

Long-Term Care Ombudsman Program Final Rule

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45 CFR § 1324.19

EDIT KEY: Deleted Text New Text

§1324.19 Duties of the representatives of the Office	Notes
<p>In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity and may designate an employee or volunteer of the local Ombudsman entity as a representative of the Office. Representatives of the Office may also be designated employees or volunteers within the Office.</p> <p>(a)<i>Duties.</i> An individual so designated as a representative of the Office shall, in accordance with the policies and procedures established by the Office and the State agency:</p> <p>(1) Identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents; (2) Provide services to protect the health, safety, welfare, and rights of residents; (3) Ensure that residents in the service area of the local Ombudsman entity have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses to requests for information and complaints; (4) Represent the interests of residents before government agencies and assure that individual residents have access to, and pursue (as the representative of the Office determines necessary and consistent with resident interest) administrative, legal, and other remedies to protect the</p>	

<p>health, safety, welfare, and rights of the residents;</p> <p>(5)(i) Review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and</p> <p>(ii) Facilitate the ability of the public to comment on the laws, regulations, policies, and actions;.</p> <p>(6) Promote, provide technical support for the development of, and provide ongoing support as requested by resident and family councils; and</p> <p>(7) Carry out other activities that the Ombudsman determines to be appropriate and are consistent with the functions of the State Long-Term Care Ombudsman Program as authorized by the Older Americans Act.</p>	
<p>(b)Complaint processing.</p> <p>(1) With respect to identifying, investigating, and resolving complaints, and regardless of the source of the complaint (i.e., complainant), the Ombudsman and the representatives of the Office serve the resident of a long-term care facility. The Ombudsman or representative of the Office shall investigate a complaint, including but not limited to a complaint related to abuse, neglect, or exploitation, for the purposes of resolving the complaint to the resident's satisfaction and of protecting the health, welfare, and rights of the resident. The Ombudsman or representative of the Office may identify, investigate, and resolve a complaint impacting multiple residents or all residents of a facility.</p>	
<p>(2) Regardless of the source of the complaint (i.e., the complainant), including when the source is the Ombudsman or representative of the Office, the Ombudsman or representative of the Office must support and maximize resident participation in the process of resolving the complaint as follows:</p> <p>(i) The Ombudsman or representative of the Office shall offer privacy to the resident for the purpose of confidentially providing information and hearing,</p>	

investigating, and resolving complaints.

(ii) The Ombudsman or representative of the Office shall **personally** discuss the complaint with the resident (and, if the resident is unable to communicate informed consent, the resident's representative) in order to:

- (A) Determine the perspective of the resident (or resident representative, where applicable) of the complaint;
- (B) Request the resident (or resident representative, where applicable) to communicate informed consent in order to investigate the complaint;
- (C) Determine the wishes of the resident (or resident representative, where applicable) with respect to resolution of the complaint, including whether the allegations are to be reported and, if so, whether **the** Ombudsman or representative of the Office may disclose resident identifying information or other relevant information to the facility and/or appropriate agencies. Such report and disclosure shall be consistent with paragraph (b)(3) of this section;
- (D) Advise the resident (and resident representative, where applicable) of the resident's rights;
- (E) Work with the resident (or resident representative, where applicable) to develop a plan of action for resolution of the complaint;
- (F) Investigate the complaint to determine whether the complaint can be verified; and
- (G) Determine whether the complaint is resolved to the satisfaction of the resident (or resident representative, where applicable).

(iii) Where the resident is unable to communicate informed consent, and has no resident representative, the Ombudsman or representative of the Office shall:

(A) Take appropriate steps to investigate and work to resolve the complaint in order to protect the health, safety, welfare and rights of the resident; and

(B) Determine whether the complaint was resolved to the satisfaction of the complainant.

(F) In determining whether to rely upon a resident representative to communicate or make determinations on behalf of the resident related to complaint processing, the Ombudsman or representative of the Office shall ascertain the extent of the authority that has been granted to the resident representative under court order (in the case of a guardian or conservator), by power of attorney or other document by which the resident has granted authority to the representative, or under other applicable State or Federal law.

(3) The Ombudsman or representative of the Office may provide information regarding the complaint to another agency in order for such agency to substantiate the facts for regulatory, protective services, law enforcement, or other purposes so long as the Ombudsman or representative of the Office adheres to the disclosure requirements of section 712(d) of the Act **(42 U.S.C. 3058g(d))** and the procedures set forth in § 1324.11(e)(3).

(i) Where the goals of a resident or resident representative are for regulatory, protective services or law enforcement action, and the Ombudsman or representative of the Office determines that the resident or resident representative has communicated informed consent to the Office, the Office must assist the resident or resident representative in contacting the appropriate agency and/ or disclose the information for which the resident has provided consent to the appropriate agency for such purposes.

