

## OMBUDSMAN REFERENCES IN FEDERAL NURSING HOME REQUIREMENTS

TOPIC	SUMMARY	SOURCE
<p><b>Acronyms:</b>            CFR: Code of Federal Regulations            CMP: Civil Monetary Penalties            IDR: Informal Dispute Resolution            F #: Federal citation tag number            LTCOP: Long-term Care Ombudsman Program            LTCSP: Long Term Care Survey Process (LTCSP) Procedure Guide            Office: Office of the State Long-Term Care Ombudsman</p>	<p>RN: Registered Nurse            RO: CMS Regional Office            SA: State Survey Agency            SMA: State Medicaid Agency            SLTCOP: State Long-term Care Ombudsman Program            SLTCO: State Long-term Care Ombudsman            SOM: CMS State Operations Manual            USC: United States Code</p>	
<b>ACCESS</b>	Facilities must provide the LTCOP with immediate access to residents.	42 CFR §483.10(f)(4)(i) 42 USC 1395i-3 (c)(3)(A) 42 USC 1396r (c)(3)(A) SOM Appendix PP, F562, F586
	Access to resident medical, social, and administrative records with permission from the resident or legal representative. The SA should ask the representative of the Office assigned to the facility if the facility allows him/her to review records, with resident or resident representative permission and according to State law.	42 CFR 483.10(h)(3) 42 USC 1395i-3 (c)(3)(E) 42 USC 1396r (c)(3)(E) SOM Appendix PP, F583
	The pharmacist's findings are considered part of the resident's medical record and are available to the resident/resident representative upon request. Establishing a consistent location for the pharmacist's findings and recommendations can facilitate communication with the attending physician, director of nursing, the interdisciplinary team (IDT), medical director, resident and resident's legal representative, the ombudsman, and surveyors.	42 CFR §483.45(c) SOM Appendix PP, F756

<b>COMPLAINT INVESTIGATION</b>	General complaint intake process and other public entities that should receive information from the SA and/or perform investigations including the LTCOP.	5010 SOM Chapter 5
	To assist the SA in the investigation planning process they should consult with the LTCOP.	5070 SOM Chapter 5
	When the SA refers a complaint to another agency such as the LTCOP the SA must request a written report on the results of the investigation as the SA has the responsibility to assess compliance with Federal regulations and requirements.	5075.6 SOM Chapter 5
<b>INVOLUNTARY SECLUSION</b>	When investigating allegations of involuntary seclusion surveyors should interview the alleged victim/resident representative and witnesses and ask if this incident was reported to anyone within the facility or an outside agency (e.g., other staff, ombudsman). If so, to whom, when, and what was the response.	§483.12(a)(1) SOM Appendix PP, F603
<b>CONSULTATION/ COORDINATION WITH OMBUDS- MAN PROGRAMS</b>	To review the accuracy of Nursing Home Compare the Secretary of the U.S. Department of Health and Human Services must consult with the SLTCOP.	42 USC 1395i-3 (i)(2)(B)(i) 42 USC 1396r (i)(2)(B)(i)
	The SA should establish procedures to: <ul style="list-style-type: none"> <li>• Notify the State ombudsman of decisions to initiate proceedings to terminate, or nonrenew a provider agreement;</li> <li>• Notify the State ombudsman of voluntary terminations and planned terminations, including dates of closure;</li> <li>• Consider ombudsman information about situations in the facility and the credibility of the provider's allegations of compliance; and</li> <li>• Share Statements of Deficiencies and Plans of Correction (PoCs).</li> </ul>	3000B SOM Chapter 3
	States are encouraged to include at least one person in the decision-making process in the informal dispute resolution process that was not directly involved in the survey such as an ombudsman.	7212.3.9 SOM Chapter 7
	The SA should consult the LTCOP when investigating eligible candidates for placement as a temporary facility manager.	7550.4 SOM Chapter 7
	The SA should ask residents, their families (or representatives), and the local ombudsman if they are able to retain and use personal possessions.	§483.10(e)(2) SOM Appendix PP, F557

<b>INFORMATION TO RESIDENT REGARDING RIGHTS AND SERVICES</b>	Facilities must furnish a written description of legal rights which includes the posting of contact information for the LTCOP.	42 CFR §483.10(g)(4), (5) SOM Appendix PP, F574, F575
	Facilities must post (or notify residents individually) the right to file grievances to a designated staff person, including the right to file a complaint with the LTCOP.	42 CFR §483.10(j)(4) SOM Appendix PP, F585
	Facilities may utilize the LTCOP to provide in-service training regarding quality of life and residents' rights.	7502.3 Chapter 7
	When investigating whether facilities have informed residents of their rights surveyors should determine if the facility provides ongoing communication to residents about their rights (e.g., through resident and family groups, presentations by representatives of the Office of the SLTCO, posting of information, etc.).	42 CFR §483.10(g)(1), (16) SOM Appendix PP, F572
	Prior to an Independent IDR, the facility must notify the involved resident and/or resident representative and include contact information for the LTCOP.	7213 SOM Chapter 7
<b>NOTICE AND DISCLOSURE TO THE OMBUDSMAN PROGRAM</b>	Notification when a penalty, assessment, or exclusion becomes final - notify the Ombudsman of State's findings of noncompliance, or of any adverse action taken against a skilled nursing facility.	42 CFR 402.11 42 USC 1395i-3 (g)(5)(B) 42 USC 1396r (g)(5)(B) 3024 SOM Chapter 3 42 CFR 1003.129
	The state agency that grants a waiver for a facility of the requirement to provide licensed nurses on a 24-hour basis must provide notice of the waiver to the Office.	42 CFR §483.35(e)(6) 42 USC 1395i-3 (b)(4)(C)(ii)(IV) 42 USC 1396r (b)(4)(C)(ii)(IV) 7014.1, 7014.1.2 SOM Chapter 7 SOM Appendix PP, F731
	Disclosure of results of inspections (including form CMS-2567), investigation activities, proposed remedies, the facilities' request for informal dispute resolution, appeal and results of the appeal.	42 CFR 488.325 42 USC 1395i-3 (g)(5)(B) 42 USC 1396r (g)(5)(B) 7212.3 SOM Chapter 7 7904.1 SOM Chapter 7
	After a facility requests an Independent IDR the State must notify the involved resident or resident representative and SLTCO of the opportunity to submit written comment. The State should request information from the LTCOP about the issue related to the deficiency(ies) being disputed.	7213 SOM Chapter 7
	Proposal to exclude from Medicare and Medicaid programs.	42 CFR 1003.105
	Waiver for requirements for nurse aide training and competency evaluation programs.	42 USC 1395i-3 (f)(2)(C)(iii) 42 USC 1396r (f)(2)(C)(iii) 4132.1E SOM Chapter 4

<b>NOTICE AND DISCLOSURE TO THE OMBUDSMAN PROGRAM (continued)</b>	<p>The Monthly Quality Indicator Comparison report were designed for family members of a resident, potential residents and their families and state Ombudsman.</p>	<p>3319E SOM Chapter 3</p>
	<p>RO notifies the SMA (State Medicaid Agency) of action taken against Medicaid ICFs/IID and the effective dates if termination action is taken pursuant to §3000.C.3. When the termination action is taken, the RO mails the informational copies to the SLTCO.</p>	<p>3024 SOM Chapter 3</p>
<b>SURVEY PREPARATION AND PROCESS</b>	<p>During offsite preparation for complaint investigation the SA should contact the LTCOP to discuss the nature of the complaints and potential history of similar complaints (including reports of misappropriation of property or exploitation*).</p>	<p>5300. 1 SOM Chapter 5 *SOM Appendix PP, F602</p>
	<p>The SA should contact the Ombudsman in accordance with State policy. Notify the ombudsman of the proposed day of entrance into the facility and to obtain any information/concerns if applicable. Ascertain whether the ombudsman will be available if residents wish her/him to be present during the Resident Council Interview.</p>	<p>7207.2 SOM Chapter 7 LTCSP pg. 5 and 35</p>
	<p>CMS will contact the SA regarding a Federal survey and the SA should notify the LTCOP of the Federal survey on behalf of CMS.</p>	<p>7904.2 SOM Chapter 7</p>
	<p>The SA should invite the LTCOP to the exit interview. If a separate exit is done with residents, the LTCOP should be invited to that meeting too.</p>	<p>LTC SOP pg. 39</p>
	<p>The SA should ask the LTCOP if the facility treats residents differently in transfer, discharge and covered services based on source of payment.</p>	<p>SOM Appendix PP, F621 42 CFR 483.15 (c)(5)</p>
<b>TRANSFER/DISCHARGE/CLOSURE</b>	<p>Facilities must include contact information for the LTCOP in transfer or discharge notices.</p>	<p>42 CFR 483.15 (c)(5) 42 USC 1395i-3 (c)(2)(B)(iii)(II) 42 USC 1396r (c)(2)(B)(iii)(II) 42 CFR §483.15(c)(5)(v) SOM Appendix PP, F623</p>
	<p>Facilities must send a copy of the (transfer/discharge) notice to a representative of the Office.</p>	<p>42 CFR §483.15(c)(3) SOM Appendix PP, F623</p>
	<p>Facilities must provide written notification prior to the impending closure of the facility to the Office.</p>	<p>42 USC 1320a-7j 42 CFR §483.15(c)(8) SOM Appendix PP, F623 42 CFR §483.70(l)(1) and (m) SOM Appendix PP, F845</p>
	<p>If the facility does not permit a resident to return after a hospital stay or therapeutic leave the facility must notify the resident, resident representative, and the LTCOP in writing of the discharge, including notification of appeal rights.</p>	<p>42 CFR §483.15(e)(1) SOM Appendix PP, F626</p>

## SOURCES:

42 CFR:	<a href="http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&amp;tpl=/ecfrbrowse/Title42/42tab_02.tpl">http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&amp;tpl=/ecfrbrowse/Title42/42tab_02.tpl</a>
42 USC 1395i-3:	<a href="http://www.ssa.gov/OP_Home/ssact/title18/1819.htm">http://www.ssa.gov/OP_Home/ssact/title18/1819.htm</a>
42 USC 1396r:	<a href="http://www.ssa.gov/OP_Home/ssact/title19/1919.htm">http://www.ssa.gov/OP_Home/ssact/title19/1919.htm</a>
42 USC 1320a-7j	<a href="https://www.gpo.gov/fdsys/pkg/USCODE-2016-title42/pdf/USCODE-2016-title42-chap7-subchapXI-partA-sec1320a-7j.pdf">https://www.gpo.gov/fdsys/pkg/USCODE-2016-title42/pdf/USCODE-2016-title42-chap7-subchapXI-partA-sec1320a-7j.pdf</a>
SOM:	<a href="https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs-Items/CMS1201984.html">https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs-Items/CMS1201984.html</a>
SOM Appendix P:	<a href="https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_p_ltcf.pdf">https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_p_ltcf.pdf</a>
SOM Appendix PP:	<a href="https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf">https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf</a>
SOM Chapter 3:	<a href="https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c03.pdf">https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c03.pdf</a>
SOM Chapter 4:	<a href="https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c04.pdf">https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c04.pdf</a>
SOM Chapter 5:	<a href="https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c05.pdf">https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c05.pdf</a>
SOM Chapter 7:	<a href="https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c07.pdf">https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c07.pdf</a>
LTCSP:	<a href="https://www.cms.gov/Medicare/Provider-Enrollment-andCertification/GuidanceforLawsAndRegulations/Downloads/LTCSP-Procedure-Guide.pdf">https://www.cms.gov/Medicare/Provider-Enrollment-andCertification/GuidanceforLawsAndRegulations/Downloads/LTCSP-Procedure-Guide.pdf</a>



## NOTE:

Appendix P is no longer available: Beginning with surveys occurring on November 28, 2017, Appendix P will no longer be accessible. The LTCSP procedure guide will replace Appendix P as the procedural and technical guide for conducting LTC standard surveys. Chapter 7 of the State Operations Manual (SOM) will be revised to include survey policy.

## OMBUDSMAN REFERENCES IN OTHER FEDERAL REQUIREMENTS *EXCLUDING NURSING HOME REGULATIONS*

TOPIC	SUMMARY	SOURCE <sup>1</sup>
<b>Acronyms:</b> ACL: Administration for Community Living CFR: Code of Federal Regulations LTCOP: Long-term Care Ombudsman Program Office: Office of the State Long-Term Care Ombudsman USC: United States Code		RN: Registered Nurse SA: State Survey Agency SLTCOP: State Long-term Care Ombudsman Program SLTCO: State Long-term Care Ombudsman SOM: State Operations Manual
Bankruptcy	United States trustee may appoint the State Long-Term Care Ombudsman for the State in which the case is pending, to monitor the quality of care.	11 USC 333 11 USC App Rule 2007.2
Protection and advocacy	State Protection and Advocacy programs must coordinate with the SLTCOP.	29 USC 794e
Facility ownership Information	Facilities must provide the State Ombudsman with ownership and related information upon request.	42 USC 1320a-3
Standardized complaint form	The Secretary shall develop a standardized complaint form for residents (or a person acting on behalf of the resident) to use for filing complaints with the SA or LTCOP. State must make this form available and develop a complaint resolution process.	42 USC 1320a-7j(f) 42 USC 1395i-3(i)(1)(A)(iii) 42 USC 1396r (i)(1)(A)(iii)
National LTCOP Report	The Assistant Secretary shall compile an annual report on the LTCOP.	42 USC 3018(b)
AAA assurances	The Area Agency on Aging will provide assurances that in carrying out the SLTCOP under section 3027(a)(9) of this title, will expend not less than the total amount of funds appropriated under this chapter and expended by the agency in fiscal year 2000.	42 USC 3026(a)(9)
State plan assurances	The SLTCOP will expend an amount that is not less than an amount expended by the State agency with funds received under this subchapter for fiscal year 2000, and an amount that is not less than the amount expended by the State agency with funds received under subchapter XI for fiscal year 2000.	42 USC 3027(a)(9) 42 USC 3058b(a)(2)(C)

<sup>1</sup> USC: <http://uscode.house.gov/browse.xhtml>. **NOTE:** The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. The United States Code (USC) is the codification by subject matter of the general and permanent laws of the United States. They are therefore different, as they deal with two separate areas (one administrative rules/regulations, and one laws/codes) and should be discussed separately.