

CHAPTER 90**OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY PRACTICE AND PROCEDURE RULES****Authority**

N.J.S.A. 52:27G-1 et seq., specifically 52:27G-5 and 5.1, and 26:2H-53 et seq.; Reorganization Plan 001-1996.

Source and Effective Date

R.2002 d.35, effective February 4, 2002.
See: 33 N.J.R. 2762(b), 33 N.J.R. 3280(a), 34 N.J.R. 735(a).

Chapter Expiration Date

Chapter 90, Office of the Ombudsman for the Institutionalized Elderly Practice and Procedure Rules, expires on February 4, 2007.

Chapter Historical Note

Chapter 90, Office of the Ombudsman for the Institutionalized Elderly Practice and Procedure Rules, was originally codified in Title 5 as Chapter 100, Office of the Ombudsman for the Institutionalized Elderly Practice and Procedure Rules. Chapter 100, Ombudsman Practice and Procedure and Public Notice Requirements, was adopted as R.1979 d.166, effective May 1, 1979. See: 11 N.J.R. 164(b), 11 N.J.R. 274(a).

Pursuant to Executive Order No. 66(1978), Chapter 100, Ombudsman Practice and Procedure and Public Notice Requirements, was readopted as R.1989 d.295, effective May 5, 1989. See: 21 N.J.R. 368(a), 21 N.J.R. 1516(b).

Chapter 100, Ombudsman Practice and Procedure and Public Notice Requirements, was repealed, and Chapter 100, Office of the Ombudsman for the Institutionalized Elderly Practice and Procedure Rules, was adopted as new rules by R.1990 d.316, effective June 18, 1990. See: 22 N.J.R. 1016(c), 22 N.J.R. 1926(a).

Pursuant to Executive Order No. 66(1978), Chapter 100, Office of the Ombudsman for the Institutionalized Elderly Practice and Procedure Rules, was readopted as R.1995 d.336, effective May 26, 1995. See: 27 N.J.R. 1348(a), 27 N.J.R. 2388(a).

Pursuant to Reorganization Plan No. 001-1996, Chapter 100, Office of the Ombudsman for the Institutionalized Elderly Practice and Procedure Rules, was recodified as N.J.A.C. 8:90, effective October 15, 1997. See: 29 N.J.R. 4679(a). Pursuant to Executive Order No. 66(1978), Chapter 90, Office of the Ombudsman for the Institutionalized Elderly Practice and Procedure Rules, expired on May 26, 2000.

Chapter 90, Office of the Ombudsman for the Institutionalized Elderly Practice and Procedure Rules, was adopted as new rules by R.2002 d.35, effective February 4, 2002. See: Source and Effective Date.

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APPENDIX A OMBUDSMAN DISCLOSURE CONSENT FORM**SUBCHAPTER 1. GENERAL PROVISIONS****8:90-1.1 Scope**

The basic objective of the Office of the Ombudsman for the Institutionalized Elderly is of promoting, advocating and ensuring, as a whole and in particular cases, the adequacy of the care received, and the quality of life experienced, by elderly patients, residents and clients of facilities offering health or health-related services for the institutionalized elderly within New Jersey. The Office of the Ombudsman advocates for the health, safety and welfare, and the civil and human rights of the institutionalized elderly, age 60 or over, and takes such actions as are necessary, and within its jurisdiction, to secure same.

8:90-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Abuse" means the willful infliction of physical pain, injury or mental anguish; unreasonable confinement; or the willful deprivation of services which are necessary to maintain a resident's physical and mental health. "Abuse" shall also mean imposing treatment upon a resident who has the capacity to make healthcare decisions, after the resident has made a voluntary and informed choice regarding such treatment. "Abuse" shall also mean providing to a resident treatment that is not medically indicated. However, no resident shall be deemed to be abused for the sole reason that he or she is being furnished non-medical remedial treatment by spiritual means through prayer alone, in accordance with a recognized religious method of healing, in lieu of medical treatment, if it is shown through the Office's review that the resident subscribes to such religious method

of healing. "Abuse" also shall not mean the withholding or withdrawal of life-sustaining treatment in accordance with the provisions of N.J.A.C. 8:90-2.

