

CHAPTER 16 INTERFERENCE WITH OMBUDSMAN ACTIVITIES

I. Introduction

Both federal and State law require long-term care facilities to provide Ombudsman representatives with access to facilities and residents. California law specifically authorizes Ombudsman representatives to move freely, without an escort or hindrance, throughout a facility in order to: identify, investigate, and resolve complaints; observe and monitor conditions of residents and facilities; speak confidentially with residents; and provide services to assist residents in protecting their health, safety, welfare and rights.

Ombudsman representatives who encounter willful interference by facility staff or others during the performance of their duties shall immediately report the incident(s) to their Program Coordinators and the appropriate licensing agency. In addition, Ombudsman representatives may also report willful interference to the local law enforcement agency as an act of "isolation" as defined in Section 15610.43 of the Welfare and Institutions Code.

Persons who willfully interfere with lawful Ombudsman activities are subject to licensing sanctions and/or civil penalties assessed by the Director of the California Department of Aging (CDA).

II. Legal Authority

FEDERAL Title 42 United States Code section 3058g(b)

STATE Welfare and Institutions Code sections 9722, 9730, 9732, 15610.43
California Code of Regulations, title 22, sections 8040, 8045

III. Acts of Willful Interference

Act of willful interference occurs when a facility staff member prevents or attempts to prevent an Ombudsman representative, during the performance of his or her lawful duty, from gaining full access to the facility, residents, or resident records. Examples of willful interference include:

- Preventing Ombudsman representatives from entering a facility.
- Refusing to allow Ombudsman representatives to speak confidentially with residents.
- Refusing to allow Ombudsman representatives access to all areas in the facility including the kitchen.

- Refusing to grant Ombudsman representatives access to resident records.

IV. Responding to Willful Interference

If an Ombudsman representative experiences willful interference, he or she shall do the following:

1. Provide the individual who is interfering with a verbal explanation of the Long-Term Care Ombudsman Program and a written summary of the laws and regulations prohibiting willful interference with the lawful actions of Ombudsman representatives. Use OSLTCO S600, (Exhibit 16-A), for this purpose. Use OSLTCO S603 (Exhibit 16-B) to document that the Ombudsman representative provided the summary. Ombudsman representatives should keep copies of these forms with them whenever they make visits to facilities.
2. If this first level of communication is not successful, the local Ombudsman Coordinator shall contact the facility administrator either by telephone or in person to provide a verbal explanation of the Long-Term Care Ombudsman Program and a written summary of the laws and regulations prohibiting willful interference with the lawful actions of Ombudsman representatives. If the issue is resolved, the Ombudsman representative shall return to the facility and resume Ombudsman duties.
3. If the interference continues, the Ombudsman Coordinator shall submit a written description of the incident to the OSLTCO, including dates, times, circumstances, history of interference by the individual or facility management, and the steps taken by the local Ombudsman Program to educate the person interfering and facility administration. If the interference results in isolation of residents from the Ombudsman, as defined section 15610.43 of the Welfare and Institutions Code, the Ombudsman Coordinator may also file a complaint with the appropriate local law enforcement agency.
4. Within two business days of receiving the written description of the incident, the State Ombudsman or his or her designee shall send a cease and desist letter to the administrator of the facility where the interference occurred. The cease and desist letter shall advise the administrator that he or she may be subject to a civil penalty for interference. The State Ombudsman shall send a copy of the letter to the local Ombudsman Coordinator.
5. If the interference continues, the Ombudsman Coordinator shall contact the OSLTCO and the State Ombudsman shall request that the CDA Director assess a civil penalty.

6. Upon receipt of the request, the CDA Director shall make the final decision to assess civil penalty against the facility and the appropriate amount of penalty to be assessed. .

V. Civil Penalties

The CDA Director may assess civil penalties of up to \$2,500.00 per incident against any person willfully interfering with the actions of an Ombudsman. In accordance with California Code of Regulations, the CDA Director shall consider the following factors when fixing the amount of the civil penalty:

- The extent to which the facility or individual violated provisions of applicable statutes or regulations.
- The “good faith” exercised by the licensee or other person connected with the facility where the interference occurred. Indications of good faith include awareness of applicable statutes and regulations, reasonable diligence in complying, and any other mitigating factors.
- Any prior history of willful interference by the licensee or other person connected with the facility where the interference occurred.

It is imperative that the local Ombudsman Program thoroughly document the circumstances surrounding the interference and the local Program’s attempts to resolve the issue. Such documentation is critical in the CDA Director’s determination to assess civil penalties.

If the CDA Director assesses a civil penalty and the individual, licensee or other person connected with the facility fails to respond within ten business days, the Director shall initiate a collection action in small claims court in the jurisdiction in which the facility is located. The local Ombudsman Program Coordinator or OSLTCO staff shall file the action on behalf of the CDA Director and appear for the Director to collect the penalties.