

651 CMR 13.00: STATEWIDE ASSISTED LIVING OMBUDSMAN PROGRAM

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13.01: Scope and Purpose

651 CMR 13.00 *et seq.* is promulgated under the authority of M.G.L. c. 19D, § 7. It establishes requirements necessary and appropriate for the Administration of the Statewide Assisted Living Ombudsman Program, including, but not limited to, the designation, re-designation, and termination of designation of Local Statewide Assisted Living Ombudsman Programs, and the receipt, investigation and resolution, through administrative action, or by referral to an appropriate agency or organization of complaints made by or on behalf of Residents. They also establish criteria and procedures for the certification of Local Assisted Living Ombudsman Program Directors and Assisted Living Ombudsmen whom shall have Access to consenting Residents of Assisted Living Residences. M.G.L. c. 19D, § 7 requires that assisting the Assisted Living Ombudsman Program in its duties is a condition of maintaining Certification under M.G.L. c. 19D, § 4 as an Assisted Living Residence.

13.02: Definitions

As used in 651 CMR 13.00, unless the context requires otherwise, these terms shall have the following meanings:

Access. The right to enter any Assisted Living Residence to:

- (a) Seek resident's consent to communicate privately and without restriction with any Resident;
- (b) Communicate privately and without restriction with any Resident who consents to the communication;
- (c) Enter the unit(s) of any Resident who consents; and
- (d) Observe all common areas of the Assisted Living Residence.

Action. Any activity or decision made by a Sponsor, as defined in 651 CMR 12.02, employee, providers or agent of a Sponsor, or by a government agency, or any condition within an Assisted Living Residence which affects the provision of service to a Resident therein.

Administrative Action. Action taken to investigate and resolve issues through negotiation and mediation within an Assisted Living Residence.

Assisted Living Manager. The individual who has general administrative charge of a Assisted Living Residence.

Assisted Living Residence means an Assisted Living Residence as defined in 651 CMR 12.02.

Assisted Living Residence means an Assisted Living Residence as defined in 651 CMR 12.02.

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Certification. The process by which a person(s) associated with a Local Assisted Living Ombudsman Program is permitted Access to consenting Residents of Assisted Living Residences pursuant to M.G.L. c. 19D, § 7. This process includes:

- (a) The Designation by EOEA of the Local Assisted Living Ombudsman Program to cover a particular geographic area; and
- (b) The certification of Local Assisted Living Ombudsman Program Directors and Local Assisted Living Ombudsman upon satisfactory completion of a training program.

Commercial Purpose or Affect. Activities which include the following:

- (a) Advertising, promoting or selling a product, goods or services;
- (b) Engaging in any illegal or fraudulent activities;
- (c) Proselytizing for religious or political purposes; and
- (d) Engaging in union organizing activities directed to the staff of any Assisted Living Residence.

Complainants. Resident(s) of Assisted Living Residences, individual(s) acting on their behalf or any individual, organization or government agency, including the representatives of the State Assisted Living Ombudsman Program that have reason to believe that an Assisted Living Residence, organization or government agency has engaged in Action, practices or omissions that either constitute violations of applicable statutes or regulations or that may have an adverse effect upon the health, safety, welfare, rights, or quality of life of Residents of such Assisted Living Residence.

Complaints. Observations by or reports to a Local Assisted Living Ombudsman, Local Assisted Living Ombudsman Program Director, or the office of the State Assisted Living Ombudsman by a Complainant of any Action, practice or omission concerning an Assisted Living Residence, organization or government agency which constitute violations of applicable statutes or regulations or may adversely affect the health, safety, welfare, rights, or quality of life of a Resident of the Assisted Living Residence.

Designee. Any Local Assisted Living Ombudsman Program Director or a member of the staff of the state Assisted Living Ombudsman program.

EOEA. The Executive Office of Elder Affairs of the Commonwealth of Massachusetts.

Legal Representative. A Guardian or Conservator appointed by a court of competent jurisdiction or the holder of a valid power of attorney with authority to act on the matter at issue as specifically set forth in that power of attorney.

Local Assisted Living Ombudsman. An individual who is associated with a Local Assisted Living Ombudsman Program, and who is certified by EOEA pursuant to M.G.L. c. 19D, § 7 and 651 CMR 13.07 to perform the duties of a Local Assisted Living Ombudsman.

