

OMBUDSMAN REFERENCES IN NEW FEDERAL NURSING HOME REGULATIONS

[Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities \(PDF\)](#)

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TOPIC	OLD REGULATION	NEW REGULATION	PREAMBLE LANGUAGE
<p>Access and Visitation</p>	<p>483.10 Resident rights. The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:</p> <p>(j) Access and visitation rights.</p> <p>(1) The resident has the right and the facility must provide immediate access to any resident by the following:</p> <p>(iv) The State long term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965);</p>	<p>483.10 Resident rights. [Phase 1] (f) Self-determination. The resident has the right to and the facility must promote and facilitate resident self-determination through support of resident choice, including but not limited to the rights specified in paragraphs (f)(1) through (11) of this section.</p> <p>(4) The resident has a right to receive visitors of his or her choosing at the time of his or her choosing, subject to the resident’s right to deny visitation when applicable, and in a manner that does not impose on the rights of another resident.</p> <p>(i) The facility must provide immediate access to any resident by-</p> <p>(C) 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.),</p>	<p>In § 483.10(f), we proposed to redesignate and revise a number of provisions relating to resident access to information. We proposed to retain the requirements of current § 483.10(b)(2)(i) and (ii), subject to the clarifying revisions described below, at new § 483.10(f)(3). In doing so, we recognized that the HIPAA rules establish a federal floor of privacy and security protections and individual rights with respect to protected health information held by covered entities (and their business associates), and the rights granted in the proposed regulation do not conflict in any way with the HIPAA regulations. In addition, to the extent that HIPAA provides additional rights to individuals (that is, residents, in the long-term care context) beyond what is provided in this proposal, covered entities and business associates must comply with the requirements in HIPAA to ensure individuals are afforded these additional rights. These provisions at § 483.10(f)(4), and clarify that: (1) The resident’s right to deny visitation is “when applicable;” (2) a facility must have written policies and procedures for visitation that includes restrictions, when such limitation may apply consistent with the requirements of this subpart, that the facility may need to place on such rights and the reasons for the clinical or safety restriction or limitation; and (3) the facility must inform each resident not only of any limitation, but also to whom the restrictions apply.</p>
<p>Information</p>	<p>483.10 Resident rights. The resident</p>	<p>483.10 Resident rights.</p>	<p>In § 483.10(g)(1) we proposed to revise a number of</p>

