



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Aging and Long-Term Support Administration
PO Box 45600, Olympia, Washington 98504-5600

October 31, 2024

AL TSA: ICF/IID #2024-023
LONG-TERM CARE (LTC) & DD OMBUDS ACCESS TO RESIDENTIAL CARE FACILITY
RESIDENTS AND RESIDENT RECORDS

Dear Superintendent:

This letter replaces previously published provider letters, ICF/IID #2018-001.

The Aging and Long-Term Support Administration (AL TSA) is committed to working in partnership with the State Long-Term Care (LTC) Ombuds program and residential care providers to promote and protect the rights, security, and well-being of residents.

Recently, AL TSA received a report that a representative of the Long-Term Care Ombuds office was refused admission to a facility while attempting to complete official duties. We are writing to draw attention to federal and state laws requiring access to facilities by the DD ombudsman. Ombuds access to facilities and residents must be provided without interruption or interference and in accordance with United States Code (USC), the Code of Federal Regulations (CFR), Revised Code of Washington (RCW), and Washington Administrative Code (WAC).

As facilities and providers who contract and partner with DSHS to provide residential care, it is critical we highlight the ongoing need for training to enhance staff expertise for residents' rights. Gatekeepers have a critical role to ensure public safety and protect residents' rights.

- [RCW 43.190.080](#) (1) The office of the state long-term care ombudsman shall have access to resident with provision made for privacy for the purpose of hearing, investigating, and resolving complaints of and rendering advise to individual who are patients or residents of the facilities any time deemed necessarily.
- [42 CFR 483.10\(b\)\(1\)](#) The facility must ensure that the resident can exercise his or her rights without interference, coercion, discrimination, or reprisal from the facility.

This list is not exhaustive, and more are listed below signature. This letter serves as a reminder of statutory requirements that support the purpose of the Ombuds Program - to promote the interests, well-being, and rights of long-term care facility residents.

Additionally, Ombuds have the right to examine a resident's clinical records in the following circumstances:

- The resident or the resident's surrogate decision maker gives consent; or
- If the resident is incapacitated and has no surrogate decision maker; or
- If a resident's surrogate decision maker objects to resident record review by the Ombuds, and prior authorization is obtained from the state Ombuds or their designee pursuant to [42 U.S.C. 3058g\(b\)](#) and [RCW 43.190.065](#).

ALTSA Provider Letter: **LONG-TERM CARE (LTC) OMBUDS ACCESS TO RESIDENTIAL CARE FACILITY RESIDENTS AND RESIDENT RECORDS**

October 31, 2024

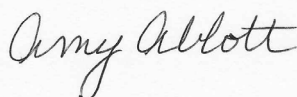
Page 2

To safeguard resident rights and ensure compliance with both federal and state laws, it's crucial that LTC facilities provide ongoing training to ensure ALL staff understand Ombuds access requirements. Training should also focus on access during the off-business hours and days of Monday through Friday from 8am to 5pm. This training should include the difference between the role of staff from Residential Care Services and the role of the Ombud's. Please refer to the following federal and state rules for additional guidance:

- [Chapter 71A.26 RCW](#) Client Rights
- [Chapter 43.382 RCW](#) – Developmental Disabilities Ombuds
- [Chapter 74.34 RCW](#) -Abuse of Vulnerable Adults

Thank you for your continued commitment to resident health and safety. If you have any questions, please contact: Deb Hoeman ICF/IID Policy Program Manager, at (360) 764-6632 or RCSPolicy@dshs.wa.gov.

Sincerely,



Amy Abbott, Director
Residential Care Services

DSHS: "Partnering with People"

Authority to access facilities and residents:

Federal Laws and Regulations (USC and CFR)

