.

All staff paid with state or federal ombudsman funding, or who are contributing their time to Ombudsman services but paid by another funding source, must adhere to these policies.

Volunteers and student interns who have been issued an Ombudsman I.D. badge, are also bound by these policies.

Additional policies will be developed as they are needed. A copy of each new policy will be mailed to you for insertion in your binder.

If you have questions, please contact me by e-mail, slocums@michigan.gov, or by telephone, (517) 335-0148.

Thanks to each of you for being part of, and contributing to the success of, the Michigan Long Term Care Ombudsman program.

July 1, 2006

Sarah Slocum
State Long Term Care Ombudsman
Lansing, Michigan

Exhibit #5

Hand Out #2

MICHIGAN LONG TERM CARE OMBUDSMAN POLICY

Subject: **Appeals**

Date: **December 6, 2004**

1. Involuntary Transfer Appeals

   A. Local ombudsman may draft letters questioning the appeal notice, and send the letter to the facility or the Bureau of Health Systems..

   Local ombudsman may also assist residents or families who wish to send their own letters.

   B. Local ombudsman should not try to do hearings or ALJ level appeals, but rather try to secure Legal Services representation for residents in these proceedings.

   In special circumstances, the State Long Term Care Ombudsman may grant permission to local ombudsman to file an appeal.

2. Complaint Appeals

   A. Local Ombudsman should not try to do hearings or ALJ level appeals. But rather try to secure Legal Services representation for residents in these proceedings.

   In special circumstances, the State Long Term Care Ombudsman may grant permission to local ombudsman to file an appeal.

MICHIGAN LONG TERM CARE OMBUDSMAN POLICY

Subject: **Document Retention**

Date: **December 6, 2004**

1. Statements of Deficiency and other facility survey and enforcement documents

   Keep for 3 years, unless they are needed longer for a particular use.

2. Case Files / Client Files

   Keep for 3 years. If there is ongoing activity related to a case or client, keep the files as long as necessary. Shred documents before disposing.

3. Grant Applications / Reports

   Keep for 3 years, unless auditors or funding sources require a longer retention period.

MICHIGAN LONG TERM CARE OMBUDSMAN POLICY

Subject: **Media Contacts**

Date: **December 12, 2004**

1. Procedure for interacting with newspaper, radio or television reporters, as ombudsman – to ensure consistent message and optimal strategy.

   A. Before talking with the media, local ombudsman must obtain approval from her or her supervisor **and** the State Long Term Care Ombudsman.

   B. If the local ombudsman cannot reach SLTCO, obtain approval from an Assistant SLTCO.

   C. If the local ombudsman cannot reach the SLTCO or an ASLTCO, issue a polite "no comment" to the media. In all cases, notify the STLCO of media interaction.

2. Types of contact

   A. Responding to media requests

      1. General information on long-term care

      2. Background, e.g., residents' rights, ombudsman program, statutes and regulations

      3. Crisis or "Hot" stories – make sure to honor confidentially, unless residents give specific, written authorization to release information

   B. Initiating media contact

      1. Letters to the editor or op-ed pieces

      2. Calling reporters

3. There are no "Off the Record" comments; only say what you want broadcast/printed. Know your message and stick to it – no matter what reporters ask!

Exhibit #5

Hand Out #5

MICHIGAN LONG TERM CARE OMBUDSMAN POLICY

Subject: **Mileage for Training Events**

Date: **April 8, 2004**

1. SLTCOP Trainings

   A. The SLTCOP will pay mileage for local ombudsman to attend required SLTCOP training events. Local ombudsman are encouraged to carpool whenever possible to save on expenses.

   B. The SLTCOP will pay for overnight accommodations and meal expenses for ombudsman staff from Regions 9, 10 and 11 for training sessions held in Lansing.

   C. For trainings at locations significantly north of Lansing, the State Long Term Care Ombudsman will approve overnight accommodations and meal expenses for those local staff with substantial travel time.

2. Other Events

   A. The State Long Term Care Ombudsman will approve payments for mileage for local staff to attend other training events and conferences on a case-by-case basis, depending on the availability of program funds.

Exhibit #5

Hand Out #6

MICHIGAN LONG TERM CARE OMBUDSMAN POLICY

Subject: **Nursing Home Transition Pre-Screening and Referral**

Date: **June 17, 2005**

The MI-Choice Home and Community Based Waiver programs were recently awarded $15,000 per MI-Choice program (there are 21 programs) to assist nursing home residents transition out of facilities into other settings of their choice (apartment, house, AFC, etc.). Also, $600,000 statewide has been set aside from the funds collected from nursing home civil money penalties to pay for transition costs for nursing home residents who want to move out. Long Term Care Ombudsmen are key partners in assisting residents who want to move out and referring them to MI-Choice agencies for help with the transition.

The following brief questionnaire is for local ombudsman to use when interviewing residents who want to move out and want to work with the MI-Choice agency to get assistance with that move.

The State Long Term Care Ombudsman Program is asking each of you to participate in the nursing home transition efforts by identifying residents who want to, and may be able to, transition out, completing the questionnaire with the resident and making the referral to MI-Choice for assistance. The MI-Choice Care Managers will do a more thorough assessment of the resident and do the work of helping them with housing and services in their new settings.

Some guidelines about this effort:

Identifying transition participants:

1. Nursing Home staff is often helpful in identifying residents who may want to, and be successful in moving out. Take information and tips from social workers, nurses, CNAs, activity staff, and others at facilities.

2. Ombudsmen may also know of residents who may want to transition through complaint casework, or from routine visits to facilities. Follow up with those people you think may want to move.

3. Resident Councils may be helpful. When you attend a resident council meeting, talk about this transition opportunity and ask them for referrals of fellow residents.

4. Family Councils may also help. Explain transition to them, and ask them if they think their loved one may want to be assessed by MI-Choice.

Conducting the interview:

1. Limit your interviews/questionnaires to residents who give some indication that they want to move, however, do not make a judgment about whether this resident would be successful or not. If they are interested, go ahead with the interview and let the MI-Choice agency deal with the more in-depth assessment.

2. You may interview surrogate decision-makers if the resident is incompetent or unable to communicate. Remember, though, that just because a resident has a guardian does not mean s/he does not have feelings, opinions, and rights. Whenever possible, conduct the questionnaire and all contact directly with the resident.

3. Make sure you have privacy and enough time to talk with the resident about transition before you start.

The referral:

1. If your local MI-Choice agency is willing to take referrals, send a copy of the questionnaire to MI-Choice for assessment.

