

OMBUDSMAN REFERENCES IN FEDERAL NURSING HOME REQUIREMENTS

| TOPIC | SUMMARY | SOURCE |
|--|--|--|
| CAH: Critical Access Hospitals CFR: Code of Federal Regulations CMP: Civil Monetary Penalties CMS: Centers for Medicare & Medicaid Services IDR: Informal Dispute Resolution F #: Federal citation tag number LTCOP: Long-Term Care Ombudsman Program LTCSP: Long Term Care Survey Process (LTCSP) Procedure Guide Office: Office of the State Long-Term Care Ombudsman | RN: Registered Nurse RO: CMS Regional Office SA: State Survey Agency SMA: State Medicaid Agency SLTCOP: State Long-term Care Ombudsman Program SLTCO: State Long-term Care Ombudsman SOM: CMS State Operations Manual TC: Team Coordinator USC: United States Code | |
| ACCESS | Facilities must provide the LTCOP with immediate access to residents. | 42 CFR §483.10(f)(4)(i) SOM Appendix PP, F586 |
| | Access to resident medical, social, and administrative records with permission from the resident or legal representative. The SA should ask the representative of the Office assigned to the facility if the facility allows him/her to review records, with resident or resident representative permission and according to State law. | 42 CFR §483.10(h)(3) SOM Appendix PP, F583 |
| | The pharmacist's findings are considered part of the resident's medical record and are available to the resident/resident representative upon request. Establishing a consistent location for the pharmacist's findings and recommendations can facilitate communication with the attending physician, director of nursing, the interdisciplinary team (IDT), medical director, resident, and resident's legal representative, the ombudsman, and surveyors. | 42 CFR §483.45(c) SOM Appendix PP, F756 |

| | | |
|---|--|--|
| CIVIL MONEY PENALTY (CMP) | States may target CMP resources for projects or programs available through various organizations that are knowledgeable, skilled, and capable of meeting the project's purpose in its area of expertise as long as the above criteria are met and the use is consistent with Federal law and policy. Examples of organizations that could qualify include, but are not limited to, consumer advocacy organizations, resident or family councils, professional or State nursing home associations, State Long-term Care Ombudsman programs, quality improvement organizations, private contractors, etc. | 7534.1 SOM Chapter 7 |
| COMPLAINT INVESTIGATION | Describes the general complaint intake process. Identifies other public entities (in addition to the survey agency) that receive information and/or perform investigations, including the LTCOP. States that public entities will forward information to the SA if there are concerns about the health and safety of residents, and SAs are required to manage and investigate these referrals as complaints. | 5010 SOM Chapter 5 |
| | To assist the SA in the investigation planning process, they should consult with the LTCOP. | 5070 SOM Chapter 5 |
| | When the SA refers a complaint to another agency, such as the LTCOP, the SA must request a written report on the results of the investigation, as the SA has the responsibility to assess compliance with Federal regulations and requirements. | 5075.6, 5075.7 SOM Chapter 5 |
| | If the SA or RO determines with certainty that no further investigation, analysis, or action is necessary, an intake is assigned a "no action necessary" priority. Sufficient evidence that the facility does not have continuing noncompliance may be indicated by a recent survey that reviewed the concern, no additional complaints or facility reported incidents have been received regarding the same issue, and an interview with the Long-term Care Ombudsman, which reveals no concerns. | 5075.8 SOM Chapter 5 |
| INFORMAL DISPUTE RESOLUTION (IDR) & INDEPENDENT INFORMAL DISPUTE RESOLUTION (IIDR) | States are encouraged to include at least one person in the decision-making process in the informal dispute resolution process who was not directly involved in the survey, such as an ombudsman. | 7212.3 SOM Chapter 7 |
| | Any Form CMS-2567 and/or plan of correction that is revised or changed as a result of informal dispute resolution must be disclosed to the ombudsman in accordance with §7904. The written record from the Independent IDR entity or person shall include any comments submitted by the State's long-term care ombudsman and/or residents or resident representatives, as appropriate, taking care to protect confidentiality and protected health information (and other content listed in 7213.5 SOM Chapter 7). Upon completion of the review, the Federal Independent IDR entity will send all documents submitted by the facility and any comments submitted by the State's long-term care ombudsman and/or residents or resident representatives to the respective CMS Location, along with its final written record/report. | 7212.3 SOM Chapter 7 7213.10 SOM Chapter 7 (federal IIDR) |

