August 19, 2013

Administration for Community Living
Administration on Aging
U.S. Department of Health and Human Services
Washington, DC 20201

ATTN: Becky Kurtz

RE: RIN 0985-AA08  State Long-Term Care Ombudsman Program
45 CFR Parts 1321 and 1327

The American Health Care Association (AHCA) is the nation’s leading
long term care organization representing more than 11,000 non-profit
and proprietary facilities. Our members deliver the professional,
compassionate, quality long term and post-acute care that more than 1.5
million of America’s seniors and persons with disabilities rely on each
day. represents nearly 11,000 non-profit and proprietary facilities
dedicated to continuous improvement in the delivery of professional and
compassionate care provided daily by millions of caring employees to
1.5 million of our nation’s frail, elderly and disabled citizens who live in
long term and post acute care facilities.

AHCA is pleased to have the opportunity to comment on the proposed
rule related to the Long-Term Care Ombudsman Program.

Allowing the Long-Term Care Ombudsman Program appropriate access
to documents is critical for the program to achieve its mission. We
recommend including language from the Older Americans Act that
provides clarification to the proposed regulations.

Recommendations
Amend §1327.15(a)(3)(D): after the phrase “...administrative records,
policies, and documents of long-term care facilities” insert “, to which
the residents have, or the general public has access,” [of long-term care
facilities]. The sentence would then read: “Such procedures shall
provide for procedures for appropriate disclosure of at least the
following types of files, records, and information which may be
maintained by the Office: medical and social records of residents;
administrative records, policies, and documents of long-term care
facilities, to which the residents have, or the general public has access;
...” This change will create clarity in the regulations and consistency
between the regulations and §712(b)(1)(C) of the Older Americans Act.
Amend §1327.15(b)(2): between the words “have” and “access” insert “appropriate”; and between the words “resident” and “records” insert “medical and social”. The sentence would then read: “Provide for representatives of the Office to have appropriate access to resident medical and social records, including when residents have guardians or other legal representatives.” This change will create clarity in the regulations and consistency between the regulations and §712(b)(1)(B)(i) of the Older Americans Act.

§1327.19(c)(2) delineates the conflicts of interest pursuant to §712(f) of the Older Americans Act. AHCA recommends including an additional provision contained in the Older Americans Act - §712(a)(5)(C)(ii) states: “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”. Thus, add a new section §1327.19(c)(2)(x) The ability to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves.” This change will provide clarity in the regulations and consistency between the regulations and the additional conflict of interest provision in §712 (a)(5)(C)(ii). (Note: §1327.19(c)(2) would also need to reference this additional section of the Older Americans Act.)

To ensure the independence of the Long Term Care Ombudsman Program, we recommend the final rule include additional clarification related to Conflict of Interest and Noninterference. A Primer for State Aging Directors and Executive Staff: State Long-Term Care Ombudsman Program includes a section “Checklist: Effective State Long—Term Care Ombudsman Programs” [Checklist]. Within the Checklist are two items related to “Conflict of Interest and Noninterference”. We recommend the two items under this heading be included in the regulations, in their entirety.

“The state agency has written policies and methods to identify and remove conflicts of interest and other influences that could limit the program’s ability to carry out its assigned functions. All functions assigned to the program under the OAA can be fully implemented within the agency and department in which the program is located. The policies include a) methods by which the state agency will examine ombudsmen, ombudsman entities and representatives, and those who designate ombudsmen and their immediate family members to identify conflicts and b) actions the state agency will require the individuals and such family members to take to remove such conflicts.

The state has policies which: a) ensure that willful interference with representatives of the office in the performance of official duties is unlawful; b) prohibit retaliation and reprisals by a long-term care facility or other entity with respect to any resident, employees, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the Office; and c) provide for appropriate sanctions with respect to the interference, retaliation and reprisals.”
AHCA appreciates the work conducted by the Long-Term Care Ombudsman Program and the advocacy efforts for residents of long term care centers. Again, we are pleased to have the opportunity comment on the proposed regulations.

Sincerely,

Lyn C. Bentley, MSW
Senior Director of Regulatory Services