2. Send another copy to the State Long Term Care Ombudsman for tracking purposes.

3. Keep a copy in a separate file in your office so that you can easily track how many referrals you are making.

4. Only refer as many potential clients as your local MI-Choice is willing to assess. It does no good to send hundreds of potential participants to a MI-Choice agency that can only take five.

5. Get a supply of brochures or contact info sheets from any MI-Choice agencies in your area (if they are willing to take referrals).

6. If you have more than one MI-Choice agency serving the area where the resident lives, offer materials and information from all MI-Choice agencies willing to take referrals and let the resident or their surrogate decision-maker decide which agency to have the referral sent to.

Tips and Questions:

1. Get to know your MI-Choice intake workers and how many referrals they can take. Try to stay within the limits they set.

2. Don't try to be a Care Manager or assessment expert yourself. Just do the questionnaire, and then let the MI-Choice staff take over the transition. You can remain involved and help out, but let MI-Choice handle the transition.

3. Do not take the nursing home staff's word that no one can or wants to move out. Listen to what residents want.

4. If you need help, or have questions, call Sarah Slocum at 517-335-0148, Brad Geller at 517-373-3697, or Priscilla Cheever at 517-373-7350

Exhibit #5

STATE LONG TERM CARE OMBUDSMAN
NURSING FACILITY TRANSITION INITIATIVE

Client Intake and Screening Form

PERSONAL INFORMATION

Your name _____

Birth date _____ Gender _____

RESIDENCE

Name of the nursing home _____

City: _____ Telephone number: _____

Why were you admitted to the nursing home?

_____

INTEREST IN MOVING

Are you interested in moving back to the community? Yes ____ No____

I am interested in moving to - My home _____ An apartment _____

Assisted Living _____ Other _____

In what city or town? _____

RELATIONSHIPS

Do you have a durable power of attorney? Yes____ No_____

If Yes, what is her or his name? _____

Do you have a representative payee? Yes____ No_____

If Yes, what is her or his name? _____

Do you have a guardian? Yes____ No_____

If Yes, what is her or his name? _____

What family members or friends are most involved with you?

Name: _____

Telephone Number: _____ Relationship: _____

Name: _____

Telephone Number: _____ Relationship: _____

CARE NEEDS

Services _____

Medications _____

Assistance with walking _____

INSURANCE

Medicare _____ Medicaid _____ Other _____

INCOME

Social Security $_____ SSI $_____ Pension: $_____

Signature of Client _____ Date: _____

Signature of Ombudsman _____ Date: _____

Print Name: _____
Waiver Agent/CIL/NFT Program referred to _____

Exhibit #5

Hand Out #7

MICHIGAN LONG TERM CARE OMBUDSMAN POLICY

Subject: **Plans of Correction**

Date: **April 8, 2008**

The State LTC Ombudsman (SLTCO) Office has worked out a document sharing agreement with the Bureau of Health Systems (BHS).

As you have seen over the last several months, as much as possible of the documentation resulting from surveys, complaint investigations, and enforcement actions is being shared with the SLTCO electronically. Many of you are then receiving the documents for your service area electronically from the SLTCO staff. Others have worked out special arrangements with our office for other methods.

A different arrangement has been set up regarding the Plans of Corrections (POC) resulting from surveys or complaint investigations. The elements of this agreement with BHS are:

1. POCs are available to State and Local Ombudsmen without a Freedom of Information Act request.

2. POCs will be requested from BHS on a case by case basis – so, we will not be getting ALL POC documents, but will be able to get POCs for particular facilities when we request them.

3. All requests for POCs will be processed through the State LTC Ombudsman office. Cathy Dufresne will be the contact person for these requests.

4. Cathy will request the specific POC you want from BHS and forward it to you.

Please only ask for the POCs you have a particular interest in getting, and please make that request to Cathy Dufresne at dufresnec@michigan.gov.

If you have any questions, or experience any problems with this process, please e mail Sarah Slocum at slocums@michigan.gov.

MICHIGAN LONG TERM CARE OMBUDSMAN POLICY

Subject: **Responding to Subpoenas and Other Requests for Information**

Date: **June 21, 2006**

1. Background

Local ombudsman will sometimes receive subpoenas to testify or to produce records regarding cases in litigation. These cases may arise under a number of circumstances including medical malpractice and negligence cases against the nursing home, whistleblower cases filed by former nursing home employees, enforcement actions, or criminal cases.

Moreover, when potential plaintiffs, prosecutors or other attorneys are considering filing a case, they might call local ombudsman seeking information to assist them in preparing litigation.

2. The Law

Pursuant to the Older Americans Act, 42 U.S. C. Sec. 3058g(d), ombudsman have very strict duties of confidentiality:

(d) Disclosure.

(1) In general. The State agency shall establish procedures for the disclosure by the Ombudsman or local Ombudsman entities of files maintained by the program, including records described in subsection (b)(1) or (c).

(2) Identity of complainant or resident. The procedures described in paragraph (1) shall—

(A) provide that, subject to subparagraph (B), the files and records described in paragraph (1) may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files and records); and

(B) prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless-

(i) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing;

(ii) (I) the complainant or resident gives consent orally; and
(II) the consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or

(iii) the disclosure is required by court order.

3. Program Policy

Upon receipt of a subpoena or inquiry from a lawyer or potential litigant, ombudsman staff shall immediately contact the State Long Term Care Ombudsman (or an Assistant State Long Term Care Ombudsman if the STLCO is unavailable) and shall not provide any information of any kind without further instruction from her.

Ombudsman staff may not disclose whether a complaint has ever been received by or about an individual, the content of a complaint or investigation, or the outcome of a complaint or investigation. Ombudsman staff should simply state their records are confidential and they may not share any information or confirm or deny whether any complaint has ever been received in the relevant matter before contacting the State Ombudsman.

In cases in which a complainant or resident about whom a complaint has been filed is willing to sign a release to permit the ombudsman to release confidential information, the release form must be approved by the State Long Term Care Ombudsman.

In situations in which the SLTCO approves the release of information, pursuant to the Older Americans Act provisions, all documents to be released must be provided to the SLTCO before they are released. Information in the records may, in the SLTCO's discretion, be redacted (edited by blacking out certain information) to protect the privacy of other residents or for other purposes.

The SLTCO will also review with ombudsman staff whether they have fully complied with the subpoena by providing all records and documents requested in the subpoena. This may include copies of email correspondence, calendar entries, and other documents maintained by ombudsman staff. Ombudsman staff are required to maintain copies of all documents—including emails and informal notes--pertaining to complaints and investigations.

