



Program Instruction Memorandum (PIM) 21-01

Certification and Performance of Ombuds Duties

Legal Background

Federal and state laws set forth the authority and duties of all ombuds, including the authority of the state ombuds to certify all local long-term care ombudsman programs and all individual long-term care ombuds so that ombuds may perform official ombuds duties. These laws can be found at [42 U.S.C. §3058g](#) (Older Americans Act); [45 C.F.R. § 1324](#) (federal regulations); [RCW 43.190](#) (state statutes); and [WAC 365-18](#) (state regulations).

Executive Summary

This PIM addresses the following subjects and supersedes the memo dated August 3, 2020 regarding re-establishment of visitation:

- **In-Person Functions:** In-person visits with long-term care residents are implicit to the role of long-term care ombuds and the operation of long-term care ombudsman programs. Providing in-person visits and other in-person ombuds services to residents are essential job duties of all long-term care ombuds. Pursuant to this PIM, the certification of long-term care ombuds in Washington, both paid and volunteer, requires the capability and willingness to provide in-person ombuds services to residents *inside* long-term care facilities.
- **Temporary Policy Extending Option for Virtual Visitation:** Due to the ongoing impact of COVID-19, particularly the delta variant, a *temporary* virtual visitation policy will remain in effect. All *fully vaccinated*¹ long-term care ombuds are permitted and encouraged, but not required, to enter their assigned long-term care facilities, make in-person visits with residents, and perform other official functions within the facilities. Ombuds must continue to follow all applicable health and safety precautions. This temporary policy will remain in effect until at least November 1, 2021, and will be evaluated by the State LTC Ombuds on at least a monthly basis thereafter, as explained later in this memo.
- **Interference with Ombuds Functions, Responsibilities, and Duties:** Willful interference with ombuds functions, responsibilities, and duties is unlawful. The authority, function, and duties of long-term care ombuds are set forth in ombudsman laws, policies, and procedures—including the policies and procedures set forth in this memo. These requirements cannot be waived, suspended, or changed by non-federal agencies, host agencies, or regional, staff, or volunteer ombuds. Note, however, that local health jurisdictions have limited authority in specific situations to prohibit individuals, including long-term care ombuds, from entering long-term care facilities. See Sections F and G for more information.

¹ To enter long-term care facilities, individual ombuds **must** be fully vaccinated against COVID-19. This requirement is addressed in a separate PIM.

Details

The laws governing long-term care ombuds provide authority for immediate access by ombuds to residents and facilities. These laws also require all long-term care ombuds to perform their duties *in accordance with the policies and procedures established by the State long-term care ombuds*.

A. Core Functions of Long-Term Care Ombuds

Entry into facilities and in-person contact with residents, staff, and others are *essential* to the role and duties of long-term care ombuds. Long-term care ombuds provide services to long-term care residents that are simply not available from other entities.² At the core of these services is the physical presence of ombuds *within residents' homes*, i.e., the long-term care facilities where residents live.

The in-person presence of ombuds is inextricably linked to the distinctive legal requirements of long-term care ombuds services. Ombuds are required to offer privacy to each resident in order to confidentially provide and receive information. Privacy and confidentiality are essential to creating a sense of safety for residents, who may be justifiably fearful of asking for help, given the very real threat of retaliation from the individuals and entities they depend on for care, housing, food, and other essential needs. Without an in-person presence, privacy and confidentiality can easily become compromised, for example, when residents must rely on staff assistance or facility-controlled devices to communicate with ombuds. For other residents who have no access to phones and electronic devices, ombuds services cannot be provided at all unless they are provided in person.

In addition, ombuds have a *broad mandate* to provide services that pertain to the “health, safety, welfare and rights” of long-term care residents. Only by entering facilities can ombuds fully assess the numerous issues that impact a resident’s health safety, welfare, and rights. Ombuds must be able to observe and examine factors such as care delivery, facility conditions, resident rooms, common areas, meals, and interactions between residents, staff, and others. The broad mandate also requires ombuds to enter facilities to gain access to family members and other resident representatives, members of resident councils, administrators, and staff so that ombuds may provide advocacy, complaint investigation, education, and other services. Only by being inside a facility can an ombuds truly see, hear, smell, and experience the real facility environment.