Local Assisted Living Ombudsman Program (The Program). A private non-profit organization or public agency which is designated by EOEA under M.G.L. c. 19D, in a Local Assisted Living Ombudsman Program Service Area, to advocate on behalf of Assisted Living Residents and receive, investigate and resolve Complaints and Problems through Administrative Action.

Local Assisted Living Ombudsman Program Director (the Designee). An individual employed by a Local Ombudsman Program as Director with the responsibility for the operation of a Local Assisted Living Ombudsman Program and Certified as such by EOEA pursuant to M.G.L. c. 19D, § 7, and 651 CMR 13.07.

Local Assisted Living Ombudsman Program Service Area. A geographic area of the Commonwealth designated by EOEA for service by a Local Assisted Living Ombudsman Program.

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Problem. A question or situation brought to the attention of a representative of the Statewide Assisted Living Ombudsman Program by a Complainant where, in the discretion of that representative, the question or situation is a minor one not appropriate for filing as a Complaint. In resolving a Problem, the representative shall obtain an oral or written consent from the Resident, their Legal Representative or the Complainant in order to disclose the identity of the Resident or Complainant.

Resident. An adult who resides in an Assisted Living Residence and who receives housing and services and when the context requires or permits, such individual's Legal Representative.

State Assisted Living Ombudsman. An individual appointed by the Secretary of EOEА under the authority of M.G.L. c. 19D, § 7 to direct the Statewide Assisted Living Ombudsman Program whose training and experience qualify him or her to perform the duties of the office.

Statewide Assisted Living Ombudsman Program. The program established under M.G.L. c. 19D, § 7 which is directed by the State Assisted Living Ombudsman in EOEА for the purpose of both directly, and by delegation of responsibility to Local Assisted Living Ombudsman Programs to:

- (a) Advocate on behalf of Residents; and
- (b) Receive, investigate, and resolve Complaints and Problems by Administrative Action.

13.03: Functions and Responsibilities of EOEА in the Administration of the Statewide Long Term Care Ombudsman Program

The functions and responsibilities of EOEА shall include, but not be limited to the following:

- (1) Establishing a structure within EOEА to implement the Statewide Assisted Living Ombudsman Program throughout the Commonwealth funded by Assisted Living Residence certification fees or other source, if legally appropriate;
- (2) Designating, re-designating, and terminating designation of Local Assisted Living Ombudsman Programs, including designation for Access to Assisted Living Residence under M.G.L. c. 19D, § 7;
- (3) Having the capacity to receive, investigate and resolve a Complaint or Problem in an Assisted Living Residence through Administrative Action;
- (4) Providing, through the office of the State Assisted Living Ombudsman, training for certification of Local Assisted Living Ombudsman and Local Assisted Living Ombudsman Program Directors;
- (5) Keeping complete records of Complaints received, actions taken, findings and recommendations in response to such Complaints including the Assisted Living Residence responses to Complaints and findings or recommendations of the Ombudsman or his/her Designee;
- (6) Establishing a Statewide uniform reporting system to collect and analyze data relating to Complaints, and conditions in Assisted Living Residences for the purpose of identifying and resolving Complaints and Problems;
- (7) Providing oversight to the resolution of Complaints and Problems by Local Assisted Living Ombudsman Programs and providing technical assistance to them in the implementation of program policies and procedures; and
- (8) Carrying out all other activities consistent with the requirements of M.G.L. c. 19D, § 7.

13.04: Functions and Responsibilities of the Local Assisted Living Ombudsman Programs

The responsibilities of a Local Assisted Living Residence Ombudsman Program shall include, but not be limited to the following:

- (1) Having the capacity to recruit a sufficient number of persons to serve as Local Ombudsmen to Assisted Living Residences within the Local Assisted Living Ombudsman Program Service Area;
- (2) Coordinating with EOEA in Local Assisted Living Ombudsman Certification training, or where appropriate under 651 CMR 13.12 providing training to Local Assisted Living Ombudsmen;
- (3) Possessing the capacity to provide a level of programmatic supervision which is determined by EOEA to be appropriate;
- (4) Having the capacity to receive, investigate, and resolve Complaints and Problems by Administrative Action and make referrals to other programs and agencies when appropriate;
- (5) Maintaining complete records of Complaints or Problems received, actions taken, and findings and recommendations made in response to such Complaints or Problems;
- (6) Reporting information and data relating to Complaints or Problems and conditions in Assisted Living Residence to EOEA, as required;
- (7) Conforming to confidentiality requirements set forth in 651 CMR 13.13;
- (8) Publicizing the existence and function of the Local Assisted Living Ombudsman Program and Statewide Assisted Living Ombudsman Program;
- (9) Complying with regulations and policies developed by EOEA to implement and maintain the Statewide Assisted Living Ombudsman Program;
- (10) Assigning each Local Ombudsman to visit Residents at one or more Assisted Living Residences within the Local Assisted Living Ombudsman Program Service Area on a "regular basis". For the purposes of 651 CMR 13.04, a regular basis means at least once every month at a time which best meets the needs of the program, the Residents, and the Residence;
- (11) Assuring that each Local Assisted Living Residence Ombudsman has identification as such;
- (12) Assuring that each Local Assisted Living Ombudsman complies with all applicable procedures for gaining Access to Residences and for investigating, and resolving Complaints and Problems by Administrative Action; and
- (13) Performing all other functions determined by EOEA to be necessary for the administration of the Local Assisted Living Ombudsman Program.