Hand Out #9

MICHIGAN LONG TERM CARE OMBUDSMAN POLICY

Subject: **Serving as Fiduciary**

Date: **June 21, 2006**

1. A fiduciary holds a position of trust with an individual, a relationship created by private agreement or court order. Duties owed the individual depend on the type of fiduciary.

2. Some examples of fiduciaries are a trustee under a trust, patient advocate under a durable power of attorney for health care, personal representative in a decedents' estate, agent under a durable power of attorney for finances, a guardian and a conservator established by a probate court.

3. With broad exceptions noted below, a local ombudsman or volunteer ombudsman is not to serve as a fiduciary for an adult. The reason is the relationship could conflict with her or his professional role.

4. The following exceptions apply-

   A. A local ombudsman or volunteer ombudsman can serve as a fiduciary for a family member. Family members include spouse or significant other, children, grandchildren, parents, grandparents, bothers and sisters.

   B. A local ombudsman or volunteer ombudsman can continue to serve as fiduciary for any individual when the fiduciary relationship began before the local ombudsman or volunteer ombudsman started work with the ombudsman program.

   The local ombudsman or volunteer must acknowledge this relationship, and she or he will not be assigned to a facility where the individual resides.

Exhibit #5

Hand Out #10

MICHIGAN LONG TERM CARE OMBUDSMAN POLICY

Subject: **Volunteers Charged With A Crime**

Date: **December 6, 2004**

1. A Long Term Care Ombudsman Program volunteer who is charged with -

   - Any felony; or
   - Any misdemeanor that involves victimization of a vulnerable adult or child

   will be placed on a Leave of Absence from the Ombudsman program until the case is settled or adjudicated.

2. The Local Ombudsman must immediately do all the following -

   - Notify the volunteer of placement on Leave of Absence
   - Notify their agency supervisor of this action
   - Notify the State Long Term Care Ombudsman of this action
   - Notify the volunteer that he/she may not make any facility visits during the Leave period
   - Require the volunteer to turn in his/her Ombudsman name badge until the person's status with the Ombudsman Program is decided
   - Notify all facilities visited by this volunteer of the volunteer's status (on a Leave of Absence from the program, do not offer any details or respond to questions about the reason for the Leave)
   - Notify the State Long Term Care Ombudsman of the completion of the above actions.

3. After the volunteer's legal charges are settled or adjudicated, a decision about the person's eligibility to volunteer for the Ombudsman program will be made on a case by case basis by the State Long Term Care Ombudsman.

Exhibit #5

Hand Out #11

STATE OF MICHIGAN
OFFICE OF SERVICES TO THE AGING
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

SHARON L. GIRE
DIRECTOR

May 13, 2005

MEMORANDUM

TO: Local LTC Ombudsman Programs and Area Agency on Aging Directors

FROM: Sarah Slocum, Director, State Long Term Care Ombudsman

SUBJECT: HIPAA Rules and Ombudsman Services

Several questions have come up from local ombudsman staff and from area agency on aging staff related to HIPAA and Ombudsman services. The attached Information Memorandum (AOA-IM-03-01, February 4, 2003) from the administration on aging clarifies how HIPAA privacy rules affect ombudsman services and protocols.

In short, HIPAA rules do apply to licensed nursing homes, as health facilities. However, since State and Local Ombudsman Programs are considered "health oversight agencies", the Ombudsman Program maintains the authorities and abilities to access resident records, as described in the Older Americans Act (42 U.S.C. 305 8a Title VII of the Act et seq). Ombudsmen must maintain client confidentiality, as was the case prior to the enactment of HIPAA. Ombudsmen who work in adult foster care homes and homes for the aged are not at all impacted by HIPAA, as these residential settings are not considered "health facilities" under the law and therefore HIPAA rules do not apply in these settings.

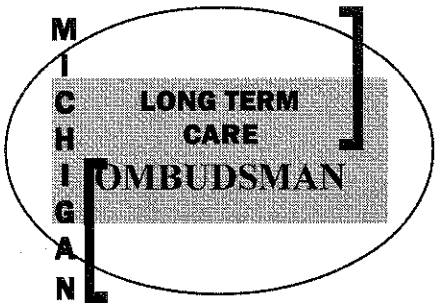
The attached document provides a more detailed description of the effect of HIPAA on Ombudsman services. I have also included a copy of a document supplied by the administration on aging entitled "Selected Provisions of the Privacy Rule", which is the actual language of the HIPAA law that is relevant to the topic of Ombudsman Programs and HIPAA.

If you have any questions, please call me at 517/335-0148 or contact me by e-mail at slocums@michigan.gov.

Enclosure

Cc: Sharon Gire, Director, Office of Services to the Aging (w/attachments)
Holliace Spencer, Director, Community Services Division/OSA (w/attachments)

Exhibit #5



MEMORANDUM

DATE: October 13, 2006

TO: Local LTC Ombudsman staff

FROM: Sarah Slocum

SUBJECT: HIPAA and Ombudsman work

There have recently been a couple of questions from Local Ombudsmen about releasing information, privacy rules, HIPAA, talking to the media, and other related situations.

I am sending another copy of the memo from the federal Administration on Aging, along with my memo from May 13, 2005 when this was first sent to you. This time, the memo is three-hole punched and must be inserted into your Manual of Michigan Long Term Care Ombudsman Policies sent to each of you earlier this year.

Please read this HIPAA memo to refresh your memories. Also, please re-read the Ombudsman policies on Media Contacts and on Responding to Subpoenas and Other Requests for Information to make sure you have a complete picture of our policies on release (or not!) of information.

Please remember that we must maintain client confidentiality, and that only the client's written release of information allows us to provide information to entities outside the Ombudsman program. You may reveal client information to other State and local Ombudsman staff for purposes of technical assistance without violating any confidentiality or privacy requirements.

Call Priscilla Cheever (517-373-3750), Brad Geller (517-373-3697), or me (517-335-0148) with any questions.

