

Effective 5/3/2023

Part 3
Long Term Care Ombudsman

26B-2-301 Definitions.

As used in this part:

- (1) "Assisted living facility" means the same as that term is defined in Section 26B-2-201.
- (2) "Auxiliary aids and services" means items, equipment, or services that assist in effective communication between an individual who has a mental, hearing, vision, or speech disability and another individual.
- (3) "Division" means the Division of Customer Experience.
- (4) "Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the state, or to which the state is a party, or created by any county or municipality, which is responsible for the regulation, visitation, inspection, or supervision of facilities, or which provides services to patients, residents, or clients of facilities.
- (5) "Intermediate care facility" means the same as that term is defined in Section 58-15-101.
- (6)
 - (a) "Long-term care facility" means:
 - (i) a skilled nursing facility;
 - (ii) except as provided in Subsection (6)(b), an intermediate care facility;
 - (iii) a nursing home;
 - (iv) a small health care facility;
 - (v) a small health care facility type N; or
 - (vi) an assisted living facility.
 - (b) "Long-term care facility" does not mean an intermediate care facility for people with an intellectual disability, as defined in Section 58-15-101.
- (7) "Ombudsman" means the administrator of the long-term care ombudsman program, created pursuant to Section 26B-2-303.
- (8) "Ombudsman program" means the Long-Term Care Ombudsman Program.
- (9) "Resident" means an individual who resides in a long-term care facility.
- (10) "Skilled nursing facility" means the same as that term is defined in Section 58-15-101.
- (11) "Small health care facility" means the same as that term is defined in Section 26B-2-201.
- (12) "Small health care facility type N" means a residence in which a licensed nurse resides and provides protected living arrangements, nursing care, and other services on a daily basis for two to three individuals who are also residing in the residence and are unrelated to the licensee.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-302 Legislative findings -- Purpose -- Ombudsman.

- (1) The Legislature finds and declares that the citizens of this state should be assisted in asserting their civil and human rights as patients, residents, and clients of long-term care facilities created to serve their specialized needs and problems; and that for the health, safety, and welfare of these citizens, the state should take appropriate action through an adequate legal framework to address their difficulties.

- (2) The purpose of this part is to establish within the division the Long-Term Care Ombudsman Program for the citizens of this state and identify duties and responsibilities of that program and of the ombudsman, in order to address problems relating to long-term care and to fulfill federal requirements.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-303 Long-Term Care Ombudsman Program -- Responsibilities.

- (1)
 - (a) There is created within the division the ombudsman program for the purpose of promoting, advocating, and ensuring the adequacy of care received and the quality of life experienced by residents of long-term care facilities within the state.
 - (b) Subject to the rules made under Section 26B-6-110, the ombudsman is responsible for:
 - (i) receiving and resolving complaints relating to residents of long-term care facilities;
 - (ii) conducting investigations of any act, practice, policy, or procedure of a long-term care facility or government agency that the ombudsman has reason to believe affects or may affect the health, safety, welfare, or civil and human rights of a resident of a long-term care facility;
 - (iii) coordinating the department's services for residents of long-term care facilities to ensure that those services are made available to eligible citizens of the state; and
 - (iv) providing training regarding the delivery and regulation of long-term care to public agencies, local ombudsman program volunteers, and operators and employees of long-term care facilities.
- (2)
 - (a) A long-term care facility shall display an ombudsman program information poster in a location that is readily visible to all residents, visitors, and staff members.
 - (b) The division is responsible for providing the posters, which shall include phone numbers for local ombudsman programs.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-304 Powers and responsibilities of ombudsman.

The long-term care ombudsman shall:

- (1) comply with Title VII of the federal Older Americans Act, 42 U.S.C. 3058 et seq.;
- (2) establish procedures for and engage in receiving complaints, conducting investigations, reporting findings, issuing findings and recommendations, promoting community contact and involvement with residents of long-term care facilities through the use of volunteers, and publicizing its functions and activities;
- (3) investigate an administrative act or omission of a long-term care facility or governmental agency if the act or omission relates to the purposes of the ombudsman. The ombudsman may exercise its authority under this subsection without regard to the finality of the administrative act or omission, and it may make findings in order to resolve the subject matter of its investigation;
- (4) recommend to the division rules that it considers necessary to carry out the purposes of the ombudsman;
- (5) cooperate and coordinate with governmental entities and voluntary assistance organizations in exercising its powers and responsibilities;
- (6) request and receive cooperation, assistance, services, and data from any governmental agency, to enable it to properly exercise its powers and responsibilities;

- (7) establish local ombudsman programs to assist in carrying out the purposes of this part, which shall meet the standards developed by the division, and possess all of the authority and power granted to the ombudsman program under this part; and
- (8) exercise other powers and responsibilities as reasonably required to carry out the purposes of this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-305 Procedures -- Adjudicative proceedings.

The ombudsman shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in the ombudsman's adjudicative proceedings.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-306 Investigation of complaints -- Procedures.