As the pandemic has made clear, in-person observations and interactions are critical to fulfilling our mandate to ensure residents have regular and timely access to ombuds services, including but not limited to efficient complaint resolution. Certification requires all long-term care ombuds to enter their assigned long-term care facilities, make in-person visits with residents, and perform other official functions within the facilities, while continuing to follow all applicable health and safety precautions. All these functions are essential job duties for all long-term care ombuds.

² The federal Administration on Community Living stated that “Ombudsman programs were designed by Congress to have several features which are uncharacteristic of other programs and services created by and funded under the [Older Americans] Act.” Fed. Register, Vol. 80, No. 28 at 7704 (Feb. 11, 2015).

B. Prior Temporary Waiver of In-Person Requirements on Emergency Basis

Throughout the pandemic, the requirement to enter facilities, make in-person visits, and carry out other ombuds duties inside facilities was temporarily waived at certain points to protect the health and safety of long-term care residents and long-term care ombuds. This temporary waiver was also necessary in light of rapidly changing circumstances, such as state and federal limitations on access to long-term care facilities, the suspension of applicable state and federal laws, the unavailability of testing and PPE, and our evolving understanding of the virus.

During portions of this time, long-term care ombuds were required or permitted temporarily to carry out their duties, albeit to a limited extent, via virtual visits with long-term care residents. When personal visits were again allowed, long-term care ombuds were required to undergo training on and observe protocols for PPE and other measures designed to protect both them and long-term care residents and staff, pending availability of a vaccine.

Although we provided virtual visits as effectively as possible, the quantity and quality of ombuds services was necessarily limited by our lack of in-person presence inside facilities. Virtual work was a helpful, *but ultimately insufficient*, stop-gap measure.

C. Extension of Temporary Waiver of In-Person Requirements

With the widespread availability of vaccines, a majority of both residents and ombuds are now vaccinated. Given these developments, the vast majority of ombuds have now returned to the core function of regular, in-person presence within long-term care facilities. The physical presence of long-term care ombuds within their assigned facilities is again providing the only means of fully observing conditions of residents (e.g., cleanliness/sanitation, signs of injury or abuse, inadequate staff attention) that may not be apparent through phone calls, outdoor visitations and video visits. In-person visits are also necessary to carry out our responsibilities for communication with and education of long-term care residents, their representatives and facility staff.

Despite these positive developments, new COVID cases and hospitalizations in Washington are currently higher than at any other point in the pandemic. The delta variant, which is the predominant strain of COVID in our state, is causing more infections and spreading faster than earlier strains of the virus. In recognition of these conditions and other factors, *the virtual visitation policy is temporarily extended as a stop-gap measure*. All fully vaccinated long-term care ombuds are permitted and encouraged, but not required, to enter their assigned long-term care facilities, make in-person visits with residents, and perform other official functions within the facilities, while continuing to follow all applicable health and safety precautions.

This temporary policy will remain in effect until at least November 1, 2021. On at least a monthly basis thereafter, the state ombuds will evaluate the possible need to extend this temporary policy, in consideration of multiple factors. These factors include guidance from federal, state, and local public health authorities; consultation with federal and state regulatory and licensing agencies; information provided by long-term care ombuds; consultation with host agencies; consultation with national authorized federal technical support entity, the National Ombudsman Resource Center (NORC), and assessment of statewide, regional, and facility specific COVID conditions.

D. Individualized Decision for Each Ombuds

Due to the ongoing pandemic and the emergence of the delta variant, the state ombuds recognizes and acknowledges that the decision whether to enter facilities at this time involves a wide variety of personal factors. Individual ombuds who are fully vaccinated must *personally* decide whether to provide in-person services within facilities or whether to *temporarily* engage in virtual visitation as permitted by this PIM.

During this temporary policy, regional ombuds *cannot* either require or prohibit in-person visitations by staff or volunteer ombuds, and staff ombuds *cannot* either require or prohibit in-person visitation by volunteer ombuds.

Likewise, host agencies and non-federal government agencies do not have authority to prohibit ombuds from providing in-person services to residents. Local health jurisdictions do have limited authority to temporarily prohibit ombuds from entering a long-term care facility *but only in very limited situations and only in accordance with specific legal requirements*. See Section G for detailed information.