INFORMATION MEMORANDUM
AOA-IM-03-01
February 4, 2003

TO : STATE AND AREA AGENCIES ON AGING ADMINISTERING PLANS UNDER TITLES III AND VII OF THE OLDER AMERICANS ACT OF 1965, AS AMENDED; OFFICES OF STATE LONG-TERM CARE OMBUDSMEN

SUBJECT : Ombudsman Access to Residents' Records and Other Information; the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule and its Effect on Access to Residents' Records by the Long-Term Care Ombudsman Program, Residents and Residents' Representatives

LEGAL AND RELATED REFERENCES : Older Americans Act, as amended, 42 U.S.C 305 8a Title VII of the Act et seq.; Health Insurance Portability and Accountability Act (HIPAA) of 1996, Pub. L. No. 104-191 (codified in scattered sections of 42 U.S.C.); "Standards for Privacy of Individually Identifiable Health Information," (The Privacy Rule) (45 CFR Parts 160 and 164)

In recent months, questions have been raised about the effect of the recently issued "Standards for Privacy of Individually Identifiable Health Information" (Privacy Rule), implementing provisions of the Health Insurance Portability and Accountability Act (HIPAA) on access to residents' records and other information by representatives of the Long-Term Care Ombudsman Program (LTCOP), residents of long-term care facilities and residents' representatives.

This memorandum:

1. Reviews the Older Americans Act (OAA) requirements regarding ombudsman access to residents' records and other information, and the Nursing Home Reform Act (the Omnibus Budget and Reconciliation Act of 1987 – OBRA '87) ombudsman access requirements;

1 Explains that the Privacy Rule does not negate those requirements; and

2 Provides additional information for state and area agencies on aging and ombudsmen about the Privacy Rule.

The memorandum addresses the following specific topics:

- Summary of Privacy Rule implications for ombudsman work and state agency on aging responsibilities;
- OAA requirements regarding ombudsman access to residents' records and other information;
- The ombudsman access to records requirement in the Nursing Home Reform Act of 1987, which governs nursing homes participating in Medicare and Medicaid;
- Background on HIPAA and the Privacy Rule;
- The Privacy Rule requirements; the LTCOP is a "Health Oversight Agency"
- How these statutory and regulatory requirements affect the work of long-term care ombudsmen; and
- How the Privacy Rule affects residents' and their representatives' access to residents' individual clinical files.

Summary of Implications of the Privacy Rule for Ombudsman Work State Agency on Aging Responsibility

Under the Privacy Rule, the LTCOP is a "health oversight agency." Therefore, the Privacy Rule does not preclude release of residents' clinical records to the LTCOP, with or without authorization of the resident or resident's legal representative. Also, since the LTCOP is a "health oversight agency," nursing homes and other "covered entities" may, in response to appropriate ombudsman inquiries, share other information without fear of violating the Privacy Rule.

State agencies on aging are required under the OAA to ensure appropriate ombudsman access to residents' records.

Nursing homes which participate in Medicare and Medicaid are required to provide ombudsmen access to residents' records with the permission of the resident or the resident's legal representative, consistent with state law.

To ensure that all facilities covered by the program, including nursing homes which do not participate in Medicare and Medicaid and board and care, assisted living and similar facilities, provide access to records under all the circumstances outlined in Section 712 (b) of the OAA (see below), state agencies on aging must ensure that the state has in place a statutory, regulatory or policy requirement sufficient to ensure that the facilities provide such access.

The following sections review and explain the Federal access and privacy requirements and how they affect each other.

OAA Requirements of State Agencies on Aging Regarding Ombudsman Access to Residents' Records and Other Information

The OAA specifies requirements for ombudsman access to facilities, residents, residents' records and other information as follows:

Sec. 712 STATE LONG-TERM CARE OMBUDSMAN PROGRAM

(b) Procedures for Access.–

(1) In general.– The State shall ensure that representatives of the Office shall have-

(A) access to long-term care facilities and residents;

(B) (i) appropriate access to review the medical and social records of a resident, if–

(I) the representative has the permission of the resident, or the legal representative of the resident; or

(II) the resident is unable to consent to the review and has no legal representative; or

(ii) access to the records as is necessary to investigate a complaint if–

(I) a legal guardian of the resident refuses to give the permission;

(II) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and

(III) the representative obtains the approval of the Ombudsman;

(C) access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities; and

(D) access to and, on request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities.

(2) **Procedures.--The State agency shall establish procedures to ensure the access described in paragraph (1).** (emphasis added)

OBRA '87 Requirement Regarding Ombudsman Access to Residents' Records

The Nursing Home Reform Act of 1987 amended Sections 1819 (Medicare) and 1919 (Medicaid) of the Social Security Act by adding the following provision:

(c)(3)(E) ACCESS AND VISITATION RIGHTS.- A nursing facility must - (E) permit representatives of the State ombudsman...with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a

resident's clinical records.

Thus, nursing homes which participate in Medicare and Medicaid are required by Federal law to permit ombudsman representatives to examine a resident's clinical records with permission of the resident or the resident's legal representative, consistent with state law.

(**Note** that neither the Older Americans Act nor the Social Security Act, as amended by OBRA, requires that permission must be in writing; however, it is strongly recommended that when ombudsmen examine a resident's records, they document in the case file that they have obtained permission to do so, in accordance with these statutory requirements.)

Background on HIPAA and the Privacy Rule

Title I of HIPAA, which became effective on July 1, 1997, protects health insurance coverage for workers and their families when they change or lose their jobs. The Administrative Simplification provisions in Title II authorized the Secretary of the U.S. Department of Health and Human Services (DHHS) to promulgate standards for electronic health data transactions. The Secretary is also authorized to promulgate standards for the privacy of individually identifiable health information if Congress does not enact health care privacy legislation by August 21, 1999. HIPAA also requires the Secretary to provide Congress with recommendations for legislation to protect the confidentiality of health care information.

The Secretary submitted such recommendations to Congress on September 11, 1997, but Congress did not pass such legislation within its self-imposed deadline. DHHS published a proposed rule setting forth privacy standards for individually identifiable health information on November 3, 1999 (64 # FR 59918). After reviewing and considering the public comments, DHHS issued a final rule (65 FR 82462) on December 28, 2000, establishing "Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule")," which became effective on April 14, 2001. DHHS issued final modifications to the Privacy Rule on August 14, 2002 (67 FR 53182), which became effective October 14, 2002.

The Privacy Rule applies only to "covered entities," which are defined as 'health plans, health care clearinghouses, and health care providers who conduct certain financial and administrative transactions electronically.' (Covered entities have until April 2003 to comply, although they may comply prior to that date.) In contrast, the Ombudsman Program applies to long-term care facilities but not to health plans, health care clearinghouses or health providers other than long-term care facilities.

The Privacy Rule standards apply to nursing homes but not to board and care, assisted living and similar facilities unless they are health care providers who transmit information electronically in connection with certain financial and administrative transactions. Regulations at 45 CFR 160.103 define "health care provider" as a provider of services (as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(u)), a provider of medical or health services (as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business. "Health care" is

defined in the Rule to include "1) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and 2) the sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription."