13.05: Contracting with Local Assisted Living Ombudsman Programs

An agency or organization shall be permitted Access to an Assisted Living Residence for the purposes of performing the duties of a Local Assisted Living Ombudsman Program under M.G.L. c. 19D, § 7 after it has been designated by contract with EOEA. EOEA shall designate and re-designate as a Local Assisted Living Ombudsman Program a public agency or private non-profit organization which has the capacity of performing the duties of the Local Assisted Living Ombudsman Program as set forth in 651 CMR 13.04. No agency or organization which is an Assisted Living Residence shall contract with EOEA for provision of Assisted Living Ombudsman Program services.

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(1) Method of Contracting. EOEА may, in its discretion, designate by contract each Local Assisted Living Residence Ombudsman Program for a period not to exceed one year. Designation shall be made in writing by EOEА. Designation may be renewed at the discretion of EOEА, for periods of time not exceeding one year.

(2) Local Assisted Living Ombudsman Program Geographic Areas. EOEА shall designate by contract a public agency or private non-profit organization to act on behalf of EOEА as a Local Assisted Living Ombudsman Program for each service area. A Local Assisted Living Ombudsman Program may be designated to cover one or more Local Assisted Living Ombudsman Program Service Areas.

13.06: Termination of Local Assisted Living Ombudsman Program Contract

(1) Termination for Convenience.

(a) A Local Assisted Living Ombudsman Program may terminate its contract without cause upon provision of written notice to EOEА at least 90 calendar days before the effective date of such termination. The Local Assisted Living Ombudsman Program shall forward written notice of this termination to EOEА within the above mentioned time period; and

(b) EOEА may terminate the contract of a Local Assisted Living Ombudsman Program without cause upon provision of at least 90 calendar days of notice prior to the end of the contract period.

(2) Termination for Cause. In the event that the Local Assisted Living Ombudsman Program fails to comply with any material term or condition of the Local Assisted Living Ombudsman Program contract in whole or in part, EOEА may after specifying any alleged breach, default, or non-compliance in writing to the other party and after allowing a reasonable time, but not less than 21 calendar days for correction thereof, terminate the contract by sending written notice of termination which specifies the reasons for termination to the other party, at least 30 calendar days prior to the effective date of termination.

(3) Termination due to Lack of Funding. In the event of an elimination or reduction of funding, for any reason, and through no fault of EOEА, EOEА may terminate or suspend this contract, without penalty, by providing the contractor with prior written notice of termination or suspension. Such prior written notice shall be provided to the contractor at least 30 days before the effective date of termination or suspension.

(4) Continuity of Services. Upon termination of a contract EOEА may contract a new Local Assisted Living Ombudsman Program in the terminated Service Area. EOEА may do any of the following for a period of up to 180 days following termination of the contract:

(a) Assign the responsibilities of the Local Assisted Living Ombudsman Program to another agency or organization; or

(b) Extend the agreement with the terminated agency; or

(c) Perform the responsibilities of the Local Assisted Living Ombudsman Program.

13.07: Certification of Local Assisted Living Ombudsman Program Directors and Local Ombudsmen

(1) Local Assisted Living Residence Ombudsman Program Directors. No person shall be employed by or associated with a Local Assisted Living Ombudsman Program as Director unless he/she has been Certified or temporarily Certified by EOEА.

