

NOTICE TO LONG-TERM CARE FACILITIES REGARDING OMBUDSMAN ACCESS TO FACILITIES, RESIDENTS, AND RECORDS

Federal and State law specify that the State Long-Term Care Ombudsman and his or her representatives are responsible for:

- Providing services to protect the health, safety, welfare and rights of long-term care facility residents;
- Ensuring that residents have regular access to designated representatives of the Office of the State Long-Term Care Ombudsman (Office); and
- Identifying, investigating, and resolving residents' complaints.

Federal and State law specify that representatives of the Office have a right to enter long-term care facilities, speak confidentially with residents, and access records as necessary to fulfill their mandated responsibilities. Residents of long-term care facilities have the right to speak confidentially with representatives of the Office.

Willful interference with any lawful actions of the Office is prohibited in federal and State law, and can trigger sanctions of up to \$2,500 per incident. Incidents of willful interference may also be reported to the appropriate licensing agency and local law enforcement as "acts of isolation" as defined in Section 15610.43 of the Welfare and Institutions Code.

Federal Law

Title 42 United States Code section 3058g

(b) Procedures for access

(1) In general

The State shall ensure that representatives of the Office shall have –

- (A) access to long-term care facilities and residents;
- (B) (i) appropriate access to review the medical and social records of 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 consent to the review and has no legal representative; or
 (ii) access to the records 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;
- (C) access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities; and

(D) access to and, on request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities.

**Title 42 Code of Federal Regulations, Chapter IV, Part 483
section 483.10 – Resident rights**

(j) *Access and visitation rights.*

(1) The resident has the right and the facility must provide immediate access to any resident by the following:

(iv) The State long term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965)

California State Law

Welfare and Institutions Code section 9722

(a) Representatives of the office shall have the right to enter long-term care facilities and to unescorted, unhindered movement within them for the purposes of identifying, hearing, investigating, and resolving complaints, observing and monitoring conditions of residents and facilities, speaking confidentially with residents, and providing services to assist residents in protecting their health, safety, welfare, and rights. Entry shall be provided at any time deemed necessary and reasonable by the State Ombudsman to effectively carry out this chapter, for any of the purposes described in this subdivision.

(d) Notwithstanding any other provision of law, a long-term care facility, upon request by a representative of the office, shall provide a roster, census, or other list of the names and room numbers or room locations of all current residents or patients residing in the facility.

Welfare and Institutions Code section 9730

Anyone who willfully interferes with any lawful action of the office shall be immediately referred to the appropriate licensing authority, which shall respond within the legally prescribed time period.

Welfare and Institutions Code section 9731

Notwithstanding the availability of statutory damages, this chapter shall not be construed to limit the ability of a court to issue equitable relief where the legal remedies provided would not be an adequate method of preventing or curing the particular injury in question.

Welfare and Institutions Code section 9732

(a) Any person who willfully interferes with any lawful action of the office shall be subject to a civil penalty of no more than two thousand five hundred dollars (\$2,500) for each incident. The civil penalty shall be assessed by the director. If the penalty is not paid within 30 days of the assessment, the director shall initiate an action to collect the penalties in the jurisdiction in which the facility is located.

(b) Each instance of willful interference may be reported to local law enforcement and the appropriate licensing agency as an act of isolation, as defined in Section 15610.43.

**California Code of Regulations Title 22, section 87468
Personal Rights.**

- (a) Each resident shall have personal rights which include, but are not limited to, the following:
- (11) To have his/her visitors, including ombudspersons and advocacy representatives permitted to visit privately during reasonable hours and without prior notice, provided that the rights of other residents are not infringed upon.

**California Code of Regulations Title 22, section 8040
Interference with Actions of Office.**

No licensee, employee, agent or other person connected with a long-term care facility shall willfully interfere with any lawful action of the Office. Violations of this Section may be the basis for the assessment of a civil penalty under Section 8045. No person shall:

- (a) Willfully prevent, impede, or interfere with entry into a long-term care facility by duly authorized representatives of the Office in the lawful exercise of their responsibilities.
- (b) Willfully prevent or interfere with the interviewing of complainants, patients, residents, or witnesses by representatives of the Office in their investigation and resolution of complaints. This includes interference with the maintenance of confidentiality when requested by complainants, witnesses, patients or residents.
- (c) Willfully prevent or interfere with the examination or copying of patients' or residents' medical or personal records requested under Section 9724 of the Welfare and Institutions Code, or other records necessary to carry out the responsibilities of the Office requested under Section 9723 of the Welfare and Institutions Code.
- (d) Willfully discriminate, discipline, or retaliate against any employee, patient, resident, or volunteer in a long-term care facility for any communication made, or information given, to aid the Office in carrying out its duties and responsibilities. This subdivision does not apply to any communication made, or information given or disclosed, that was done maliciously or without good faith.
- (e) Willfully prevent, impede, or interfere in any other way with the work of duly authorized representatives of the Office in the investigation and resolution of complaints.