| | | |
|--|--|--|
| | After a facility requests an Independent IDR the State must notify the involved resident or resident representative and SLTCO of the opportunity to submit written comments. The State should request information from the LTCOP about the issue related to the deficiency(ies) being disputed. | 7213.3 SOM Chapter 7 7213.5 SOM Chapter 7 7213.10 SOM Chapter 7 (federal IIDR) |
| | Prior to an Independent IDR, the facility must notify the involved resident and/or resident representative and include contact information for the LTCOP. | 7213.5 SOM Chapter 7 |
| INVOLUNTARY SECLUSION | When investigating allegations of involuntary seclusion surveyors should interview the alleged victim/resident representative and witnesses and ask if this incident was reported to anyone within the facility or an outside agency (e.g., other staff, ombudsman). If so, to whom, when, and what was the response. | 42 CFR §483.12(a)(1) SOM Appendix PP, F603 |
| CONSULTATION/ COORDINATION WITH OMBUDSMAN PROGRAMS | The SA should establish procedures to: <ul style="list-style-type: none"> • Notify the State ombudsman of decisions to initiate proceedings to terminate, or nonrenew a provider agreement; • Notify the State ombudsman of voluntary terminations and planned terminations, including dates of closure; • Consider ombudsman information about situations in the facility and the credibility of the provider's allegations of compliance; and • Share Statements of Deficiencies and Plans of Correction (PoCs). | 3000B SOM Chapter 3 |
| | The SA should consult the LTCOP when investigating eligible candidates for placement as a temporary facility manager. | 7550.4 SOM Chapter 7 |
| | The SA should ask residents, their families (or representatives), and the local ombudsman if they are able to retain and use personal possessions. | 42 CFR §483.10(e)(2) SOM Appendix PP, F557 |
| | | |
| INFORMATION TO RESIDENT REGARDING RIGHTS AND SERVICES | Facilities must furnish a written description of legal rights, which includes the posting of contact information for the LTCOP. | 42 CFR §483.10(g)(4), (5) SOM Appendix PP, F574, F575 |
| | Facilities must post (or notify residents individually) the right to file grievances to a designated staff person, including the right to file a complaint with the LTCOP. | 42 CFR §483.10(j)(4) SOM Appendix PP, F585 |
| | Facilities may utilize the LTCOP to provide in-service training regarding quality of life and residents' rights. | 7304.1 SOM Chapter 7 7502.3 Chapter 7 |
| | When investigating whether facilities have informed residents of their rights surveyors should determine if the facility provides ongoing communication to residents about their rights (e.g., through resident and family groups, presentations by representatives of the Office of the SLTCO, posting of information, etc.). | 42 CFR §483.10(g)(1), (16) SOM Appendix PP, F572 |