Privacy Rule Requirements
LTCOPs Are "Health Oversight Agencies"

The regulations permit covered entities to release individually identifiable health information only with the authorization of the individual to whom the information pertains, or to the individual's personal representative, with certain exceptions. Among the exceptions is release of information to "health oversight agencies." Covered entities may release individuals' records to such agencies without the authorization of the resident or his/her legal representative, to the extent permitted by law or regulation, subject to the Privacy Rule's minimum necessary requirements.

The Rule defines a "health oversight agency" as follows:

> an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant. (Section 164.501)

Section 164.512 (d) of the Rule specifies:

> A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

- The health care system;
- Government benefit programs for which health information is relevant to beneficiary eligibility;
- Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or
- Entities subject to civil rights laws for which health information is necessary for determining compliance.

Exception to health oversight activities For the purpose of the disclosures permitted by paragraph (d)(1) of this section, a health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such

investigation or other activity does not arise out of and is not directly related to:

- The receipt of health care;
- A claim for public benefits related to health; or
- Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.

The DHHS Office for Civil Rights (OCR), the federal agency which administers the Privacy Rule, concurs with the Administration on Aging's (AoA) determination that since LTCOPs have oversight responsibilities authorized by law for a component of the health care system, they are health oversight agencies, as defined in the Privacy Rule (see Section 164.501, cited above).

This determination hinges on LTCOPs being governmental agencies (e.g., state, territory or tribal entities) or entities "acting under a grant of authority from or contract with such public agency." This means that under HIPAA, the designated State Long-Term Care Ombudsman and ombudsman entities and representatives who are designated as part of the Office of the State Long-Term Care Ombudsman, in accordance with Section 712 (a) (1),(2) and (5) of the OAA, have the same right to access to residents' health records and other appropriate information as any other health oversight agency, including agencies that provide oversight of government programs in which health information is necessary to determine eligibility or compliance.

The following Privacy Rule provisions are also relevant to the LTCOP:

- "When using or disclosing protected health information or when requesting protected health information from another covered entity, a covered entity must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request." (Section 164.502(b)(1))

- A covered entity may make disclosures required by other laws. (Section 164.512 (a))

- A covered entity may rely, if such reliance is reasonable under the circumstances, on a requested disclosure as the minimum necessary for the stated purpose when: [m]aking disclosures to public officials that are permitted under [the health oversight provisions in] § 164.512, if the public official represents that the information requested is the minimum necessary for the stated purpose(s)." (Section 164.514(d)(3)(iii))

- A covered entity may disclose protected health information about victims of adult abuse or neglect or domestic violence. The preamble to the Privacy Rule, at 65 Fed. Reg. 82527, discusses disclosures under this provision to authorized government agencies and gives the example of "ombudsmen for the aging or those in long-term care facilities." The circumstances specified in the regulations are:

< If disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law,

< If the victim of abuse agrees to disclosure, or

‹ Without the individual's agreement if the disclosure is expressly authorized by statute or regulation and either: (1) The covered entity, in the exercise of its professional judgment, believes that the disclosure is necessary to prevent serious harm to the individual or to other potential victims; or (2) if the individual is unable to agree due to incapacity, a law enforcement or other public official authorized to received the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual, and that an immediate enforcement activity that depends on the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure. (Section 164.512(c))

See the attachment for the full text of these sections of the Privacy Rule.

Implications of the OAA, OBRA and HIPAA Privacy Rule Requirements for LTCOP Work

1 If an ombudsman program representative has the permission of the resident or the resident's legal representative, the facility is required, under the Federal conditions of participation for Medicare and Medicaid, to provide the ombudsman with access to the resident's clinical records, consistent with state law.

2 The LTCOP is a "health oversight agency" under the Privacy Rule. Nursing homes and other facilities which are "covered entities" under the Privacy Rule are permitted to release residents' records to health oversight agencies without the authorization of the resident or his or her representative, subject to the Privacy Rule's minimum necessary requirements.

3 Since the LTCOP is a "health oversight agency," nursing homes and other "covered entities" may, in response to appropriate ombudsman inquiries, share other information without fear of violating the Privacy Rule.

4 The OAA requires state agencies on aging to ensure that ombudsman program representatives have appropriate access to review residents' medical and social records, if:

- the representative has the permission of the resident or the resident's legal representative, or
- the resident is unable to give consent and has no legal representative, or
- access is necessary to investigate a complaint, the resident's legal guardian refuses permission and the ombudsman representative has reasonable cause to believe that the guardian is not acting in the best interests of the resident and the representative obtains the approval of the State Ombudsman.

5. If, as required by the OAA, a state has ensured ombudsman access to residents' clinical records and other information through a state law, regulation or policy binding on long-

term care facilities, the facility must permit ombudsman access to residents' records and other information, in accordance with the state requirements. The Privacy Rule does not affect that requirement.

HIPAA Impact on Residents' and Their Representatives' Access to Residents' Individual Clinical Files

The Privacy Rule offers the following rights to residents and their personal representatives regarding their protected health information:

The right to

- Inspect and obtain a copy of their health information; provider may charge reasonable fees for copying, postage, and preparation of a summary or explanation.
- Ask that corrections be made to their protected health information – if their request is denied, the entity must notify the resident with an explanation and must include the request, denial and additional information in the record.
- Receive written notice of privacy practices.
- Request restrictions on disclosure to particular entities and use of information.
- Accommodation of a reasonable request for alternative communication – e.g., request to use alternate mailing address.
- Receive an accounting of certain disclosures.
- File a written complaint to the Secretary of HHS or the entity without retaliation.

Resident's Representative's Access to Resident's Records

The Privacy Rule does not use the term "legal representative" (as in the OAA), but rather refers to "personal representative." Section 164.502(g) provides that a covered entity must treat a person as a personal representative if "under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care." The information that may be disclosed is "with respect to protected health information relevant to such personal representation." See the attachment for this provision of the Privacy Rule.

If a family member lacks the authority quoted above, the covered entity may provide access pursuant to an authorization that meets the requirements of Section 164.508 or the transition provisions at Section 164.532(b). An authorization under 164.508 may permit access to a resident's file and may be worded to terminate upon the discharge of the patient from the facility. In addition, family members who are involved in a resident's care or payment may have access to information necessary for these purposes under 164.510(b), subject to the minimum necessary provisions in the Rule. See the attachment for these provisions of the Privacy Rule.