<p>and Communication</p>	<p>has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:</p> <p>(b) Notice of rights and services.</p> <p>(7) The facility must furnish a written description of legal rights which includes –</p> <p>(iii) A posting of names, addresses, and telephone numbers of all pertinent State client advocacy groups such as the State survey and certification agency, the State licensure office, the State ombudsman program, the protection and advocacy network, and the Medicaid fraud control unit; and</p>	<p>[Phase 1]</p> <p>(g) Information and communication.</p> <p>(4) The resident has the right to receive notices orally (meaning spoken) and in writing (including Braille) in a format and a language he or she understands, including;</p> <p>(i) Required notices as specified in this section. The facility must furnish to each resident a written description of legal rights which includes— [Phase 1]</p> <p>(C) A list of names, addresses (mailing and email), and telephone numbers of all pertinent State regulatory and informational agencies, resident advocacy groups such as the State Survey Agency, the State licensure office, the State Long-Term Care Ombudsman program, the protection and advocacy agency, adult protective services where state law provides for jurisdiction in long-term care facilities, the local contact agency for information about returning to the community and the Medicaid Fraud Control Unit; and</p> <p>[Phase 2- the entire 483.10 Resident rights section will be implemented in Phase 1, except for 483.10 (g)(4)(ii)-(v)]</p> <p>(ii) Information and contact information for State and local advocacy organizations, including but not limited to the State Survey Agency, the State Long-Term Care Ombudsman program (established under section 712 of the Older Americans Act of</p>	<p>provisions related to resident privacy and confidentiality to update the language to accommodate electronic communications. Information includes both information that must be included in the written description of legal rights and other information of importance to the resident. For example, the written description of legal rights must include a statement that the resident may file a complaint with the State Survey Agency concerning any suspected violation of state or federal nursing facility regulations, including but not limited to resident abuse, neglect, exploitation, misappropriation of resident property in the facility, noncompliance with the advance directives requirements and requests for information regarding returning to the community. In addition, the resident has a right to receive, information and contact information for filing grievances or complaints and the facility must post similar information, in a form and manner accessible and understandable to residents, and resident representatives.</p> <p>Comment: One commenter suggested that the information required to be in the discharge notice... include the name, address, and telephone number of the representative of the Office of the State Long-Term Care Ombudsman.</p> <p>Response: In this final rule, we are requiring that this information be provided to the resident in the written description of legal rights (§ 483.10(g)(4)(ii)), and posted in an accessible manner (§ 483.10(g)(5)). In addition, a copy of the notice must be sent to the Long-Term Care Ombudsman (§483.15(c)(3)(i)).</p>
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		1965, as amended 2016 (42 U.S.C. 3001 et seq.) and the protection and advocacy system (as designated by the state, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);	
Information and Communication	<p>483.10 Resident rights. (b) Notice of Rights and Services (7) -- The facility must furnish a written description of legal rights which includes—</p> <p>(iii) A posting of names, addresses, and telephone numbers of all pertinent State client advocacy groups such as the State survey and certification agency, the State licensure office, the State ombudsman program, the protection and advocacy network, and the Medicaid fraud control unit [483.10 (b)(7)(iii)]</p>	<p>483.10 Resident rights. [Phase 1] (g) Information and communication (5) The facility must post, in a form and manner accessible and understandable to residents, and resident representatives: (i) A list of names, addresses (mailing and email), and telephone numbers of all pertinent State agencies and advocacy groups, such as the State Survey Agency, the State licensure office, adult protective services where state law provides for jurisdiction in long-term care facilities, the Office of the State Long-Term Care Ombudsman program, the protection and advocacy network, home and community based service programs, and the Medicaid Fraud Control Unit;</p>	
Privacy and Confidentiality	<p>§ 483.10 Resident rights. (j) Access and visitation rights. (3) The facility must allow representatives of the State Ombudsman, described in paragraph (j)(1)(iv) of this section, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with State law.</p>	<p>483.10 Resident rights. [Phase 1] (h) Privacy and confidentiality. The resident has a right to personal privacy and confidentiality of his or her personal and medical records. (3) The resident has a right to secure and confidential personal and medical records. (ii) The facility must allow representatives of the Office of the State Long-Term Care</p>	<p>In § 483.10(h), we proposed to redesignate and revise a number of provisions relating to resident communications...to include ... reasonable access and privacy for electronic communications such as email or internet-based interpersonal video communications. We agree that flexibility, contingent upon the resident’s ability to access and understand the information, is important. It is not our intent to reduce a resident’s access to information. Although sections 1819(c)(1)(iv) and 1919(c)(1)(iv) of the Act only require access to</p>

		<p>Ombudsman to examine a resident’s medical, social, and administrative records in accordance with State law.</p>	<p>current clinical records, we agree that it is important that LTC facility residents also have access to certain other records about themselves that may be held by a long-term care facility, such as their financial or social records. We have reviewed our proposals and expanded the language which we are finalizing at § 483.10(g)(2) and at § 483.10(h) to include both personal and medical records.</p>
<p>Grievances</p>	<p>483.10 Resident rights. (f) Grievances. A resident has the right to - (1) --Voice grievances without discrimination or reprisal. Such grievances include those with respect to treatment which has been furnished as well as that which has not been furnished; and (2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.</p>	<p>483.10 Resident rights. [Phase 1] (j) Grievances. (4) [NEW] The facility must establish a grievance policy to ensure the prompt resolution of all grievances regarding the residents’ rights contained in this paragraph. Upon request, the provider must give a copy of the grievance policy to the resident. The grievance policy must include: (i) Notifying resident individually or through postings in prominent locations throughout the facility of the right to file grievances orally (meaning spoken) or in writing; the right to file grievances anonymously; the contact information of the grievance official with whom a grievance can be filed, that is, his or her name, business address (mailing and email) and business phone number; a reasonable expected time frame for completing the review of the grievance; the right to obtain a written decision regarding his or her grievance; and the contact information of independent</p>	<p>In § 483.10(j), we proposed to revise language relating to resident grievances to add that a resident could not be deterred from voicing a grievance for fear of reprisal or discrimination. We will finalize proposed requirements regarding notifying resident individually or through postings in prominent locations throughout the facility of the right to file grievances orally (meaning spoken) or in writing; the right to file grievances anonymously; the contact information of the grievance official with whom a grievance can be filed, that is, his or her name, business address (mailing and email) and business phone number; a reasonable expected time frame for completing the review of the grievance; the right to obtain a written decision regarding his or her grievance; and the contact information of independent entities with whom grievances may be filed, that is, the pertinent State agency, Quality Improvement Organization, State Survey Agency and State Long-Term Care Ombudsman program or protection and advocacy system. We also finalize the requirement to provide a copy of the grievance policy to the resident upon request. Therefore, the cost associated with establishing a grievance policy will be associated with designating an individual as the grievance official who is responsible for overseeing the grievance process. We do not specify</p>

		entities with whom grievances may be filed, that is, the pertinent State agency, Quality Improvement Organization, State Survey Agency and State Long-Term Care Ombudsman program or protection and advocacy system;	who has to be the grievance official, but for purposes of estimating the cost we believe that an average facility will designate a social worker to be the grievance official and that individual will need to commit about 10 percent of a FTE to his or her responsibilities for overseeing the grievance process. We estimate that this will cost \$153,023,728 for all LTC facilities to comply with requirement (10 percent of a social worker FTE × \$47 hourly wage for a social worker × 2,080 hours (40 hours a week × 52 weeks = 2,080 hours) × 15,653 facilities).
Right to Communicate with External Entities	483.10 Resident rights.	483.10 Resident rights. [Phase 1] (k) Contact with external entities. [NEW] A facility must not prohibit or in any way discourage a resident from communicating with federal, state, or local officials, including, but not limited to, federal and state surveyors, other federal or state health department employees, including representatives of the Office of the State Long-Term Care Ombudsman , and any representative of the agency responsible for the protection and advocacy system for individuals with mental disorder (established under the Protection and Advocacy for Mentally Ill Individuals Act of 2000 (42 U.S.C. 10801 et seq.), regarding any matter, whether or not subject to arbitration or any other type of judicial or regulatory action.	We proposed a new [rule] that establishes that the facility must protect and facilitate a resident’s right to communicate with individuals and entities both inside and external to the facility... Proposed [rule]..., states that facilities must not prohibit or in any way discourage a resident from communicating with federal, state, or local officials, including, but not limited to, federal and state surveyors, other federal and state health department employees, including representatives of the Office of the State Long-Term Care Ombudsman and the protection and advocacy system, regarding any matter, whether or not subject to arbitration or any other type of judicial or regulatory action.
Notice of Transfer and	483.12 Admission, transfer and discharge rights.	483.15 Admission, transfer, and discharge rights.	Finally, we proposed to redesignate existing § 483.12(a)(3) as § 483.15(c)(3) and revised it to add a