(a) Certification Requirements. In order to receive Certification, a Local Assisted Living Ombudsman Program Director shall:

1. Meet the qualifications of a Local Assisted Living Ombudsman Program Director, as specified by EOEА and shall not be an owner, lessee, Manager, employee, or agent of an Assisted Living Residence;

2. Satisfactorily complete an Assisted Living Ombudsman Basic Training Program authorized by EOEА;

3. Agree to attend on a regular basis EOEА sponsored Director's training/meeting sessions; and

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4. Agree to comply with all laws, regulations and Departmental Operating Standards governing the Statewide Assisted Living Ombudsman Program.
 - (b) Temporary Certification. EOEА may, in its discretion, temporarily Certify an individual as a Local Assisted Living Ombudsman Program Director for a period not to exceed 90 days. Such temporary certification may occur before the completion of Certification requirements in 651 CMR 13.07;
 - (c) Decertification requirements. The certification of a Local Assisted Living Ombudsman Program Director shall continue under M.G.L. c. 19D, § 7 until:
 1. Termination of the Local Assisted Living Ombudsman Program contract with EOEА; or
 2. He/she is no longer employed by or associated with a Local Assisted Living Ombudsman Program; or
 3. He/she has received a written notice of Decertification from EOEА citing a substantial failure to comply with one or more of the certification requirements stated in 651 CMR 13.07(1)(a).
 - (d) Continued Certification of Directors. Each Local Assisted Living Ombudsman Program Director who is Certified and acting as such under the Statewide Assisted Living Ombudsman Program on the date of promulgation of 651 CMR 13.00 *et seq.* shall retain such Certification for the purposes of M.G.L. c. 19D, § 7 from and after such date until decertified by EOEА as set forth in 651 CMR 13.07(1)(c).
- (2) Local Assisted Living Ombudsmen. No person shall be associated with a Local Assisted Living Ombudsman Program as a Local Assisted Living Ombudsman unless he/she has been Certified as such by EOEА.
- (a) Certification Requirements. To receive Certification, a Local Assisted Living Ombudsman shall:
 1. Meet the qualifications of a Local Assisted Living Ombudsmen, as specified by EOEА and shall not be an owner, lessee, Manager, employee, or agent of an Assisted Living Residence;
 2. Satisfactorily complete an Ombudsman Basic Training Program authorized by EOEА; and
 3. Agree to comply with all laws, regulations, and Departmental Operating Standards governing the Statewide Assisted Living Ombudsman Program.
 - (b) Decertification Requirements. The Certification of a Local Assisted Living Ombudsman shall continue under M.G.L. c. 19D, § 7 until:
 1. Termination of the Local Assisted Living Ombudsman Program contract with EOEА; or
 2. He/she is no longer associated with a Local Assisted Living Ombudsman Program; or
 3. He/she has received a written notice of Decertification from EOEА citing a substantial failure to comply with one or more of the Certification requirements stated in 651 CMR 13.07(2)(a).
 - (c) Continued Certification of Local Assisted Living Ombudsman. Each Local Assisted Living Ombudsman who is Certified and acting as such under the Statewide Assisted Living Residence Ombudsman Program on the date of promulgation of 651 CMR 13.00 *et seq.* shall retain such Certification for the purposes of M.G.L. c. 19D, § 7 from and after such date until decertified by EOEА as set forth in 651 CMR 13.07(2)(b).

13.08: Access to Assisted Living Residences and Residents by State Assisted Living Ombudsman, his/her Designee(s) or Local Assisted Living Ombudsmen

- (1) State Assisted Living Ombudsman or His/Her Designee.
 - (a) Access to Assisted Living Residence. The State Assisted Living Ombudsman or his/her Designee shall have the right of entry into any Assisted Living Residence within his/her Local Assisted Living Ombudsman Program Service Area at any time considered necessary and reasonable by him/her for the purpose of:
 1. Investigating, and resolving Complaints and Problems by Administrative Action;
 2. Interviewing Residents, with their consent, in private;
 3. Offering his/her services to any Resident, in private;