For additional information, please contact AoA Ombudsman Program Specialist Sue Wheaton at 202-357-3587; e-mail sue.wheaton@aoa.com

EFFECTIVE DATE: Immediately

INQUIRIES TO: State agencies should address inquiries to Regional Administrators on Aging, DHHS regional offices.

ATTACHMENT: Selected provisions of the Privacy Rule

(Signed)

Edwin L. Walker
Deputy Assistant Secretary for Policy and Programs

Selected Provisions of the Privacy Rule

Section 164.502(g), Personal Representative

(1) Standard: Personal representatives. As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter.
(2) Implementation specification: adults and emancipated minors. If under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.
(3) Implementation specification: unemancipated minors.... (doesn't pertain)
(4) Implementation specification: Deceased individuals. If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.
(5) Implementation specification: Abuse, neglect, endangerment situations. Notwithstanding a state law or any requirement of this paragraph to the contrary, a covered entity may elect not to treat a person as the personal representative of an individual if: (i) The covered entity has a reasonable belief that: (A) The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or (B) Treating such person as the personal representative could endanger the individual; and (ii) The covered entity, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

Section 164.508, Authorization Requirements

Uses and disclosures for which an authorization is required.
(a) Standard: Authorizations for uses and disclosures.
(1) Authorization required: General rule. Except as otherwise permitted or required by this subchapter, a covered entity may not use or disclose protected health information without an authorization that is valid under this section. When a covered entity obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with such authorization.
Documentation required for authorization is specified in Section 164.508 (c):
(1)....A valid authorization under this section must contain at least the following elements:

(i) A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;
(ii) The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure;
(iii) The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure;
(iv) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure;
(v) A statement of the individual's right to revoke the authorization in writing and the

exceptions to the right to revoke, together with a description of how the individual may revoke the authorization;
(vi) A statement that information used or disclosed pursuant to the authorization may be subject to redisclosure by the recipient and no longer be protected by this rule;
(vii) Signature of the individual and date; and
(viii) If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual.
(2) Plain language requirement. The authorization must be written in plain language.

Section 164.510, Uses and disclosures requiring an opportunity for the individual to agree or to object

A covered entity may use or disclose protected health information without the written consent or authorization of the individual as described by Secs. 164.506 and 164.508, respectively, provided that the individual is informed in advance of the use or disclosure and has the opportunity to agree to or prohibit or restrict the disclosure in accordance with the applicable requirements of this section. The covered entity may orally inform the individual of and obtain the individual's oral agreement or objection to a use or disclosure permitted by this section.
(a) Standard: use and disclosure for facility directories.
(1) Permitted uses and disclosure. Except when an objection is expressed in accordance with paragraphs (a)(2) or (3) of this section, a covered health care provider may:
(i) Use the following protected health information to maintain a directory of individuals in its facility: (A) The individual's name; (B) The individual's location in the covered health care provider's facility; (C) The individual's condition described in general terms that does not communicate specific medical information about the individual; and (D) The individual's religious affiliation; and
(ii) Disclose for directory purposes such information: (A) To members of the clergy; or [[Page 82813]] (B) Except for religious affiliation, to other persons who ask for the individual by name.
(2) Opportunity to object. A covered health care provider must inform an individual of the protected health information that it may include in a directory and the persons to whom it may disclose such information (including disclosures to clergy of information regarding religious affiliation) and provide the individual with the opportunity to restrict or prohibit some or all of the uses or disclosures permitted by paragraph (a)(1) of this section.
(3) Emergency circumstances. (i) If the opportunity to object to uses or disclosures required by paragraph (a)(2) of this section cannot practicably be provided because of the individual's incapacity or an emergency treatment circumstance, a covered health care provider may use or disclose some or all of the protected health information permitted by paragraph (a)(1) of this section for the facility's directory, if such disclosure is: (A) Consistent with a prior expressed preference of the individual, if any, that is known to the covered health care provider; and (B) In the individual's best interest as determined by the covered health care provider, in the exercise of professional judgment. (ii) The covered health care provider must inform the individual and provide an opportunity to object to uses or disclosures for directory purposes as required by paragraph (a)(2) of this section when it becomes practicable to do so.
(b) Standard: uses and disclosures for involvement in the individual's care and notification purposes.

(1) Permitted uses and disclosures.

(i) A covered entity may, in accordance with paragraphs (b)(2) or (3) of this section, disclose to a family member, other relative, or a close personal friend of the individual, or any other person identified by the individual, the protected health information directly relevant to such person's involvement with the individual's care or payment related to the individual's health care.

(ii) A covered entity may use or disclose protected health information to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general condition, or death. Any such use or disclosure of protected health information for such notification purposes must be in accordance with paragraphs (b)(2), (3), or (4) of this section, as applicable.

(2) Uses and disclosures with the individual present. If the individual is present for, or otherwise available prior to, a use or disclosure permitted by paragraph (b)(1) of this section and has the capacity to make health care decisions, the covered entity may use or disclose the protected health information if it:

(i) Obtains the individual's agreement;

(ii) Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or

(iii) Reasonably infers from the circumstances, based the exercise of professional judgment, that the individual does not object to the disclosure.

(3) Limited uses and disclosures when the individual is not present. If the individual is not present for, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the covered entity may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the individual and, if so, disclose only the protected health information that is directly relevant to the person's involvement with the individual's health care. A covered entity may use professional judgment and its experience with common practice to make reasonable inferences of the individual's best interest in allowing a person to act on behalf of the individual to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.

(4) Use and disclosures for disaster relief purposes. A covered entity may use or disclose protected health information to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with such entities the uses or disclosures permitted by paragraph (b)(1)(ii) of this section. The requirements in paragraphs (b)(2) and (3) of this section apply to such uses and disclosure to the extent that the covered entity, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

Section 164.512 Uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required.

A covered entity may use or disclose protected health information without the written consent or authorization of the individual as described in Secs. 164.506 and 164.508, respectively, or the opportunity for the individual to agree or object as described in Sec. 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered

entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.
(a) Standard: Uses and disclosures required by law.
(1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.
(2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.
(b) Standard: uses and disclosures for public health activities....
(c) Standard: Disclosures about victims of abuse, neglect or domestic violence.
(1) Permitted disclosures. Except for reports of child abuse or neglect permitted by paragraph (b)(1)(ii) of this section, a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:

(i) To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;
(ii) If the individual agrees to the disclosure; or
(iii) To the extent the disclosure is expressly authorized by statute or regulation and:
(A) The covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or
(B) If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.