An "act" of any facility or government agency shall be deemed to include any failure or refusal to act by such facility or government agency.

"Administrator" means any person who is charged with the general administration or supervision of a facility, whether or not such person has an ownership interest in such facility, and whether or not such person's functions and duties are shared with one or more other persons.

"Caregiver" or "caretaker" means a person employed to provide care or services to an elderly person, and includes, but is not limited to, the administrator of a facility.

"Exploitation" means the act or process of using a person or his or her resources for another person's profit or advantage without legal entitlement to do so.

"Facility" means any facility or institution, whether public or private, offering health or health-related services for the institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision by any government agency. Facilities include, but are not limited to, nursing homes, skilled nursing homes, intermediate care facilities, extended care facilities, convalescent homes, rehabilitation centers, assisted living facilities, residences, and programs, residential healthcare facilities, comprehensive personal care homes, class "C" and "D" boarding homes, special hospitals, veterans' hospitals, chronic disease hospitals, psychiatric hospitals, mental hospitals, mental retardation centers or facilities, day care facilities for the elderly, and medical day care centers. "Facility" shall not mean an acute care medical center but shall include a rehabilitation facility housed within an acute care medical center.

"Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the State or to which the State is a party, or by any county or municipality, which is responsible for the regulation, visitation, inspection or supervision of facilities, or which provides services to patients, residents or clients of facilities.

"Institutionalized elderly," "elderly" or "elderly person" means any person 60 years of age or older, who is a patient, resident or client of any facility.

"Neglect" means failure to perform one's duties according to an accepted professional standard.

"Office" means the Office of the Ombudsman for the Institutionalized Elderly.

"Ombudsman" means the administrator and chief executive officer of the Office of the Ombudsman for the Institutionalized Elderly.

"Regional Volunteer Coordinator" means an individual trained and qualified to administer and supervise the Volunteer Advocate Program, and who is capable and willing to promote the Program's philosophy throughout the community being served.

"Resident" means any elderly person who is receiving treatment or care in any facility in all its aspects, including, but not limited to, admission, retention, confinement, commitment, period of residence, transfer, discharge and any instances directly related to such status. For purposes of these Regulations, the term "Resident" shall also include an elderly patient or client who is receiving treatment or care in any facility.

"Volunteer Advocate" means an individual trained and certified by the Office to make regular weekly visits to assigned long-term care facilities. A Volunteer Advocate may exercise, but need not be limited to, such functions as visitation, consultation, problem solving, eliciting complaints and generally serving as an advocate on behalf of the institutionalized elderly.

8:90-1.3 Contact with the Office; information about rights and entitlements; communications

(a) Any person may contact the Office to report any complaints concerning the health, safety and welfare, and the civil and human rights of institutionalized elderly persons.

(b) The Office may be contacted by calling its toll-free telephone number (877-852-6995), 24 hours per day, any day of the year; or by writing to: The Office of the Ombudsman for the Institutionalized Elderly, Department of Health and Senior Services, PO Box 807, Trenton, New Jersey 08625-0807.

(c) Any correspondence or written communication from any resident of a facility to the Office shall, if delivered to or received by the facility, be promptly forwarded, unopened, by the facility to the Office. Any correspondence or written communication from the Office to any resident of a facility shall, if delivered to or received by the facility, be promptly forwarded, unopened, by the facility to such resident.

(d) The Office shall prepare and distribute to each facility written notices which set forth the address and telephone number of the Office, a brief explanation of the function of the Office, the procedure to follow in filing a complaint, and other pertinent information.