| | | |
|---|--|---|
| NOTICE AND DISCLOSURE TO THE OMBUDSMAN PROGRAM | Notification when a penalty, assessment, or exclusion becomes final - notify the Ombudsman of State's findings of noncompliance, or of any adverse action taken against a skilled nursing facility. | 42 CFR §402.11 3024 SOM Chapter 3 42 CFR §1003.129 |
| | The state agency that grants a waiver for a facility of the requirement to provide licensed nurses on a 24-hour basis must provide notice of the waiver to the Office. | 42 CFR §483.35(f)(6) 7014.1.1, 7014.1.2 SOM Chapter 7 SOM Appendix PP, F731 |
| | Disclosure of results of inspections (including form CMS-2567), investigation activities, proposed remedies, the facilities' request for informal dispute resolution, appeal and results of the appeal. In accordance with §1819(g)(5)(B), §1919(g)(5)(B) of the Act, and 42 CFR 488.325(f), the State survey agency must provide the State's long-term care ombudsman with the following: <ul style="list-style-type: none"> • A Statement of Deficiencies reflecting facility noncompliance and, if applicable, a separate list of isolated deficiencies that constitute no actual harm with the potential for minimal harm; • Reports of adverse actions specified in 42 CFR 488.406 imposed on a facility; • Any written response by the facility, including plans of correction and facility requests for informal dispute resolution; and • A facility's request for an appeal and the results of any appeal.* | 42 CFR §488.325 7904.1 SOM Chapter 7* |
| | Proposal to exclude from Medicare and Medicaid programs. | 42 CFR §1003.105 |
| | Waiver for requirements for nurse aide training and competency evaluation programs. | 42 USC 1395i-3 (f)(2)(C)(iii) 42 USC 1396r (f)(2)(C)(iii) 4132.1E SOM Chapter 4 |
| | The Monthly Quality Indicator Comparison report was designed for family members of a resident, potential residents and their families, and SLTCO. | 3319E SOM Chapter 3 |
| | RO notifies the SMA (State Medicaid Agency) of action taken against Medicaid ICFs/IID and the effective dates if termination action is taken pursuant to §3000.C.3. When the termination action is taken, the RO mails the informational copies to the SLTCO. | 3024 SOM Chapter 3 |
| | | |
| SURVEY PREPARATION AND PROCESS | During offsite preparation for complaint investigation the SA should contact the LTCOP to discuss the nature of the complaints and potential history of similar complaints (including reports of misappropriation of property or exploitation*). | 5078 SOM Chapter 5 5300. 1 SOM Chapter 5 *SOM Appendix PP, F602 |
| | During offsite prep, the SA should review PBJ Staffing Data Report for identified concerns regarding staffing. For Standard Recertification Surveys without a staffing related complaint/Ombudsman concern, the TC should review the most recent quarter of staffing data available. For Standard Recertification Surveys with a staffing related complaint/Ombudsman concern, the TC may need to review previous quarters reflecting a specific time period. | LTCSP pg. 7 (10/23/23 version) |

| | | |
|---|---|--|
| SURVEY PREPARATION AND PROCESS (continued) | <p>The SA should contact the Ombudsman in accordance with State policy. Notify the ombudsman of the proposed day of entrance into the facility and obtain any information/concerns if applicable. Ascertain whether the ombudsman will be available if residents wish her/him to be present during the Resident Council Interview. Enter the Ombudsman's name, number, contact date, and areas of concern [in the offsite prep screen].</p> | <p>7207.2 SOM Chapter 7 LTCSP pg. 9 (10/23/23 version)</p> |
| | <p>CMS will contact the SA regarding a Federal survey, and the SA should notify the LTCOP of the Federal survey on behalf of CMS.</p> | <p>7904.2 SOM Chapter 7</p> |
| | <p>Starting on 11/12/21, CMS is temporarily allowing the med storage task to be discretionary and only completed if there is an outstanding complaint or concerns from the ombudsman or concerns identified when completing the med admin observation task. If the task will not be completed, remove the task and document the rationale (i.e., removed at the discretion of the SA).</p> | <p>LTCSP pg. 52 (10/23/23 version)</p> |
| | <p>Starting on 11/12/21, CMS is temporarily allowing the resident council task to be discretionary and only completed if there's an outstanding complaint or concerns from the ombudsman or during the initial pool (e.g., with visitation or grievances). If the task will not be completed, remove the task and document the rationale (i.e., removed at the discretion of the SA). If the ombudsman has indicated interest in attending the interview, ask the president if that is acceptable; if it is, notify the ombudsman of the time/place of the meeting.</p> | <p>LTCSP pg. 53 (10/23/23 version)</p> |
| | <p>The SA should invite the LTCOP to the exit interview. If a separate exit is done with residents, the LTCOP should be invited to that meeting too.</p> | <p>LTCSP pg. 59 (10/23/23 version)</p> |
| TRANSFER/ DISCHARGE/ CLOSURE | <p>The SA should ask the LTCOP if the facility treats residents differently in transfer, discharge and covered services based on source of payment.</p> | <p>SOM Appendix PP, F621 42 CFR §483.15 (c)(5)</p> |
| | <p>Facilities must include contact information for the LTCOP in transfer or discharge notices.</p> | <p>42 CFR §483.15(c)(5)(v) SOM Appendix PP, F628</p> |
| | <p>Facilities must send a copy of the (transfer/discharge) notice to a representative of the Office.</p> | <p>42 CFR §483.15(c)(3) SOM Appendix PP, F628</p> |
| | <p>Facilities must provide written notification prior to the impending closure of the facility to the Office. When a resident is temporarily transferred on an emergency basis to an acute care facility a notice of transfer must be provided to the resident and resident representative as soon as practicable before the transfer, according to 42 CFR §483.15(c)(4)(ii)(D). Copies of notices for emergency transfers must also still be sent to the ombudsman, but they may be sent when practicable, such as in a list of residents on a monthly basis, as long as the list meets all requirements for content of such notices at §483.15(c)(5).</p> | <p>42 CFR §483.15(c)(8) SOM Appendix PP, F628 42 CFR §483.70(l)(1) and (m) SOM Appendix PP, F845</p> |
| | <p>Investigating noncompliance with the transfer and discharge requirements begins when conducting offsite preparation. The team coordinator (TC) should contact the local ombudsman and inquire if there are specific residents from whom the</p> | <p>SOM Appendix PP, F627</p> |