(2) Informing the individual. A covered entity that makes a disclosure permitted by paragraph (c)(1) of this section must promptly inform the individual that such a report has been or will be made, except if:

(i) The covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or
(ii) The covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

(d) Standard: Uses and disclosures for health oversight activities.
(1) Permitted disclosures. A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative,
or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

(i) The health care system;
(ii) Government benefit programs for which health information is relevant to beneficiary

eligibility;

(iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or

(iv) Entities subject to civil rights laws for which health information is necessary for determining compliance.

(2) Exception to health oversight activities. For the purpose of the disclosures permitted by paragraph (d)(1) of this section, a health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:

(i) The receipt of health care;

(ii) A claim for public benefits related to health; or

(iii) Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.

(3) Joint activities or investigations. Notwithstanding paragraph (d)(2) of this section, if a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint activity or investigation is considered a health oversight activity for purposes of paragraph (d) of this section.

(4) Permitted uses. If a covered entity also is a health oversight agency, the covered entity may use protected health information for health oversight activities as permitted by paragraph (d) of this section.

(e) Standard: Disclosures for judicial and administrative proceedings.

(1) Permitted disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:

(i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or

(ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:

(A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or

(B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.

(iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a covered entity receives satisfactory assurances from a party seeking protecting health information if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

(A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);

(B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection

to the court or administrative tribunal; and
(C) The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:
(1) No objections were filed; or
(2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.
(iv) For the purposes of paragraph (e)(1)(ii)(B) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information, if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:
(A) The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or
(B) The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.
(v) For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to protected health information requested under paragraph (e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:
(A) Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and
(B) Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.
(vi) Notwithstanding paragraph (e)(1)(ii) of this section, a covered entity may disclose protected health information in response to lawful process described in paragraph (e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the covered entity makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(iv) of this section.

(2) Other uses and disclosures under this section. The provisions of this paragraph do not supersede other provisions of this section that otherwise permit or restrict uses or disclosures of protected health information.
(f) Standard: Disclosures for law enforcement purposes. A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable.
(1) Permitted disclosures: Pursuant to process and as otherwise required by law. A covered entity may disclose protected health information:
(i) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii) or (c)(1)(i) of this section; or
(ii) In compliance with and as limited by the relevant requirements of:
(A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;

(B) A grand jury subpoena; or

(C) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:

(1) The information sought is relevant and material to a legitimate law enforcement inquiry;

(2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and

(3) De-identified information could not reasonably be used.

(2) Permitted disclosures: Limited information for identification and location purposes. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:

(i) The covered entity may disclose only the following information:

(A) Name and address; (B) Date and place of birth;(C) Social security number; (D) ABO blood type and rh factor; (E) Type of injury; (F) Date and time of treatment; (G) Date and time of death, if applicable; and (H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

(ii) Except as permitted by paragraph (f)(2)(i) of this section, the covered entity may not disclose for the purposes of identification or location under paragraph (f)(2) of this section any protected health information related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.

(3) Permitted disclosure: Victims of a crime. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime, other than disclosures that are subject to paragraph (b) or (c) of this section, if:

(ii) The individual agrees to the disclosure; or

(iii) The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance,provided that:

(A) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;

(B) The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and

(C) The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

(4) Permitted disclosure: Decedents. A covered entity may disclose protected health information about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct.

(5) Permitted disclosure: Crime on premises. A covered entity may disclose to a law enforcement official protected health information that the covered entity believes in good faith constitutes

evidence of criminal conduct that occurred on the premises of the covered entity.
(6) Permitted disclosure: Reporting crime in emergencies.

(i) A covered health care provider providing emergency health care in response to a medical emergency, other than such emergency on the premises of the covered health care provider, may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to: (A) The commission and nature of a crime; (B) The location of such crime or of the victim(s) of such crime; and (C) The identity, description, and location of the perpetrator of such crime.

(ii) If a covered health care provider believes that the medical emergency described in paragraph (f)(6)(i) of this section is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, paragraph (f)(6)(i) of this section does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to paragraph (c) of this section.

(g) Standard: Uses and disclosures about decedents.
(1) Coroners and medical examiners. A covered entity may disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. A covered entity that also performs the duties of a coroner or medical examiner may use protected health information for the purposes described in this paragraph.
(2) Funeral directors. A covered entity may disclose protected health information to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary for funeral directors carry out their duties, the covered entity may disclose the protected health information prior to, and in reasonable anticipation of, the individual's death.
(h) Standard: Uses and disclosures for cadaveric organ, eye or tissue donation purposes. ...
(i) Standard: Uses and disclosures for research purposes....
(j) Standard: Uses and disclosures to avert a serious threat to health or safety....
(k) Standard: Uses and disclosures for specialized government functions....

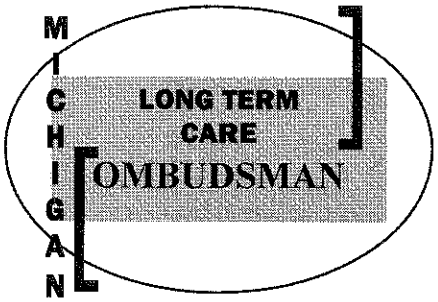
Section 164.532, Transition Provisions

(a) Standard: Effect of prior consents and authorizations. Notwithstanding other sections of this subpart, a covered entity may continue to use or disclose protected health information pursuant to a consent, authorization, or other express legal permission obtained from an individual permitting the use or disclosure of protected health information that does not comply with Secs. 164.506 or 164.508 of this subpart consistent with paragraph (b) of this section.
(b) Implementation specification: Requirements for retaining effectiveness of prior consents and authorizations. Notwithstanding other sections of this subpart, the following provisions apply to use or disclosure by a covered entity of protected health information pursuant to a consent, authorization, or other express legal permission obtained from an individual permitting the use or disclosure of protected health information, if the consent, authorization, or other express legal permission was obtained from an individual before the applicable compliance date of this subpart and does not comply with Secs. 164.506 or 164.508 of this subpart.
(1) If the consent, authorization, or other express legal permission obtained from an individual permits a use or disclosure for purposes of carrying out treatment, payment, or health care operations, the covered entity may, with respect to protected health information that it created or received before the applicable compliance date of this subpart and to which the consent,