<p>Discharge</p>	<p>(a) Transfer and discharge - (4) Notice before transfer. Before a facility transfers or discharges a resident, the facility must - (i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.</p>	<p>[Phase 1] (c) Transfer and discharge— (3) Notice before transfer. Before a facility transfers or discharges a resident, the facility must— (i) Notify the resident and the resident’s representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. The facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.</p>	<p>new requirement that a resident who is hospitalized or placed on therapeutic leave with an expectation of returning to the facility must be notified in writing by the facility when the facility determines that the resident cannot be readmitted to the facility, the reason the resident cannot be readmitted to the facility, and the appeal and contact information specified in § 483.15(b)(5)(iv) through (vii).</p>
	<p>483.12 Admission, transfer and discharge rights. (a) Transfer and discharge - (6) Contents of the notice. The written notice specified in paragraph (a)(4) of this section must include the following: (v) The name, address and telephone number of the State long term care ombudsman;</p>	<p>483.15 Admission, transfer, and discharge rights. [Phase 1] (c) Transfer and discharge— (5) Contents of the notice. The written notice specified in paragraph (b)(3) of this section must include the following: (v) The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman</p>	<p>In this final rule, we are requiring that [the name, address, and telephone number of the representative of the Office of the State Long-Term Care Ombudsman] be provided to the resident in the written description of legal rights (§ 483.10(g)(4)(ii)), and posted in an accessible manner (§ 483.10(g)(5)). In addition, a copy of the notice must be sent to the Long-Term Care Ombudsman (§ 483.15(c)(3)(i)). We estimate this notice may need to be sent to the Office of the State Long-Term Care Ombudsman for one third of all LTC facility residents, resulting in a cost of \$1,340,936 ((\$.10 + \$.58 + (\$31 hourly wage for an office assistant × .(5/60) of an hour)) × (.3 percentage of LTC facility residents for whom a copy of a transfer notice needs to be sent to the Office of the State Long-Term Care Ombudsman × 1,369,700 LTC facility residents)) for all facilities. We note that the per-facility cost will vary significantly according to facility size and number of transfers out of each facility.</p> <p>Comment: Some commenters supported our proposal to require that discharge notices be sent to a representative of the Office of the State Long Term Care Ombudsman. Several commenters suggested that requiring resident agreement for sending the notice to the LTC Ombudsman was</p>

			<p>potentially confusing and unnecessary. Others suggested that we specify that the notice go to the local ombudsman. Another requested clarification on the intended effect of sending the notice and whether or not sending the notice constituted a request for assistance and if not, what the resident would need to do to make such a request. One commenter stated that it is unclear why the ombudsman’s office would need notification of every routine discharge or transfer and that such notification should be reserved for situations where the transfer or discharge is contested. The commenter doubted that ombudsman offices have the capacity to receive and act upon even a small portion of this information.</p> <p>Response: We have eliminated language requiring resident consent. We consulted with the Administration for Community Living in the development of this proposal and believe that sending these notices to the State Long-Term Care Ombudsman will provide added protection to the resident and assist the State Long-Term Care Ombudsman to keep informed of facility activities.</p>
<p>Notice of Closure</p>	<p>483.12 Admission, transfer and discharge rights. (a) Transfer and discharge (8) Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the State Survey Agency, the State LTC ombudsman, residents of the facility, and the legal representatives of</p>	<p>483.15 Admission, transfer, and discharge rights. [Phase 1] (c) Transfer and discharge— (8) Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the State Survey Agency, the Office of the State Long Term Care Ombudsman, residents of the</p>	<p>In the event of an impending closure, facilities are required to ensure the safe and orderly transfer, discharge and adequate relocation of all residents. In addition, a copy of the notice must be sent to the Long-Term Care Ombudsman.</p>

	the residents or other responsible parties, as well as the plan for the transfer and adequate relocation of the residents, as required at § 483.75(r).	facility, and the resident representatives, as well as the plan for the transfer and adequate relocation of the residents, as required at §483.70(l).	
Nursing Services	<p>483.30 Nursing services (c) Nursing facilities: Waiver of requirement to provide licensed nurses on a 24-hour basis. To the extent that a facility is unable to meet the requirements of paragraphs (a)(2) and (b)(1) of this section, a State may waive such requirements with respect to the facility if</p> <p>(6) The State agency granting a waiver of such requirements provides notice of the waiver to the State long term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and mentally retarded; and</p>	<p>483.35 Nursing services. [Phase 1] (e) Nursing facilities: Waiver of requirement to provide licensed nurses on a 24-hour basis. To the extent that a facility is unable to meet the requirements of paragraphs (a)(2) and (b)(1) of this section, a State may waive such requirements with respect to the facility if</p> <p>(6) The State agency granting a waiver of such requirements provides notice of the waiver to the Office of the State Long-Term Care Ombudsman (established under section 712 of the Older Americans Act of 1965) and the protection and advocacy system in the State for individuals with a mental disorder who are eligible for such services as provided by the protection and advocacy agency; and</p>	We do not agree that we should establish minimum staffing ratios at this time. As discussed in the preamble to the proposed rule, this is a complex issue and we do not agree that a “one size fits all” approach is best. We also agree that RNs are a valuable resource in LTC facilities, however, we are not mandating a 24/7 RN presence in each facility at this time. While we would have the discretion to impose a more stringent requirement regarding RN presence, we do not have the discretion to eliminate the waiver option, as it is statutory. See sections 1819(b)(4)(C)(ii) and 1919(b)(4)(C)(ii) of the Act. While there are no current RN waivers in effect, such a mandate could result in an increase in such requests. We are also concerned that imposing such a requirement could negatively impact the development of innovative care options, particular in smaller, more home-like settings, for a subset of residents who might benefit from and be appropriate for such a setting. We are also concerned that, while the RN supply overall might be sufficient, geographic disparity in supply could make such a mandate particularly challenging in some rural and underserved areas.
	<p>483.30 Nursing services. (d) SNFs: Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week. (1) The Secretary may waive the requirement that a SNF provide the services of a registered nurse for more than 40 hours a week, including a director of nursing specified in paragraph (b) of this section, if the</p>	<p>483.35 Nursing services. [Phase 1] (f) SNFs: Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week. (1) The Secretary may waive the requirement that a SNF provide the services of a registered nurse for more than 40 hours a week, including a director of nursing specified in paragraph (b) of</p>	

