

# LTC OMBUDSMAN PROTOCOL: 16-01

## Unlicensed Facilities

### I. Introduction

Ombudsmen may be notified of a facility that is operating without a license. When an ombudsman receives an allegation of a facility operating as an assisted living facility (ALF) without a license, the ombudsman should gather information from the complainant and take the appropriate steps as outlined in this protocol.

***Ombudsmen do not investigate unlicensed facilities with an onsite visit.***

Regulatory Services investigates allegations of unlicensed facilities. Facilities with three or fewer people living there, excluding anyone related to the owner, are not required to be licensed.

### II. Applicable Regulations

Title 4, Texas Health and Human Safety Code, Title 4, Subchapter A, §247.002  
(Relating to definitions)

Title 40, Texas Administrative Code (TAC), Subchapter B, [§92.11](#)  
[Provider Letter 2010-32](#)

### III. Definition of an Assisted Living Facility

According to [§92.11](#) (a) of the TAC, a facility is considered an ALF if it:

(A) Furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment;

(B) Provides personal care services and administration of medication by a person licensed or otherwise authorized in this state to administer the medication; or

(C) May provide assistance with or supervision of the administration of medication.

One or more facilities may be considered part of the same establishment and, therefore, subject to licensure as an assisted living facility, based on the following factors:

(A) common ownership;

(B) physical proximity;

(C) shared services, personnel, or equipment in any part of the facilities' operations; and

(D) any public appearance of joint operations or of a relationship between the facilities.

#### **IV. Responding to Unlicensed Facilities**

If someone contacts the ombudsman with an allegation of an unlicensed facility, the ombudsman must:

1. Review §92.11 for details on state requirements for facilities that must be licensed and Provider Letter 2010-32 for information about common ownership, which relates to a provider operating both licensed and unlicensed facilities.
2. Gather information from the complainant by asking the following questions.
  - How many people live in the facility?
  - Is the facility providing personal care services, such as assistance with eating (not meal preparation), dressing, bathing or other personal needs or maintenance?
  - Is the facility administering or supervising medications?
  - How do residents pay the facility for services?
  - What is the unlicensed facility's name and address?
  - Does the owner operate another facility that is licensed as an ALF? Collect the name and address of the licensed facility.
  - Do you know if this facility was licensed as an ALF in the past?\*
  - Did the facility lead you to believe the facility is currently licensed as an ALF?
  - Can you provide names of any residents, staff, or caregivers at the facility?
  - Do you have any concerns about residents or the care being provided?

\*If the facility was previously licensed as an ALF, contact the regional office of Regulatory Services to inquire about the status of the license before proceeding to step three. The facility may be in the process of renewing their license. If Regulatory Services confirms the facility is in the process of renewing its license, report this information to the complainant.

3. Inform the complainant that ombudsmen are not the investigating authority. Explain the public's right to report and provide the complainant with contact information on investigating authorities. If based on the complainant's report the facility appears to meet the requirements described in §92.11 of the TAC or in Provider Letter 2010-32, the complainant should file a complaint through Consumer Rights and Services (CRS) by calling 1-800-458-9858. If the facility does not appear to meet the requirements to be licensed as an ALF and there is concern for residents' well-being, Adult Protective Services (APS) is the appropriate investigating authority. The complainant should file a complaint with APS by calling 1-800-252-5400.

4. If the complainant requests you to file a complaint on their behalf, make a report to the appropriate authority. If making a complaint to CRS, also notify the regional office of Regulatory Services.
5. If the complainant chooses not to make a report to the appropriate authority, consider the impact of not reporting. If the ombudsman has reasonable cause to believe that inaction to report may adversely affect the health, safety, and welfare, or rights of the residents, contact the State Ombudsman, who may grant permission to report.
6. Document as a consultation. In the activity comments, note the address and contact information of the facility, and document the steps taken, such as reporting to Regulatory Services. If applicable, use topic “Unlicensed Facility in violation of Chapter 92” to specify that the facility is unlicensed and should be licensed under 40 TAC §92.11(a). Otherwise, use the most applicable consult topic.

## **V. Questions?**

Contact Julie Porter, Assisted Living Ombudsman at the Office of the State Long-term Care Ombudsman.

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