(e) The administrator of each facility shall ensure that such written notice is given to every resident or his or her next of kin or guardian, as appropriate, upon admission to the facility and to every person already in residence or his or her next of kin or guardian, as appropriate. The administrator shall also post such written notice in a conspicuous, public place in the facility.

(f) The Office shall from time to time publicize its existence, function and activities by informing residents, their families and friends, facility staff and other caregivers, government agencies and representatives, private organizations and community groups, and the general public, about the Office and its function and activities, through "in-service training" presentations at facilities and elsewhere, participation in seminars or other informational programs, contact with the press and other media, and direct communication, in person or in writing, including the submission for publication of scholarly and informational articles and other materials concerning the Office, its functions and activities.

(g) The Office shall make itself available for the purpose of informing and educating interested individuals and groups about general issues of concern affecting the civil and human rights of the institutionalized elderly.

8:90-1.4 Complaint procedure

(a) If a complaint identifies the complainant, the Office shall acknowledge receipt of all complaints by letter, telephone or e-mail. If the Office does not have jurisdiction, the Office shall so advise the person making the complaint and shall promptly refer the complaint to the appropriate government agency.

(b) Upon receiving and acknowledging a complaint, the Office shall investigate any act, practice, policy or procedure of any facility or government agency that does or may adversely affect the health, safety, welfare or civil or human rights of any resident of a facility.

(c) The Office need not investigate any complaint where it determines that:

1. The complaint is trivial, frivolous, vexatious or not made in good faith;
2. The complaint has been too long delayed to justify present investigation;
3. The resources available, considering the Office's established priorities, are insufficient for an adequate investigation; or
4. The matter complained of is not within the investigatory authority of the Office.

(d) During the course of any investigation conducted by the Office, the Office may:

1. Make the necessary inquiries and obtain such information as it deems necessary;
2. Hold private hearings or public hearings;
3. Enter without notice and, after notifying the person in charge of its presence, inspect the premises of a facility or government agency and inspect any books, files, medical records or other records that pertain to residents, which are required by law to be maintained by the facility or government agency;

4. Compel at a specific time and place, by subpoena, the appearance and sworn testimony of any person who the Office reasonably believes may be able to give information relating to a matter under investigation; and

5. Compel any person to produce at a specific time and place, by subpoena, any documents, books, records, papers, objects, or other evidence which the Office reasonably believes may relate to a matter under investigation.

(e) Upon completing an investigation of a complaint, the Office shall take one or more of the following courses of action, as appropriate:

1. If Office representatives are unable to substantiate a complaint, the Office shall so advise the complainant and the facility or government agency against whom the complaint was brought, as appropriate. Such notification to a facility or government agency concerning which a complaint was lodged shall not include the identity of the complainant, resident or witnesses, unless such persons authorize, in writing, such disclosure.

2. If Office representatives are able to substantiate a complaint, they may work with facility or government agency representatives, as appropriate, to remedy the problem(s) that exist.

3. In the event that a complaint of a resident or class of residents of a facility or facilities cannot be resolved satisfactorily through negotiation with the facility or the appropriate government agency, or that an act, practice, policy or procedure of a facility or government agency does or may adversely affect the health, safety, welfare or civil or human rights of a resident or class of residents of a facility or facilities, the Office may recommend to the appropriate authorities civil litigation on behalf of such resident or class of residents, as it deems appropriate. The Office may also institute such actions for injunctive relief or civil damages as it deems appropriate.

4. If the Office discovers a deficiency in compliance with State or Federal laws or regulations or rules administered by any government agency, the Office shall refer the matter directly to the appropriate government agency for action.

5. If the Office discovers facts which the Office determines warrant the institution of civil proceedings by a government agency against any person or governmental agency, the matter shall be referred to the government agency with authority to institute such proceedings.

6. If the Office discovers information in relation to the misconduct or breach of duty of any officer or employee of a facility or a government agency, the matter shall be referred to the appropriate authorities for such action as may be necessary.