	<p>Secretary finds that - (iv) The Secretary provides notice of the waiver to the State long term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and mentally retarded;</p>	<p>this section, if the Secretary finds that – (iv) The Secretary provides notice of the waiver to the Office of the State Long-Term Care Ombudsman (established under section 712 of the Older Americans Act of 1965) and the protection and advocacy system in the State for individuals with developmental disabilities or mental disorders;</p>	
<p>Binding Arbitration Agreements</p>	<p>483.75 Administration.</p>	<p>483.70 Administration. [Phase 1- This new part about binding arbitration agreements is pending implementation due to a federal judge granting an injunction barring CMS from implementing this requirement]</p> <p>(n) Binding arbitration agreements. [NEW] (2) If, after a dispute between the facility and a resident arises, and a facility chooses to ask a resident or his or her representative to enter into an agreement for binding arbitration, the facility must comply with all of the requirements in this section.</p> <p>(iv) The agreement must not contain any language that prohibits or discourages the resident or anyone else from communicating with federal, state, or local officials, including but not limited to, federal and state surveyors, other federal or state health department employees, and representatives of the Office of the State Long-Term Care Ombudsman, in accordance with §483.10(k).</p>	<p>If a facility utilized an arbitration agreement, such facility would be required to inform the resident, at a minimum, that the resident was waiving his or her right to judicial relief for any potential cause of action covered by the agreement. The agreement could only be entered into by the resident voluntarily and would have to provide for the selection of a neutral arbitrator and a venue convenient to both parties, the resident and the facility...any agreement for binding arbitration could not be contained within any other agreement or paperwork addressing any other issues. It would have to be a separate agreement in which the resident made an affirmative choice to either accept or reject binding arbitration for disputes between the resident and the facility.</p> <p>The [arbitration] agreement could not contain any language that prohibited or discouraged the resident or any other person from communicating with federal, state, or local officials, including, but not limited to, federal and state surveyors, other federal or state health department employees, or representatives of the Office of the State Long-Term Care Ombudsman, regarding any matter, whether or not subject to arbitration or any other</p>

			<p>type of judicial or regulatory action, in accordance with proposed § 483.11(i).</p> <p>[This provision] specifically addresses the arbitration agreement and applies both to the resident and anyone else who would like to, or chooses to, communicate with outside authorities. We wished to ensure that pre-dispute arbitration agreements could not be used to in any way prohibit or discourage anyone from contacting or communicating with outside authorities,</p> <p>When any dispute involves any allegations that relate to our long-term care requirements, especially the health care provided by the facility or instances of abuse or neglect, we believe it is necessary for the protection of the health and safety of residents that federal, state, and local health and regulatory officials have access to the relevant information and be able to conduct an investigation as appropriate. Anything that could interfere with federal, state, or local health and regulatory officials or LTC advocates from learning of, or restricting the investigation of, instances of substandard care or other serious instances affects the health and safety of residents.</p>
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