<p>(ii) Where the goals of a resident or resident representative can be served by disclosing information to a facility representative and/or referrals to an entity other than those referenced in paragraph (b)(3)(i) of this section, and the Ombudsman or representative of the Office determines that the resident or resident representative has communicated informed consent to the Ombudsman program, the Ombudsman or representative of the Office may assist the resident or resident representative in contacting the appropriate facility representative or the entity, provide information on how a resident or representative may obtain contact information of such facility representatives or entities, and/or disclose the information for which the resident has provided consent to an appropriate facility representative or entity, consistent with Ombudsman program procedures.</p> <p>(iii) In order to comply with the wishes of the resident, (or, in the case where the resident is unable to communicate informed consent, the wishes of the resident representative), the Ombudsman and representatives of the Office shall not report suspected abuse, neglect or exploitation of a resident when a resident or resident representative has not communicated informed consent to such report except as set forth in paragraphs (b)(5) through (7) of this section, notwithstanding State laws to the contrary</p>	
<p>(4) For purposes of paragraphs (b)(1) through (3) of this section, communication of informed consent may be made in writing, including through the use of auxiliary aids and services. Alternatively, communication may be made orally or visually, including through the use of auxiliary aids and services, and such consent must be documented contemporaneously by the Ombudsman or a representative of the Office, in accordance with the procedures of the Office.</p>	

(5) For purposes of paragraphs (b)(1) paragraph (3) of this section, if a resident is unable to communicate ~~his or her~~ **their** informed consent, or perspective on the extent to which the matter has been satisfactorily resolved, the Ombudsman or representative of the Office may rely on the communication **by a resident representative** of informed consent and/or perspective regarding the resolution of the complaint of a ~~resident representative so long as if~~ the Ombudsman or representative of the Office has no reasonable cause to believe that the resident representative is not acting in the best interests of the resident.

(6) For purposes of paragraphs (b)(1) through (3) of this section, the procedures for disclosure, as required by § 1324.11(e)(3), shall provide that the Ombudsman or representative of the Office may refer the matter and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action in the following circumstances:

- (i) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office;
- (ii) The resident has no resident representative;
- (iii) The Ombudsman or representative of the Office has reasonable cause to believe that an action, inaction, or decision may adversely affect the health, safety, welfare, or rights of the resident;
- (iv) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;
- (v) The Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; and

The representative of the Office obtains the approval of the Office or otherwise follows the policies and procedures of the Office described in paragraph (b)(9) of this section.

(7) For purposes of paragraphs (b)(1) through (3) of this section, the procedures for disclosure, as required by § 1324.11(e)(3), shall

provide that, the Ombudsman or representative of the Office may refer the matter and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action in the following circumstances:

- (i) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office,...¹ and the Ombudsman or representative of the Office has reasonable cause to believe that the resident representative has taken an action, inaction or decision that may adversely affect the health, safety, welfare, or rights of the resident;
- (ii) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;
- (iii) The Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; and
- (iv) The representative of the **Ombudsman Office** obtains the approval of the Ombudsman.

(8) The procedures for disclosure, as required by § 1324.11(e)(3), shall provide that, if the Ombudsman or representative of the Office personally witnesses suspected abuse, gross neglect, or exploitation of a resident, the Ombudsman or representative of the Office shall seek communication of informed consent from such resident to disclose resident-identifying information to appropriate agencies;.

- (i) Where such resident is able to communicate informed consent, or has a resident representative available to provide informed consent, the Ombudsman or representative of the Office shall follow the direction of the resident or resident representative as set forth **in** paragraphs (b)(1) through (3) of this section; and
- (ii) Where the resident is unable to communicate informed consent, and has no resident representative available to

provide informed consent, the Ombudsman or representative of the Office shall open a case with the Ombudsman or representative of the Office as the complainant, follow the Ombudsman program's complaint resolution procedures, and shall refer the matter and disclose identifying information of the resident to the management of the facility in which the resident resides and/or to the appropriate agency or agencies for substantiation of abuse, gross neglect or exploitation in the following circumstances:

- (A) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;
- (B) The Ombudsman or representative of the Office has reasonable cause to believe that disclosure would be in the best interest of the resident; and (C) The representative of the Office obtains the approval of the Ombudsman or otherwise follows the policies and procedures of the Office described in paragraph (b)(9) of this section.

In addition, the Ombudsman or representative of the Office, following the policies and procedures of the Office described in paragraph (b)(9) of this section, may report the suspected abuse, gross neglect, or exploitation to other appropriate agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action.

(9) Prior to disclosing resident- identifying information pursuant to paragraph (b)(6) or (8) of this section, a representative of the Office must obtain approval by the Ombudsman or, alternatively, follow policies and procedures of the Office which provide for such disclosure.

- (i) Where the policies and procedures require Ombudsman approval, they shall include a time frame in which the Ombudsman is required to communicate approval or

disapproval in order to assure that the representative of the Office has the ability to promptly take actions to protect the health, safety, welfare or rights of residents.

(ii) Where the policies and procedures do not require Ombudsman approval prior to disclosure, they shall require that the representative of the Office promptly notify the Ombudsman of any disclosure of resident-identifying information under the circumstances set forth in paragraph (b)(6) or (8) of this section.

(iii) Disclosure of resident-identifying information under paragraph (b)(7) of this section shall require Ombudsman approval.



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