7. If the Office discovers information or facts indicating the commission of criminal offenses or violations of

standards of professional conduct, it shall refer the matter, as appropriate, to the Attorney General, county prosecutor, or any other law enforcement official who has jurisdiction to prosecute the crime, and to the relevant professional licensing board.

(f) The government agency, prosecuting agency or professional licensing board to whom a substantiated allegation has been referred shall report to the Office on its findings and actions with respect to all such referrals within 30 days after receipt thereof and every 30 days thereafter until final action on each such referral. The Office may make disclosure of such information as appropriate and as may be necessary to resolve the matter referred.

(g) Where the Office has substantiated the allegations set forth in a complaint, it shall notify the complainant and the facility or government agency concerning which the complaint was lodged, in writing, of its findings and action taken. Such notification to a facility or government agency concerning which a complaint was lodged shall not include the identity of the complainant, resident or witnesses, unless such persons authorize, in writing, such disclosure.

8:90-1.5 Reporting requirements and complaint procedures under the Mandatory Adult Abuse and Exploitation Reporting Law, N.J.S.A. 52:27G-7.1 et seq.

(a) Any caregiver, social worker, physician, registered or licensed practical nurse, or other professional, who, as a result of information obtained in the course of his or her employment, has reasonable cause to suspect or believe that an institutionalized elderly person is being or has been abused or exploited, shall report such information to the Office within one business day from the time when such individual acquired such information. Any other person having reasonable cause to suspect or to believe that an elderly person is being or has been abused or exploited may report such information to the Ombudsman or to the person designated by the Ombudsman to receive such report.

(b) Any report of actual or suspected elderly abuse or exploitation shall be made verbally or in writing and shall contain, if known:

1. The name, address and age of the elderly person who is the subject of the suspected abuse or exploitation;
2. The name of the person accused of committing the alleged abuse or exploitation;
3. The name and address of the facility involved;
4. A description of the nature of the suspected abuse or exploitation;
5. The date, time and specific location of the occurrence;
6. The name and address of any witness to the suspected abuse or exploitation; and

7. Any other information which might be helpful in an investigation of the case and the protection of such elderly person.

(c) A verbal report, in order to be in compliance with this reporting mandate, must be made directly to a live representative of the Office, and not merely left on an answering machine or voice-mail system.

(d) The Office complaint procedure is as follows:

1. Within 24 hours of receipt of a report of abuse or exploitation, the Office shall notify the Commissioner of Health and Senior Services, or that Commissioner's designee, and any other government agency which regulates or operates the facility.

2. The Office shall investigate a complaint alleging elderly abuse or exploitation by utilizing the procedure set forth in N.J.A.C. 8:90-1.4. In addition, an investigation shall include a visit with the elderly person who has allegedly been abused or exploited and consultation with others who have knowledge of the particular case.

(e) Upon completing its investigation, the Office shall report its findings and recommended action, if any, in writing, to:

1. The resident;
2. The resident's legal guardian or other person named on the consent form pursuant to (l) below, by certified and regular mail, except that the Office may withhold reporting to such person upon evidence that such person was a party to the abuse, neglect or exploitation of the resident;
3. The person who reported the suspected abuse or exploitation;
4. The Commissioner of Health and Senior Services, or that Commissioner's designee;
5. The facility in which the elderly person who was allegedly abused or exploited is residing; such notification shall contain a general description of the Office's investigation and its findings, but shall not include the identity of the complainant, the victim or witnesses, unless such persons authorize, in writing, such disclosure;
6. The county prosecutor's office or any other appropriate prosecuting agency, if a determination is made that an elderly person may have been criminally abused or exploited; and
7. Where the Office has substantiated the allegations of the complaint, and where appropriate, the government agency or agencies having regulatory or licensing authority over either the person accused of the abuse or exploitation or over the facility in which the elderly person is residing.

(f) The name of any person who reports suspected abuse or exploitation pursuant to this subchapter shall not be disclosed, unless: