

The Law and the Rule Pertaining to Access of Records

The Older American's Act specially states the program representative must have the resident's permission to look at their medical records:

Section 712(b) PROCEDURES FOR ACCESS.—

(1) IN GENERAL.—The State shall ensure that representatives of the Office shall have—

(A) private and unimpeded access to long-term care facilities and residents;

(B)(i) **appropriate access to review all files, records, and other information concerning a resident, if—**

(I) the representative has the permission of the resident, or the legal representative of the resident; or

(II) the resident is unable to communicate consent to the review and has no legal representative; or

(ii) access to the files, records, and information as is necessary to investigate a complaint if—

(I) a legal guardian of the resident refuses to give the permission;

(II) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and

(III) the representative obtains the approval of the Ombudsman;

The [rule](#) provides the following requirements for duties of the representatives of the Office (representatives are the employees or volunteers designated by the State LTC Ombudsman to fulfill the duties of the LTCO program) regarding access to records and other information concerning a resident.

§ 1324.11(e)(2)(iv) **Access to review the medical, social and other records** relating to a resident, if—

(A) The resident or resident representative communicates informed consent to the access and the consent is given in writing or through the use of auxiliary aids and services;

(B) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services, and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; and

(C) Access is necessary in order to investigate a complaint, the resident representative refuses to consent to the access, a representative of the Office has reasonable cause to believe that the resident representative is not acting in the best interests of the resident, and the representative of the Office obtains the approval of the Ombudsman;