



Memo

To: LTC Providers, LTC Residents, LTC Ombuds and Other Interested Parties
From: Patricia Hunter, State LTC Ombuds
Washington State Long-Term Care Ombudsman Program
Date: Monday, August 3, 2020
Re: LTC Ombuds Authority Access

Effective August 3, 2020, LTC ombuds will begin re-entering facilities to visit residents and perform ombuds duties. Ombuds will not visit residents who have a confirmed or presumptive COVID-19 diagnosis. LTC Ombuds will provide their own PPE, practice social distancing and be screened for COVID by the facility. We encourage residents, providers and ombuds to meet outdoors when appropriate.

Please keep in mind the following federal and state laws, which govern the right of residents to access by LTC ombuds and the authority of LTC ombuds to access facilities, residents, and records. To date, these laws have **not** been suspended or waived because of COVID-19. **All laws below are currently in effect.**

- **Residents' rights to private access by LTC Ombuds.** Residents must have regular, timely, private, and unimpeded access to LTC Ombuds services. 42 USC § 3058g(a)(3)(D); 45 CFR §1324.13(a)(4); RCW 70.129.090(1)(c); WAC 365-18-060(5). Residents must receive timely responses from LTC Ombuds to complaints and requests for information. 42 USC § 3058g(a)(3)(D); 45 CFR §1324.13(a)(4); WAC 365-18-060(5). Facilities must allow LTC Ombuds to meet privately with residents in order to build relationships, provide information, investigate complaints, and render advice. RCW 43.190.080(1); WAC 365-18-100(3).
- **LTC Ombuds' access to facilities and residents.** All LTC ombuds must have private, unimpeded access to LTC facilities and residents. 42 USC § 3058g(b)(1)(A); 42 USC § 1396r(c)(3)(A). All ombuds must have access to all LTC facilities and residents at any time deemed necessary and reasonable to effectively carry out LTC ombuds duties, which includes:
 - a. Any time during a facility's regular business day, regular visiting hours, or other period the facility is open to the public; and
 - b. Any other time access may be required by the particular condition to be investigated or monitored. 45 CFR §1324.11(e)(2)(i); WAC 365-18-100(1)(a)-(b).
- **LTC Ombuds' access to resident rosters and representatives' contact information:** LTC ombuds also have authority to access resident names and room number, and contact information for resident representatives. Consent from individual residents or their representatives is not needed to access this information. 45 CFR 1324.11(e)(2)(iii); 45 CFR 1324.11(e)(2)(vii).
- **LTC Ombuds' access to records of individual residents:** LTC Ombuds must have access to review all files, records, and other information concerning a resident if the resident or resident's representative provides the LTC Ombuds written consent, or if the resident is unable to communicate consent to the review but has no legal representative. 42 USC § 3058g(b)(1)(B); 45 CFR §1324.11(e)(2)(iv); WAC 365-18-100(5),(7).

- **Interference unlawful.** It is unlawful for facilities to interfere with the work of LTC Ombuds or the right of residents to have access by LTC Ombuds. 42 USC § 3058g(j); 45 CFR §1324.15(i); RCW 70.129.090(1)(c); WAC 365-18-120.

More information about the policies and procedures of the Washington State LTC Ombudsman Program can be found at www.waombudsman.org.