- [42 USC § 3058g\(b\)\(1\)\(A\)](#) The State shall ensure that representatives of the Office shall have private and unimpeded access to long-term care facilities and residents.
- [42 U.S.C. § 1396r\(c\)\(3\)\(A\)](#) A nursing facility must permit immediate access to any resident by an ombudsman.
- [42 CFR 483.10\(f\)\(4\)\(i\)\(C\)](#) The facility must provide immediate access to any resident by any representative of the Office of the State long term care ombudsman (established under section 712 of the Older Americans Act of 1965, as amended 2016 (42 U.S.C. 3001 et seq.).
- [45 CFR 1324.11\(e\)\(2\)\(i\)](#) Access to enter all long-term care facilities at any time during a facility's regular business hours or regular visiting ours, and at any other time when access may be required by the circumstances to be investigated.
- [45 CFR 1324.15\(b\)](#) The State agency shall ensure, through the development of policies, procedures, and other means, consistent with § 1324.11(e)(2), that the Ombudsman program has sufficient authority and access to facilities, residents, and information needed to fully perform all of the functions, responsibilities, and duties of the Office.

State Laws and Regulations (RCW and WAC)

- [RCW 43.190.030 \(3\)](#) Establish procedures consistent with RCW 43.190.110 for appropriate access by long-term care ombuds to long-term care facilities
- [RCW 43.190.080 \(1\)](#) The office of the state long-term care ombudsman shall have access to residents with provisions made for privacy for the purpose of hearing, investigating, and resolving complaints of, and rendering advice to, individuals who are patients or residents of the facilities at any time deemed necessary.
- [WAC 365-18-100 \(1\)](#) All ombudsmen shall have access to all long-term care facilities and residents at any time deemed necessary and reasonable to effectively carry out the ombudsman duties set forth in this chapter, chapter 43.190 RCW, and federal law.

ALTSA Provider Letter: **LONG-TERM CARE (LTC) OMBUDS ACCESS TO RESIDENTIAL CARE FACILITY RESIDENTS AND RESIDENT RECORDS**

October 31, 2024

Page 3

Interference:

Federal Laws and Regulations (USC and CFR)

- [42 U.S.C § 3058g\(j\)](#) The State shall (1) ensure that [willful interference](#) with representatives of the Office in the performance of the official duties of the representatives (as defined by the Assistant Secretary) shall be unlawful; (2) prohibit retaliation and reprisals by a long-term care facility or other entity with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of, the Office; and (3) provide for appropriate sanctions with respect to the interference, retaliation, and reprisals.
- [42 CFR 483.10\(b\)\(1\)](#) The facility must ensure that the resident can exercise his or her rights without interference, coercion, discrimination, or reprisal from the facility.
- [45 CFR 1324.15\(i\)](#) The State agency shall (1) Ensure that it has mechanisms to prohibit and investigate allegations of interference, retaliation, and reprisals: (i) By a long-term care facility, other entity, or individual with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the Office; or (ii) By a long-term care facility, other entity or individual against the Ombudsman or representatives of the Office for fulfillment of the functions, responsibilities, or duties enumerated at §§ 1324.13 and 1324.19; and (2) Provide for appropriate sanctions with respect to interference, retaliation, and reprisals.

State Laws and Regulations (RCW and WAC)

- [RCW 74.39A.060\(7\)](#) A facility that provides long-term care services shall not willfully interfere with the performance of official duties by a long-term care ombuds. The department shall sanction and may impose a civil penalty of not more than three thousand dollars for a violation of this subsection.
- [RCW 70.129.090\(1\) \(c\)](#) The resident has the right and the facility must not interfere with access to any resident by the state long-term care ombuds as established under chapter 43.190 RCW.
- [WAC 365-18-120 \(1\)](#) It is unlawful under 42 U.S.C. Sec. 3058g(j) and RCW 43.190.090 to take any discriminatory, disciplinary, or retaliatory action against the following persons: (a) Any employee of a facility or agency; (b) Any resident or client of a long-term care facility or family member of a resident; (c) Any ombudsman; or (d) Any person; for any communication made, or information given or disclosed, to an ombudsman carrying out his or her duties unless that person acted maliciously or without good faith. (2) It is unlawful to willfully interfere with ombudsmen in the performance of their official duties. (3) No ombudsman shall be liable for good faith performance of his or her duties under this chapter, chapter 43.190 RCW, or federal law.
- [WAC 365-18-100\(4\)](#) Ombudsmen shall have private access to residents without willful interference from the facility or the resident's representative, including a guardian, family member, or holders of powers of attorney.