| | | |
|---|--|---|
| | ombudsman has received complaints related to inappropriate discharges for review. Use Offsite Preparation information from the Ombudsman to identify residents or resident representatives (for residents already discharged) who may have concerns with inappropriate discharges. | |
| | If the facility does not permit a resident to return after a hospital stay or therapeutic leave the facility must notify the resident, resident representative, and the LTCOP in writing of the discharge, including notification of appeal rights. | 42 CFR §483.15(e)(1) SOM Appendix PP, F627 |
| CRITICAL ACCESS HOSPITALS (CAHs) AND SWING BEDS* | The facility must allow representatives of the Office of the State Long-term Care Ombudsman to examine a resident's medical, social, and administrative records in accordance with State law. | SOM Appendix W 42 CFR §485.645(d)(1) 42 CFR §483.10(h)(3)(ii) |
| | Facilities must include contact information for the LTCOP in transfer or discharge notices. | SOM Appendix W 42 CFR §485.645(d)(2) 42 CFR §483.15(c)(5)(v) |
| | Facilities must provide written notification prior to the impending closure of the facility to the Office. | SOM Appendix W 42 CFR §485.645(d)(2) 42 CFR §483.15(c)(8) |
| | Facilities must send a copy of the transfer/discharge notice to the LTCOP. | SOM Appendix W 42 CFR §485.645(d)(2) 42 CFR §483.15(c)(3) |

*§485.645(d) SNF Services of the State Operations Manual, Appendix W – Survey Protocol, Regulations, and Interpretative Guidelines for Critical Access Hospitals (CAHS) and Swing-Beds in CAHS states that CAHs follow SNF requirements in subpart B of part 483, so parts §485.645 and §483 are listed in the chart.

SOURCES

| | |
|------------------|--|
| 42 USC 1395i-3: | The United States Code (USC) is the codification by subject matter of the general and permanent laws of the United States. This section includes requirements for nursing facilities participating in Medicare. http://www.ssa.gov/OP_Home/ssact/title18/1819.htm |
| 42 USC 1396r: | The United States Code (USC) is the codification by subject matter of the general and permanent laws of the United States. This section includes requirements for nursing facilities participating in Medicaid. http://www.ssa.gov/OP_Home/ssact/title19/1919.htm |
| 42 USC 1320a-7j | The United States Code (USC) is the codification by subject matter of the general and permanent laws of the United States. This section includes accountability requirements for nursing facilities. https://www.gpo.gov/fdsys/pkg/USCODE-2016-title42/pdf/USCODE-2016-title42-chap7-subchapXI-partA-sec1320a-7j.pdf |
| 42 CFR Part 483: | The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. This part contains federal requirements that apply to states and long-term care facilities, including nursing homes that participate in Medicare and Medicaid. https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-G/part-483?toc=1 |
| SOM: | The State Operations Manual (SOM) is CMS's guidance for surveyors to follow when surveying and assessing facility compliance with federal regulations. https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs-Items/CMS1201984.html |
| SOM Appendix PP: | https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltc.pdf |
| SOM Appendix W: | https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107ap_w_cah.pdf |
| SOM Chapter 3: | https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c03.pdf |