- (1) The ombudsman shall investigate each complaint the ombudsman receives. An investigation may consist of a referral to another public agency, the collecting of facts and information over the telephone, or an inspection of the long-term care facility that is named in the complaint.
- (2) In making an investigation, the ombudsman may engage in actions the ombudsman considers appropriate, including:
 - (a) making inquiries and obtaining information;
 - (b) holding investigatory hearings;
 - (c) entering and inspecting any premises, without notice to the facility, provided the investigator presents, upon entering the premises, identification as an individual authorized by this part to inspect the premises; and
 - (d) inspecting or obtaining a book, file, medical record, or other record required by law to be retained by the long-term care facility or governmental agency, pertaining to residents, subject to Subsection (3).
- (3)
 - (a) Before reviewing a resident's records, the ombudsman shall seek to obtain from the resident, or the resident's legal representative, permission in writing, orally, or through the use of auxiliary aids and services to review the records.
 - (b) The effort to obtain permission under Subsection (3)(a) shall include personal contact with the resident or the resident's legal representative. If the resident or the resident's legal representative refuses to give permission, the ombudsman shall record and abide by this decision.
 - (c) If the ombudsman's attempt to obtain permission fails for a reason other than the refusal of the resident or the resident's legal representative to give permission, the ombudsman may review the records.
 - (d) If the ombudsman has reasonable cause to believe that the resident is incompetent to give permission and that the resident's legal representative is not acting in the best interest of the resident, the ombudsman shall determine whether review of the resident's records is in the best interest of the resident.
 - (e) If the ombudsman determines that review of the resident's records is in the best interest of the resident, the ombudsman shall review the records.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-307 Confidentiality of materials relating to complaints or investigations -- Immunity from liability -- Discriminatory, disciplinary, or retaliatory actions prohibited.

- (1) The ombudsman shall establish procedures to ensure that all files maintained by the ombudsman program are disclosed only at the discretion of and under the authority of the ombudsman. The identity of a complainant or resident of a long-term care facility may not be disclosed by the ombudsman unless:
 - (a) the complainant or resident, or the legal representative of either, consents in writing, orally, or through the use of auxiliary aids and services to the disclosure;
 - (b) disclosure is ordered by the court; or
 - (c) the disclosure is approved by the ombudsman and is made, as part of an investigation involving the resident, to an agency that:
 - (i) has statutory responsibility for the resident;
 - (ii) has statutory responsibility over the action alleged in the complaint;
 - (iii) is able to assist the ombudsman to achieve resolution of the complaint; or
 - (iv) is able to provide expertise that would benefit the resident.
- (2) Neither the ombudsman nor the ombudsman's agent or designee may be required to testify in court with respect to confidential matters, except as the court finds necessary to enforce this part.
- (3) Any person who makes a complaint to the ombudsman pursuant to this part is immune from any civil or criminal liability unless the complaint was made maliciously or without good faith.
- (4)
 - (a) Discriminatory, disciplinary, or retaliatory action may not be taken against a volunteer or employee of a long-term care facility or governmental agency, or against a resident of a long-term care facility, for any communication made or information given or disclosed to aid the ombudsman or other appropriate public agency in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith.
 - (b) This subsection does not infringe on the rights of an employer to supervise, discipline, or terminate an employee for any other reason.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-308 Prohibited acts -- Penalty.

- (1) No person may:
 - (a) give or cause to be given advance notice to a long-term care facility or agency that an investigation or inspection under the direction of the ombudsman is pending or under consideration, except as provided by law;
 - (b) disclose confidential information submitted to the ombudsman pursuant to this part, except as provided by law;
 - (c) willfully interfere with the lawful actions of the ombudsman;
 - (d) willfully refuse to comply with lawful demands of the ombudsman, including the demand for immediate entry into or inspection of the premises of any long-term care facility or agency or for immediate access to a resident of a long-term care facility; or
 - (e) offer or accept any compensation, gratuity, or promise thereof in an effort to affect the outcome of a matter being investigated or of a matter that is before the ombudsman for determination of whether an investigation should be conducted.
- (2) Violation of any provision of this part constitutes a class B misdemeanor.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-309 Assisted living facility transfers.

- (1) After the ombudsman receives a notice described in Subsection 26B-2-237(2)(b), the ombudsman shall:
 - (a) review the notice; and
 - (b) contact the resident or the resident's responsible person to conduct a voluntary interview.
- (2) The voluntary interview described in Subsection (1)(b) shall:
 - (a) provide the resident with information about the services available through the ombudsman;
 - (b) confirm the details in the notice described in Subsection 26B-2-237(2)(b), including:
 - (i) the name of the resident;
 - (ii) the reason for the transfer or discharge;
 - (iii) the date of the transfer or discharge; and
 - (iv) a description of the resident's next living arrangement; and
 - (c) provide the resident an opportunity to discuss any concerns or complaints the resident may have regarding:
 - (i) the resident's treatment at the assisted living facility; and
 - (ii) whether the assisted living facility treated the resident fairly when the assisted living facility transferred or discharged the resident.
- (3) On or before November 1 of each year, the ombudsman shall provide a report to the Health and Human Services Interim Committee regarding:
 - (a) the reasons why assisted living facilities are transferring residents;
 - (b) where residents are going upon transfer or discharge; and
 - (c) the type and prevalence of complaints that the ombudsman receives regarding assisted living facilities, including complaints about the process or reasons for a transfer or discharge.

Renumbered and Amended by Chapter 305, 2023 General Session