

CONSENT TO ACCESS AND DISCLOSE CONFIDENTIAL INFORMATION

Resident's Name: _____ **Place of Residence:** _____

I authorize representatives of the _____ Long-Term Care Ombudsman Program (LTCOP) to advocate for me in the resolution of my complaints and:

- 1. Access and make copies of my medical, social, and financial records to assist in the resolution of my complaints *except* as stated below.

Yes No N/A

Exception(s):

- 2. Take and disclose photographs of me or my circumstances to assist in the resolution of my complaints.

Yes No N/A

- 3. Access financial institution records listed below, as authorized by Government Code section 7480(b)-(e).

Yes No N/A

Name of Institution(s) and Targeted Account(s):

- 4. Disclose information in my file, including my identity, to licensing and law enforcement agencies or other organizations that may be of assistance in the resolution of my complaints *except* as stated below.

Yes No N/A

Exception(s):

This authorization is effective immediately and will remain in effect until my complaints are resolved or this case is closed, whichever comes first. I understand that this document is required as part of the record of my complaint investigation, and that I have a right to a free copy of this signed authorization form.

Signature of Resident or Legal Representative

Print Name of Resident or Legal Representative

Date

AUTHORIZATION BY RESIDENT'S ORAL CONSENT

I understand the terms of this authorization but I am unable to provide my signature. I have given my oral consent to the items noted above, and my consent has been documented by a representative of the Long-Term Care Ombudsman Program and a third-party witness.

Signature of LTCOP Representative

Signature of Third-Party Witness if Accessing Records

Print Name

Date

Print Name

Date

Copy of consent provided to: Resident Legal Representative Not requested

Instructions to the Ombudsman Representative Completing this Form:

This form shall be used by an Ombudsman representative to document consent from a resident or resident's legal representative to access and disclose confidential information which would assist the Ombudsman representative in the resolution of a complaint. This form shall not be used to authorize the release of confidential information to any organization, attorney or others in a civil matter. Use OSLTCO S202 for that purpose.

Consent must be received and documented prior to any investigation. Documentation of consent must be included in the case/complaint record retained by the local Ombudsman Program. [42 U.S.C. § 3058g (b)(1)(B)(i)(I), Welf. & Inst. Code § 9724]

Where a resident is unable to provide written consent, Ombudsman representatives must ensure that valid oral consent is received. If oral consent includes access to medical and personal records contained in the facility, this form must also be signed by a third-party witness. [Welf. & Inst. Code § 9724(b)] The third-party witness may be a family member, another resident with capacity, or another Ombudsman representative.

If the Ombudsman determines at the time that a resident lacks decision-making capacity, consent should be sought from and may be provided by a legally recognized surrogate decision maker: 1) a court-appointed guardian or conservator [Prob. Code § 1800 et seq.], 2) the resident's designated agent through an advance health care directive or power of attorney for health care [Prob. Code § 4670 et seq.], 3) the resident's next of kin [Cobbs v. Grant (1972) 8 Cal.3d 299 and other case law]. The surrogate may initially give consent over the phone, but Ombudsman representatives should follow up by sending a consent form to be signed by the surrogate.

Please note that ombudsman access is limited to information pertinent to the particular complaint. If there are records that the resident does not wish the Ombudsman representative to access, they should be listed in the "exceptions" space below the authorization statement.

If any of the items 1-4 on this form are not applicable to a complaint, the Ombudsman representative should check the N/A box for that item.

If the resident does not want his or her identity disclosed to particular organizations or persons, they should be listed in the "exceptions" space below the disclosure authorization statement. [42 U.S.C. § 3058g (d), Welf. & Inst. Code § 9725]

Under Government Code section 7480, certified Ombudsman representatives may access financial institution (bank, credit union, savings association) information when investigating financial abuse. The financial institution is to disclose whether the resident has any accounts at the institution and any identifying numbers of those accounts. [Gov. Code § 7480 (e)] When a police department, sheriff's department or district attorney provides written certification to the financial institution that a crime report has been filed alleging the fraudulent use of a resident's accounts, the bank or financial institution must provide information related to specific accounts at the request of the Ombudsman representative. [Gov. Code §§ 7480 (b)-(d)]

The U.S. Department of Health and Human Services has determined that the State Long-Term Care Ombudsman and designated Ombudsman entities and representatives are "health oversight agencies" for the purposes of the HIPAA Privacy Rule. (45 CFR section 164.501) This means that for HIPAA purposes, certified Ombudsman representatives have the same right to access residents' health records and other appropriate information as any other health oversight agency, including licensing agencies. Nursing homes and other HIPAA-covered entities may share protected health information with certified Ombudsman representatives without violating the Privacy Rule. (AoA-IM-03-01)