SOM Chapter 4: <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c04.pdf>
SOM Chapter 5: <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c05.pdf>
SOM Chapter 7: <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c07.pdf>
LTCSP: The Long Term Care Survey Process (LTCSP) Procedure Guide is the procedural and technical guide for conducting LTC surveys.
<https://qtso.cms.gov/reference-and-manuals/ltcsp-users-guide-and-reports>

NOTE

Appendix P content was removed, and Appendix P was placed on reserve for future use in 2017. The LTCSP procedure guide replaced Appendix P as the procedural and technical guide for conducting LTC surveys. Chapter 7 of the State Operations Manual (SOM) was revised to include survey policy. There are over fifty references to the LTCOP in Appendix PP, so only the most pertinent references are included in this resource. LTCOPs rely most heavily on the nursing facility requirements in the CFR and the surveyor guidance in the SOM, so for ease of use, if the federal statute in the USC is the same as the regulatory language in the CFR it was not included in this chart.

OMBUDSMAN REFERENCES IN OTHER FEDERAL REQUIREMENTS
EXCLUDING NURSING HOME REGULATIONS

| TOPIC | SUMMARY | SOURCE ¹ |
|---|---|---|
| Acronyms: ACL: Administration for Community Living CFR: Code of Federal Regulations LTCOP: Long-term Care Ombudsman Program Office: Office of the State Long-Term Care Ombudsman USC: United States Code | | RN: Registered Nurse SA: State Survey Agency SLTCOP: State Long-term Care Ombudsman Program SLTCO: State Long-term Care Ombudsman SOM: State Operations Manual |
| AAA assurances | The Area Agency on Aging will provide assurances that in carrying out the SLTCOP under section 3027(a)(9) of this title, will expend not less than the total amount of funds appropriated under this chapter and expended by the agency in fiscal year 2000. | 42 USC 3026(a)(9) |
| Bankruptcy | United States trustee may appoint the State Long-Term Care Ombudsman for the State in which the case is pending, to monitor the quality of care. | 11 USC 333 11 USC App Rule 2007.2 |
| Facility ownership Information | Facilities must provide the State Ombudsman with ownership and related information upon request. | 42 USC 1320a-3 |
| National LTCOP Report | The Assistant Secretary shall compile an annual report on the LTCOP. | 42 USC 3018(b) |
| Nursing Home Compare | To review the accuracy of Nursing Home Compare the Secretary of the U.S. Department of Health and Human Services must consult with the SLTCOP. | 42 USC 1395i-3 (i)(2)(B)(i) 42 USC 1396r (i)(2)(B)(i) |
| Protection and advocacy | State Protection and Advocacy programs must coordinate with the SLTCOP. | 29 USC 794e |
| Standardized complaint form | The Secretary shall develop a standardized complaint form for residents (or a person acting on behalf of the resident) to use for filing complaints with the SA or LTCOP. States must make this form available and develop a complaint resolution process. | 42 USC 1320a-7j(f) 42 USC 1395i-3(i)(1)(A)(iii) 42 USC 1396r (i)(1)(A)(iii) |
| State plan assurances | The SLTCOP will expend an amount that is not less than an amount expended by the State agency with funds received under this subchapter for fiscal year 2000, and an amount that is not less than the amount expended by the State agency with funds received under subchapter XI for fiscal year 2000. | 42 USC 3027(a)(9) 42 USC 3058b(a)(2)(C) |

¹ USC: <http://uscode.house.gov/browse.xhtml>. **NOTE:** The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. The United States Code (USC) is the codification by subject matter of the general and permanent laws of the United States. They are therefore different, as they deal with two separate areas (one administrative rules/regulations, and one laws/codes) and should be discussed separately.