E. Resident-Driven Services

No resident shall be denied a confidential visit from an ombuds or denied an in-person visit from an ombuds (unless the resident is known or suspected to have COVID or is in quarantine, as described in Section G of this memo).

If a phone visit, virtual visit, or outdoor visit does not meet the needs or preferences of a resident, the local ombudsman program must accommodate the resident. If that is not possible, the ombuds must contact the office of the state ombuds for direction and assistance.

F. Interference with Ombuds Work

Federal and state laws set forth the authority of ombuds to enter facilities, the duty of ombuds to provide ombuds services to residents, and the authority of the state ombuds to set policies and procedures for ombuds certification and other matters. The state ombuds has sole authority to grant, refuse, suspend, and remove the certification of local ombudsman programs and the certification of individual ombuds, in accordance with the policies and procedures set forth by the state ombuds. Host agencies and non-federal government entities do not have authority to waive, suspend, or change these laws.

If a host agency or non-federal government agency, including a local health jurisdiction, requests or requires an ombuds to refrain from entering a facility, the affected ombuds must immediately contact their ombuds supervisor, who must immediately contact the office of the state long-term care ombuds for direction and guidance.

G. Local Health Jurisdictions

Local health jurisdictions (“LHJs”) have limited authority to prohibit individuals, *including long-term care ombuds*, from entering long-term care facilities. This authority is limited to specific situations and must be exercised in accordance with specific legal requirements.

A full discussion of LHJ authority is beyond the scope of this memo. However, **ombuds should know that the authority of LHJs is partially addressed in Washington’s “Safe Start” plans for long-term care facilities during the pandemic.** The Safe Start plans, which vary by facility type, are available here: <https://www.dshs.wa.gov/altsa/residential-care-services/safe-start-long-term-care-plan>. **If any ombuds is prohibited from entering a facility based on guidance or direction from an LHJ, the affected ombuds must immediately contact their ombuds supervisor, who must immediately contact the office of the state long-term care ombuds for direction and guidance.**

In addition to authority under the Safe Start plans, LHJs also have authority to issue *emergency* detention orders and to seek *court orders* for involuntary detention—for purposes of quarantine and isolation. This authority is subject to important legal requirements. One requirement is to ask for *voluntary* compliance with quarantine and isolation. **If an ombuds is asked to *voluntarily* refrain from entering a long-term care facility on the basis of LHJ guidance or direction, the affected ombuds must immediately contact their ombuds supervisor, who must immediately contact the office of the state ombuds for direction and guidance.**

H. COVID-Related Restrictions on In-Person Visits

Long-term care ombuds who are displaying symptoms of COVID-19, suspected to have COVID-19, or have tested positive for COVID-19 *regardless of vaccination status* are prohibited from visiting facilities or meeting with residents until their symptoms have resolved (beyond temporary relief of symptoms through the use of medication) and they have tested negative for COVID-19. Ombuds who show signs and symptoms of or test positive for COVID-19 should self-quarantine immediately and call their health care provider for instructions on what to do next. Ombuds who have been or might have been exposed to a COVID-positive person should follow CDC guidance on quarantine and isolation.

In addition, long-term care ombuds are not allowed to make an in-person visit with any resident or other person within a long-term care facility who is suspected or known to have COVID-19 or is in quarantine. Long-term care ombuds should observe signage and seek information from facility staff about any required precautions before visiting.

I. Health and Safety Precautions for Entering Facilities and In-Person Visits

As set forth in earlier memos, long-term care ombuds are required to perform a self-assessment screening prior to entering any long-term care facilities. The self-assessment must happen on the day of the entry or visit. Long-term care ombuds must also follow all policies and procedures of the long-term care Ombudsman Program for presence in facilities during COVID-19. This includes guidelines and training from the Washington State Department of Health (DOH), Department of Social and Health Services (DSHS), the Centers for Medicaid and Medicare Services (CMS), and the Centers for Disease Prevention and Control (CDC). These materials address the following issues and others in the context of long-term care facilities:

- a. The Governor's Safe Start Plan for Long-Term Care
- b. COVID-19 symptoms, precautions, and screening; personal protective equipment (PPE)
- c. Infection control management
- d. Vaccination, testing, contact tracing, quarantine, and cohorting
- e. Monitoring / reporting of COVID-19 activity within a facility and county
- f. Communication with long-term care providers, understanding their infection control policies and coordination with initial visits.