

**CHAPTER 100**

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

**Authority**

N.J.S.A. 52:27G-1 et seq.

**Source and Effective Date**

R.1995 d.336, effective May 26, 1995.  
See: 27 N.J.R. 1348(a), 27 N.J.R. 2388(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 100, Office of the Ombudsman for the Institutionalized Elderly Practice and Procedure Rules, expires May 26, 2000.

**Chapter Historical Note**

Chapter 100, Ombudsman Practice and Procedure and Public Notice Requirements, was filed on April 30, 1979 and became effective on May 1, 1979 as R.1979 d.166. See: 11 N.J.R. 164(b), 11 N.J.R. 274(a). Further amendments were filed and became effective on September 28, 1979 as R.1979 d.386. See: 11 N.J.R. 431(a), 11 N.J.R. 536(a). Pursuant to Executive Order No. 66(1978), Chapter 100 was redopted as R.1989 d.295. See: 21 N.J.R. 368(a), 21 N.J.R. 1516(b), eff. May 26, 1995. See: 27 N.J.R. 1348, 27 N.J.R. 2388(b).

Prior rulemaking activity in Chapter 100, Ombudsman Practice and Procedure and Public Notice Requirements, repealed by R.1990 d.316, effective June 18, 1990.

**Cross References**

Blind and visually impaired services institutional abuse of elderly persons reporting; see N.J.A.C. 10:91-5.10.

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**Subchapter Historical Note**

Further amendments were filed and became effective on May 30, 1980 as R.1980 d.233. See: 12 N.J.R. 250(a), 12 N.J.R. 387(a). Further amendments were filed and became effective June 20, 1983 as R.1983 d.215. See: 15 N.J.R. 588(a), 15 N.J.R. 1016(a). Further amendments were filed and became effective May 7, 1984 as R.1984 d.168. See: 16 N.J.R. 476(a), 16 N.J.R. 1072(a).

**5:100-1.1 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.

**5:100-1.2 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. 5:100-2.

An “act” of any facility or government agency shall be deemed to include any unlawful 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" 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, residential healthcare facilities, 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.

"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.

"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. "Resident" shall also mean a 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.

Amended by R.1995 d.336, effective June 19, 1995.  
See: 27 N.J.R. 1348(a), 27 N.J.R. 2388(b).

Added "Regional Volunteer Coordinator" and "Volunteer Advocate".

#### Case Notes

Ombudsman's regulation defining "abuse" as "providing to a resident treatment that is not medically indicated" was reasonable. *Gleason v. Abrams*, 250 N.J.Super. 265, 593 A.2d 1232 (A.D.1991).

Ombudsman's regulation defining "abuse" as "imposing treatment upon a resident who has the capacity to make health care decisions, after a resident has made a voluntary and informed choice regarding such treatment" conformed with Supreme Court guidelines. *Gleason v. Abrams*, 250 N.J.Super. 265, 593 A.2d 1232 (A.D.1991).

Ombudsman for Institutionalized Elderly erroneously substituted opinion of only attending physician for required opinions of "two non-attending physicians." *Gleason v. Abrams*, 250 N.J.Super. 265, 593 A.2d 1232 (A.D.1991).

Ombudsman properly recognized that it is not abuse of institutionalized elderly patient when attending physician alone determines life-sustaining treatment is not medically indicated because patient's life is not at risk or is no longer at risk. *Gleason v. Abrams*, 250 N.J.Super. 265, 593 A.2d 1232 (A.D.1991).

Ombudsman for Institutionalized Elderly could supplement statutory general definition of "abuse". *Gleason v. Abrams*, 250 N.J.Super. 265, 593 A.2d 1232 (A.D.1991).

#### 5:100-1.3 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 (800-792-8820), 24 hours per day, any day of the year; or by writing to: The Office of the Ombudsman for the Institutionalized Elderly, Department of Community Affairs, CN 808, Trenton, New Jersey 08625-0808.

(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.