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4. Interviewing employees/Provider or agents of the Facility;
 5. Consulting regularly with the Residence administration; and
 6. Informing Residents of their rights under law or regulation.
- (b) Access to Resident Records. The State Assisted Living Ombudsman or the Local Assisted Living Ombudsman Program Director shall have access to any Resident's records, and to records of any public agency necessary to the duties of the office, including records on Resident abuse, neglect, or financial exploitation, complaints, provided, however, that the Resident or his Legal Representative has given written authorization to allow such access to the State Assisted Living Ombudsman or his/her Designee.
- (2) Local Assisted Living Ombudsman. A Local Assisted Living Ombudsman shall have a right to Access any consenting individual Resident of a Assisted Living Residence between the hours of 10:00 A.M. and 8:00 P.M. each day, provided:
- (a) That there is no Commercial Purpose or Affect to such Access; and
 - (b) If the purpose of the Access is to do any of the following:
 1. Visit, talk with and make the services set forth below available to all consenting Residents;
 2. Inform Residents of their rights and entitlements and their correspondent obligations, under federal and state laws and regulations;
 3. Assist Residents in asserting their legal rights regarding their Residency Agreement; or
 4. Investigate, and resolve Complaints and Problems by administrative action and make referrals to other programs and agencies, where appropriate.
- (3) Visitation and Access. The State Assisted Living Ombudsman, his/her Designee, or a Local Assisted Living Ombudsman, shall make visits to a Resident of an Assisted Living Residence as requested. The State Assisted Living Ombudsman or his/her Designee or a Local Assisted Living Ombudsman shall:
- (a) When entering an Assisted Living Residence, notify Assisted Living Residence staff of his/her presence and produce identification upon request by the staff of the Assisted Living Residence;
 - (b) Be allowed to visit with Residents in the common areas of the Assisted Living Residence unescorted by personnel of the Assisted Living Residence;
 - (c) When invited to the unit of a Residents(s) he/she shall:
 1. Be unescorted by personnel of the Assisted Living Residence, unless escort is requested by the Resident;
 2. Prior to entering the unit of a Resident(s), he/she shall knock on the door or door frame, identify himself/herself and explain the purpose of the visit;
 3. Be allowed to enter into the unit(s) of a Resident(s) who has given consent orally or in writing; and
 4. Respect the rights of other Residents present in the unit.

13.09: Complaint and Problem Resolution Procedures for the Statewide Assisted Living Ombudsman Program

- (1) Initiation of Investigation. The goal of the Statewide Assisted Living Ombudsman Program is to maintain or improve the quality of life of Residents by the receipt, investigation and resolution of a Complaint(s) and Problem(s) by or on behalf of the Residents by Administrative Action. The State Assisted Living Ombudsman or his/her Designee may initiate his/her own investigation of Resident health, safety, welfare or rights issues of an Assisted Living Residence independent of the receipt of a specific Complaint or Problem.
- (2) Receipt of a Complaint(s) and Problem(s). The State Assisted Living Ombudsman, his/her Designees and Local Assisted Living Ombudsmen shall receive Complaints and Problems or may file a Complaint regarding Actions, practices, or omissions that either constitute violations of applicable statutes or regulations, or that may have an adverse effect upon the health, safety, welfare, or quality of life of Residents of Assisted Living Residence. The following procedures shall govern the intake of Complaints:

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- (a) EOEА shall have the capacity to receive Complaints and Problems during regular business hours, Monday through Friday, excluding state holidays. Each Local Assisted Living Ombudsman Program shall have the capacity to receive Complaints and Problems during the regular business hours of said Program, including at least Monday through Friday, excluding holidays designated by the Board of Directors of the sponsoring agency of such program;
- (b) All Complaints and Problems developed or received by EOEА shall be recorded and become part of a case file, and shall include, but not be limited to, information set forth by EOEА;
- (c) All Complaints and Problems received by a Local Assisted Living Ombudsman Program shall be transcribed onto forms provided by EOEА, and shall include, but not be limited to, information required by EOEА which shall become part of the case file;
- (d) Upon receipt of a Complaint, a representative of the Statewide Assisted Living Ombudsman Program shall:
 - 1. Inform the Resident and/or Complainant (if not the affected Resident) that his/her identity shall not be disclosed unless such Complainant or Resident, or a Legal Representative of either, consents to such disclosure and specifies to whom their identity may be disclosed. Such disclosure shall be made without the Complainant or Resident's consent if ordered by a court of competent jurisdiction or when disclosure is mandated by statute (such as cases of abuse, neglect, or financial exploitation pursuant to M.G.L. 19A, §§ 14 through 26);
 - 2. If a Complainant is a Resident, and the Complaint involves the health, safety, welfare, rights, or quality of life of the Complainant, request consent from the Complainant or his/her Legal Representative to investigate and attempt to resolve the Complaint on his/her behalf;
 - 3. If the Complainant is not the affected Resident, and the Complaint involves the health, safety, welfare, rights or quality of life of a particular Resident, request consent from the Complainant, and the particular Resident or his/her Legal Representative, to the extent practicable, to investigate and attempt to resolve the Complaint on the Resident's behalf;
 - 4. Review the Complaint and consult with the Complainant regarding possible methods of resolution; and
 - 5. If such consent to proceed is not obtained, the Resident, or Complainant, if not the affected Resident, shall be provided with information and/or referral sources appropriate to enable them to advocate on their own behalf.
- (e) The Local Assisted Living Ombudsman shall attempt to verify the facts involved in the Complaint by investigation and contacting those who may also be affected by the Complaint or involved in its resolution;
- (f) If the Complaint is found to be not justified, the Local Assisted Living Ombudsman shall inform the Resident or Complainant of this fact as soon as possible after making such a determination;
- (g) Any Local Assisted Living Ombudsman may observe Actions, practices or omissions regarding an Assisted Living Residence which generally may affect the health, safety, welfare, rights or quality of life of all or a substantial number of the Residents in the Assisted Living Residence. If in the discretion of the Local Assisted Living Ombudsman, such observations constitute a Complaint situation (s)he may investigate and attempt to resolve these Complaints without the consent of an individual Resident;
- (h) Upon receipt of a Problem, a representative of the Statewide Assisted Living Ombudsman shall:
 - 1. Inform the Resident and/or person raising the Problem or Complaint (if not the affected Resident) that his/her identity shall not be disclosed unless such Resident and/or person raising the Problem Complainant consents to such disclosure and specifies to whom their identity may be disclosed, or a court orders such disclosure; and
 - 2. Resolution of a justified Problem shall be carried out by compliance with procedures set forth in 651 CMR 13.09(3) and (4).

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(3) Resolution of a Complaint or Problem by a Local Assisted Living Ombudsman.

(a) Resolution of the Complaint or Problem. If a Local Assisted Living Ombudsman has Reasonable Cause to Believe that a Complaint or Problem is justified, and has obtained consent to act as described in 651 CMR 13.09(2) he/she shall discuss the Complaint or Problem with the individual named by the Assisted Living Residence as the contact person. If the Complaint or Problem is resolved without further action, the Local Assisted Living Ombudsman shall notify the Resident and the Complainant (if not the affected Resident) as soon as possible after resolution of the Complaint or Problem.

(b) Referral to Local Assisted Living Ombudsman Program Director.

1. If a Local Assisted Living Ombudsman has Reasonable Cause to Believe that a Complaint or Problem is justified and he/she is unable to resolve the Complaint or Problem, or if Access to the records of the Resident is required in the investigation of the Complaint or Problem, a Local Assisted Living Ombudsman shall inform his/her Program Director as soon as possible after making such a determination. Such Director shall work with the Local Assisted Living Ombudsman in gaining access to records and the investigation and resolution of the Complaint or Problem; and

2. Upon resolution of such a case requiring Local Assisted Living Ombudsman Program Director involvement, the Local Assisted Living Ombudsman Program Director shall inform the Resident or their Legal Representative, and the Complainant (if not the affected Resident) of such facts as soon as possible after resolving the Complaint or Problem.

(c) Referral for Legal or Other Community Intervention. If after investigating the Complaint or Problem, a Local Assisted Living Ombudsman or Program Director believes that resolution of the Complaint or Problem may require legal intervention or the involvement of another agency or organization, he/she shall inform the Resident of such fact. With the Resident's consent, the Local Assisted Living Ombudsman Program shall refer the complaint or problem to the appropriate agency or organization. The Local Assisted Living Ombudsman Program Director may close the case once such referral has been made.

(d) Referral to Statewide Assisted Living Ombudsman Program.

1. If a Local Assisted Living Ombudsman Program is unable, after investigation, to resolve a Complaint or Problem directly, or, in the opinion of the Local Assisted Living Ombudsman Program Director, it is inappropriate to refer the case for resolution as set forth above, said Program shall, with the Resident's consent, refer the case to the Office of the State Assisted Living Ombudsman. Such Office shall work with the Local Assisted Living Ombudsman Program and, where appropriate, the Legal Unit of EOEA or other appropriate parties in the investigation and resolution of the Complaint or Problem. If the State Assisted Living Ombudsman or his/her Designee, following investigation, determines that any Action of any Assisted Living Residence may adversely affect the health, safety, welfare or rights of any Resident of the Assisted Living Residence, he/she shall make recommendations for the elimination or correction of such Action to the Administration of the Assisted Living Residence involved and EOEA. EOEA may take appropriate action under M.G.L. c. 19D to eliminate or correct such Action; and

2. Complaints involving alleged Resident abuse, neglect, or financial exploitation under M.G.L. 19A, §§ 14 through 26, shall be forwarded by a Local Assisted Living Ombudsman to his/her Assisted Living Ombudsman Program Director. Such complaints shall be reported to EOEA's Protective Service Unit. A copy of such report shall also be forwarded to the state Assisted Living Ombudsman. Such reports shall be confidential and shall be governed by the provisions and penalties contained in M.G.L. c. 19A, § 23.

