

This is an amendment to 9.2.19.18 NMAC Sections 18, 19, 22 and 38, effective xx/xx/2010.

9.2.19.18 STATE AGENCY ON AGING RESPONSIBILITIES:

- A provide for a full-time state long-term care ombudsman;
- B. provide funding for a statewide long-term care ombudsman program (LTCOP) in accordance with allocation formula and maintenance of effort requirements;
- C. provide for legal representation for the office of the state long-term care ombudsman (which may be through the office of the New Mexico attorney general);
- D. provide support to the SLTCO to enable him or her to fulfill all responsibilities consistent with all applicable federal and state laws, regulations, and policies;
- E. administer the ombudsman service contracts between the SAOA and AAAs and/or provider agencies;
- F. provide technical assistance for and monitor performance of AAAs; and,
- ~~G. manage and approve all communications with the press, broadcast and other public media, and all other public dissemination or release of information from or concerning the LTCOP.~~
- ~~H.~~ **G.** administer the statewide LTCOP in accordance with all applicable federal and state laws, regulations, and policies.

[9.2.19.18 NMAC - N, 2/1/2001; A, xx/xx/2010]

9.2.19.19 [STATE] LONG-TERM CARE OMBUDSMAN RESPONSIBILITIES: [Reserved]

[9.2.19.19 NMAC - N, 2/1/2001, A, xx/xx/2010]

9.2.19.22 STATE LONG-TERM CARE OMBUDSMAN RESPONSIBILITIES:

- A. ~~[adhering]~~ adhere to the rules of confidentiality and propriety set forth in these regulations and in the resource manual for new volunteer training, if applicable;
- B. ~~[protecting]~~ protect access to LTCO records, in accordance with Sections ~~[2-19.7]~~ 9.2.19.36 – 9.2.19.38 of these regulations;
- C. ~~[carrying]~~ carry out other activities that the SLTCO reasonably deems appropriate to the certification of such LTCO, in accordance with the level of certification of such LTCO; ~~and~~
- D. ~~[performing]~~ perform each responsibility in accordance with all applicable federal and state law, rules, regulations, and policies; and
- E. provide a copy of any comments regarding laws, regulations, policies or actions relating to the health and well being of residents of long term care facilities and services as determined to be appropriate by the state ombudsman and to facilitate such comment including to the director of the state unit on aging and the immediate supervisor (if the immediate supervisor is someone other than the director of the state unit on aging) of the state ombudsman as soon as is practicable.

[9.2.19.22 NMAC - N, 2/1/2001, A, xx/xx/2010]

9.2.19.38 PROCEDURE FOR RELEASE:

- A. Records maintained by the LTCOP may not be released, disclosed, duplicated, or removed to anyone who is not a LTCO without the written permission of the SLTCO. All request made for LTCO records shall be referred to the SLTCO or his/her designee.
- B. The SLTCO or designee shall determine whether to disclose all or part of the records as follows:
 - (1) The SLTCO shall require that the request be made in writing and may require a copy of the request before determining the appropriate response. Where the request is made orally by a resident, complainant, or legal representative of the resident or complainant, the request must be documented immediately and filed as an LTCO record by the LTCO to whom consent was communicated in order to meet this requirement.
 - (2) The SLTCO shall review the request with the relevant Regional Coordinator and/or local Facility Ombudsman to determine whether the release of all or part of the records would be consistent with the wishes or interest of the relevant resident(s).
 - (3) The SLTCO shall determine whether any part of the records should be redacted (i.e. all identifying information removed). The identities of residents or complainants who have not provided express consent for the release of their names shall not be revealed. Such consent must be in writing or made orally and documented immediately and filed as an LTCO record by the LTCO to whom consent was communicated.
 - (4) ~~[Any request for LTCO records by a public media organization shall be referred to the Director, Deputy Director or designee.]~~ SLTCO shall notify the director of the state unit on aging and the immediate supervisor (if the immediate supervisor is someone other than the director of the state unit on aging) of any public media request for records as soon as is practicable.

(5) Any request made by formal legal process, e.g. written interrogatories, subpoena, Court order, etc, shall first be referred to legal counsel. The SLTCO shall be responsible to ensure that a response is timely filed, e.g. motion to quash, request for in camera review, etc, and endeavor to prevent any release that would be inconsistent with the interests of the resident(s).

(6) Any request for information made under the Inspection of Public Records Act, 14-2-1 NMSA 1978 shall be responded to in writing within 15 days by the SLTCO. In most cases the request will be denied as most records of the LTCOP are exempt from the Inspection act, but where the request can be granted without revealing any client identifying information, reasonable effort shall be made to do so. If the request is overly broad but can be addressed with reasonable additional time, the requestor shall be advised of that intention within the initial 15 day time frame.

[9.2.19.38 NMAC - N, 2/1/2001, A, xx/xx/2010]