authorization, or other express legal permission obtained from an individual applies, use or disclose such information for purposes of carrying out treatment, payment, or health care operations, provided that: (i) The covered entity does not make any use or disclosure that is expressly excluded from the a consent, authorization, or other express legal permission obtained from an individual; and (ii) The covered entity complies with all limitations placed by the consent, authorization, or other express legal permission obtained from an individual.
(2) If the consent, authorization, or other express legal permission obtained from an individual specifically permits a use or disclosure for a purpose other than to carry out treatment, payment, or health care operations, the covered entity may, with respect to protected health information that it created or received before the applicable compliance date of this subpart and to which the consent, authorization, or other express legal permission obtained from an individual applies, make such use or disclosure, provided that: (i) The covered entity does not make any use or disclosure that is expressly excluded from the consent, authorization, or other express legal permission obtained from an individual; and (ii) The covered entity complies with all limitations placed by the consent, authorization, or other express legal permission obtained from an individual.
(3) In the case of a consent, authorization, or other express legal permission obtained from an individual that identifies a specific research project that includes treatment of individuals: (i) If the consent, authorization, or other express legal permission obtained from an individual specifically permits a use or disclosure for purposes of the project, the covered entity may, with respect to protected health information that it created or received either before or after the applicable compliance date of this subpart and to which the consent or authorization applies, make such use or disclosure for purposes of that project, provided that the covered entity complies with all limitations placed by the consent, authorization, or other express legal permission obtained from an individual. (ii) If the consent, authorization, or other express legal permission obtained from an individual is a general consent to participate in the project, and a covered entity is conducting or participating in the research, such covered entity may, with respect to protected health information that it created or received as part of the project before or after the applicable compliance date of this subpart, make a use or disclosure for purposes of that project, provided that the covered entity complies with all limitations placed by the consent, authorization, or other express legal permission obtained from an individual.
(4) If, after the applicable compliance date of this subpart, a covered entity agrees to a restriction requested by an individual under Sec. 164.522(a), a subsequent use or disclosure of protected health information that is subject to the restriction based on a consent, authorization, or other express legal permission obtained from an individual as given effect by paragraph (b) of this section, must comply with such restriction.

Exhibit #5

Hand Out #12



MEMORANDUM

DATE: March 24, 2008

TO: Michigan Long Term Care Ombudsmen

FROM: Sarah Slocum, State Long Term Care Ombudsman

SUBJECT: Ombudsman Policy on Older Persons At Risk/Abuse Reporting

Attached is a new Ombudsman Policy on Older Persons at Risk/Abuse Reporting. This was drafted by Pat MacKinnon of the Grand Rapids CBC/Ombudsman office then revised slightly by State LTC Ombudsman staff. Thanks to Pat for doing this research and putting this policy together.

Please print this policy, read it, and add it to your Michigan Long Term Care Ombudsman Policies notebook. You should have a three ring binder in your office with that title. This policy is both for your own use to help you know how to proceed in with certain cases, and to use with Area Agencies on Aging (AAA), or any other funding source, that wants a policy on this topic from your agency. Please share this policy with AAA contract staff (or your supervisor if you work at a AAA) and please distribute copies to any Ombudsmen in your office who did not get this e mail.

If you have any questions, feel free to contact me, Brad, or Priscilla.

Michigan Long Term Care Ombudsman Policy

Older Persons at Risk

1. Background

While working with long term care clients, local ombudsmen may become aware of, or suspect that, their client has been or is being abused or exploited by a professional caregiver, family member, or other person.

Specific guidelines for handling and reporting suspected abuse, neglect, and exploitation are required due to the serious nature of these complaints and to comply with laws which govern the Long Term Care Ombudsman Program, including confidentiality requirements and mandatory reporting requirements.

2. The Law

Michigan Social Welfare Act requires that:

> MCL 400.11a (1) A person who is employed, licensed, registered, or certified to provide health care, educational, social welfare, mental health, or other human services; an employee of an agency licensed to provide health care, educational, social welfare, mental health, or other human services; ...who suspects or has reasonable cause to believe that an adult has been abused, neglected, or exploited shall make immediately, by telephone or otherwise, an oral report to the county department of social services of the county in which the abuse, neglect, or exploitation is suspected of having or believed to have occurred.

However, under the Older Americans Act, ombudsmen have a strict duty of confidentiality:

42 USC 3058g(d) Disclosure

(1) In general
The State agency shall establish procedures for the disclosure by the Ombudsman or local Ombudsman entities of files maintained by the program, including records described in subsection (b)(1) or (c) of this section.

(2) Identity of complainant or resident
The procedures described in paragraph (1) shall—

(A) provide that, subject to subparagraph (B), the files and records described in paragraph (1) may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files and records); and

(B) prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless—

(i) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing;

(ii)

(I) the complainant or resident gives consent orally; and

(II) the consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or

(iii) the disclosure is required by court order.

3. Program Policy

Federal law supersedes state law in instances where state law mandates that the ombudsmen report all incidents of abuse.

The ombudsman shall report suspected abuse or neglect as follows:

When to Report Abuse

IF the resident…	**THEN** the Ombudsman shall…
gives permission to an ombudsman to make the report	report the suspected abuse or neglect
does not give permission to an ombudsman to make the report; and the complainant is a long-term care service provider, facility staff person, or other mandatory reporter	inform the complainant of his or her duty to report to the appropriate agency
does not give permission to an ombudsman to make the report; and the resident acknowledges having been abused	determine 1) whether other residents have experienced similar circumstances, and 2) whether any other such resident wishes the ombudsman to take any action on his or her behalf, and 3) make repeated visits to the resident who alleged abuse in order to encourage the resident to permit the ombudsman to report the suspected abuse
is unable to communicate his or her wishes	encourage and provide assistance to any other person who is aware of the suspected abuse to make the report
does not make the complaint (i.e. the ombudsman receives a complaint of suspected abuse or neglect from a	advise the complainant to report the suspected abuse or neglect to the appropriate agency and provide information to assist the complainant in making the

IF the resident…	**THEN** the Ombudsman shall…
complainant other than the resident)	report; and visit the resident and follow regular investigation procedures
does not make the complaint and the ombudsman personally witnesses abuse of a resident	report the suspected abuse; file an ombudsman-generated complaint; and follow complaint investigation procedure. If resident invokes confidentiality and asks the Ombudsman not to report, the local Ombudsman calls the State Long Term Care Ombudsman, who will decide whether or not to report.
requests the ombudsman's assistance in moving from the facility	take steps to facilitate moving the resident to another facility, such as assisting with contact of family members or appropriate agencies. **NOTE**: the ombudsman shall not physically transport the resident.