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(4) Documentation of Complaints. Each Local Assisted Living Ombudsman Program shall record all Complaints and Problems on forms provided by the Statewide Assisted Living Ombudsman Program. Each Local Assisted Living Ombudsman Program Director shall forward a copy of such completed forms and, if requested, any other relevant information in the case file to the Statewide Assisted Living Ombudsman Program as required by EOEA. The State Assisted Living Ombudsman may, in his/her discretion, require other periodic reports from each Local Assisted Living Ombudsman Program which may include, but not be limited to, identification of barriers to effective response to Complaints and Problems, and patterns of significant problems relating to conditions and/or Residents' care in Assisted Living Residences in its Service Area.

13.10: Notice to Assisted Living Residence of Actions and Findings of Ombudsman

(1) If the State Assisted Living Ombudsman conducts an investigation under 651 CMR 13.09(3)(d) on a non-abuse, neglect or financial exploitation complaint and takes appropriate action which involves a report to another state or federal agency, or to the Office of the Attorney General, the State Assisted Living Ombudsman shall notify the Assisted Living Residence in writing of his/her findings and actions taken on the Complaint, if any, within 15 days following the completion of actions taken by the Ombudsman, another state or federal agency, or the Office of the Attorney General, whichever comes later. Notification to the involved Assisted Living Residence of findings and actions shall not disclose the identity of any Complainant or Resident of the involved Assisted Living Residence in any Complaint unless the Complainant or Resident or a Legal Representative of either consents to such disclosures and specifies to whom the identity may be disclosed;

(2) Upon the resolution of such a Complaint, the Local Assisted Living Ombudsman Program shall inform the Resident or their Legal Representative, and the Complainant, if not the affected Resident, of such findings and actions as soon as possible;

(3) The Assisted Living Residence which is the subject of the Complaint shall have an opportunity to respond in writing to the report received from the State Assisted Living Ombudsman within 15 days following receipt of such notification; and

(4) A Residence's response shall be affixed as a permanent appendix to the State Assisted Living Ombudsman's report and shall accompany the report in the event that the report is submitted to any other appropriate person or agency which is authorized to receive such report.

13.11: Financial and Administrative Responsibilities of Local Ombudsman Programs

Each contracted agency of a Local Assisted Living Ombudsman Program shall establish financial and administrative systems and procedures which comply with the provisions of the Commonwealth of Massachusetts Master Agreement and appropriate Service Agreement as set forth in 808 CMR 2.00 *et seq.* as well as any other requirements established by EOEA or the Commonwealth of Massachusetts.

13.12: Training Requirements for Ombudsmen

(1) Basic Training For Local Ombudsman and Local Ombudsman Program Director. The office of the State Assisted Living Ombudsman shall develop and conduct a basic Certification training program for Local Assisted Living Ombudsmen and Local Assisted Living Ombudsman Program Directors.

(2) Examination For Certification. The office of the State Assisted Living Ombudsman shall develop a standardized written examination which shall measure the skills which are necessary for certification as a Local Assisted Living Ombudsman.

A representative of the Statewide Assisted Living Ombudsman Program or a Certified Ombudsman Trainer shall administer the exam to each Local Assisted Living Ombudsman Program Director Trainee and Local Assisted Living Ombudsman Trainee upon the completion of his/her basic training.

13.12: continued

(3) Follow-up Training For Local Assisted Living Ombudsman. Each Local Assisted Living Ombudsman Program Director shall conduct follow-up training meetings in a manner prescribed by the Office of the State Assisted Living Ombudsman for the Local Assisted Living Ombudsmen under his/her supervision.

(4) Follow-up Training For Local Assisted Living Ombudsman Program Directors. Each Local Assisted Living Residence Ombudsman Program Director shall attend the Local Assisted Living Ombudsman Program Director training meetings as called by the Office of the State Assisted Living Ombudsman. Attendance at such meetings by each Local Assisted Living Ombudsman Program Director shall be considered by EOEА in the re-designation of that Local Assisted Living Residence Ombudsman Program and the Certification of such Local Assisted Living Ombudsman Program Director.

(5) Training of Local Assisted Living Ombudsman Program Directors As Trainers. The Office of the State Assisted Living Ombudsman shall certify as Ombudsman Trainers those Local Assisted Living Ombudsman Program Directors who:

- (a) Successfully complete an Ombudsman Trainer Program established by EOEА;
- (b) have been certified Program Director for a period of one year or more; and
- (c) Have attended Local Assisted Living Ombudsman Program Director meetings on a regular basis as determined by the Office of the State Assisted Living Ombudsman.

The State Assisted Living Ombudsman shall determine the standardized curriculum for this training program and the standards for satisfactory completion of it.

(6) Authorized Areas For Training By Ombudsman Trainers. Upon certification as an Ombudsman Trainer, a Local Assisted Living Ombudsman Program Director may provide portions of Ombudsman Basic Certification Training, as determined appropriate by the Office of the State Assisted Living Ombudsman. The Program Director who provides and supervises basic training shall provide to EOEА the names of Local Assisted Living Ombudsman Trainees who have completed the training, the examination and requirements for Certification by EOEА.

13.13: Privacy and Confidentiality Requirements

All records containing personal data which are created, collected, used, maintained or disseminated under these regulations shall not be public records, and shall be governed by the provisions of M.G.L. c. 66A, (the state privacy and confidentiality law). The State Assisted Living Ombudsman shall be the custodian of all records maintained by the Statewide Assisted Living Ombudsman Program, including, but not limited to, records and files containing Personal Data concerning Complaints and Problems regarding Residents of Assisted Living Residence held by EOEА or designated Local Assisted Living Ombudsman Programs. As such, requests for the disclosure of such Personal Data, other than that ordered by a Court, or authorized by Statute or regulations, shall be approved or disapproved by the State Assisted Living Ombudsman or his/her State Office Designee, consistent with 651 CMR 13.13(1) through (4).

(1) Disclosure of Identity of Complainant or Resident. The State Assisted Living Ombudsman, his/her Designee, or any representative of a Local Assisted Living Ombudsman Program shall not disclose the identity of any Complainant or Resident of a Assisted Living Residence, either by name or by the release of sufficient facts to allow the Complainant or Resident's identity to be inferred, unless the Complainant or Resident or the Legal Representative of either consents to such disclosure and specifies to whom the identity may be dis-closed. Such disclosure shall be made without the Complainant or Resident's consent if ordered by a court of competent jurisdiction or when disclosure is mandated by statute. (such as cases of abuse, neglect, financial exploitation pursuant to M.G.L. c. 19A, §§ 14 through 26.).

13.13: continued

(3) Access to Resident Records. The State Assisted Living Ombudsman or his/her Designee shall have access to any Resident's records, and to records of any public agency necessary to the duties of the office, including but not limited to, Resident records, and records on elder abuse complaints, provided, however, that the Resident or his/her Legal Representative has given written authorization to allow such access to the State Assisted Living Ombudsman or his/her Designee. A Legal Representative of a Resident may give written authorization for access by the State Assisted Living Ombudsman or his/her Designee to the financial records of his/her ward or principal.

(4) Confidentiality of Communications. A representative of the Statewide Assisted Living Ombudsman Program shall, at all times, respect the confidentiality of all communications with a Resident within the Statewide Assisted Living Ombudsman Program and shall not subject the Resident to photographing, filming, videotaping, or audio-taping without the written consent of the Resident or his/her Legal Representative.

13.14: Waivers

(1) Request By Secretary. The Secretary of EOE A may, in his discretion, waive one or more of the requirements of 651 CMR 13.00 *et seq.* if necessary to preserve the public health, safety or welfare, and if such a waiver would not violate any other applicable federal or state law or regulation. Such a waiver shall clearly identify that section of the Statewide Assisted Living Ombudsman Program Regulations to be waived; the conditions that have made such a waiver necessary; the steps that have been taken to insure that future waivers will not be necessary; and the consequences to the Local Assisted Living Ombudsman Program or affected Residents of not granting the waiver request.

(2) Requests for Waivers. All other requests for waivers shall be made in writing to the Secretary by the President of the Board of Directors or Chief Executive Officer of the organization making such a request and shall set forth the information required in 651 CMR 13.14(1).

REGULATORY AUTHORITY

651 CMR 13.00: M.G.L. c. 19A, § 6; c. 19D § 7.