

# Chapter 365-18 WAC

## LONG-TERM CARE OMBUDSMAN PROGRAM, DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

### WAC

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**WAC 365-18-010 Purpose.** The purpose of this chapter is to implement the long-term care ombudsman program as provided for in chapter 43.190 RCW and the Older Americans Act of 1965 (42 U.S.C. § 3001 et seq., as amended). The overall purpose of the ombudsman program is to promote the interests, well-being, and rights of long-term care facility residents. These rules set forth the ombudsman program's authority and duties.

[Statutory Authority: Chapter 43.190 RCW and Older Americans Act of 1965 (42 U.S.C., 3001 et seq., as amended). 00-09-060, § 365-18-010, filed 4/17/00, effective 5/18/00.]

**WAC 365-18-020 Definitions.** When used in this chapter, unless otherwise required by the context:

(1) "Contractor" means the private nonprofit organization established by contract with the department to provide the services of the office of the state long-term care ombudsman program.

(2) "Department" means the department of community, trade, and economic development.

(3) "Immediate family" pertaining to conflicts of interest, means spouse, parents, children and siblings who live in the same household or who have, as determined by the state office, a significant financial relationship with the potential ombudsman.

(4) "Long-term care facility" or "facility" is as defined in RCW 43.190.020, and includes, but is not limited to, nursing homes, adult family homes, boarding homes, assisted living facilities, facilities that have a portion of their services established for long-term care, long-term care facilities operated by the Washington state department of veterans affairs, and any facility that is required by law to be licensed but is not.

(5) "Long-term care services" means services provided to residents and applicants of long-term care facilities including, but not limited to, assessment, placement, case management, and determinations regarding benefits, personal care, and health care, but for purposes of these regulations does not

mean care or services provided in the applicant's or resident's home outside of a long-term care facility or in other locations outside of a long-term care facility. Services are those provided to residents of all ages, and include, but are not limited to, those provided to individuals with developmental or physical disabilities, mental illness, dementia, or substance abuse problems.

(6) "Ombudsman" means the state long-term care ombudsman, assistant state long-term care ombudsman, regional long-term care ombudsman, regional staff long-term care ombudsman, or certified long-term care volunteer ombudsman.

(7) "Resident" means any individual residing temporarily or permanently in a long-term care facility, and, when concerning complaints about admissions, readmissions, transfers, or discharges, includes applicants and former residents of such facilities.

(8) "State office" means the office of the state long-term care ombudsman.

(9) "Pecuniary interest" for purposes of this chapter means any significant ownership or investment interest.

[Statutory Authority: Chapter 43.190 RCW and Older Americans Act of 1965 (42 U.S.C., 3001 et seq., as amended). 00-09-060, § 365-18-020, filed 4/17/00, effective 5/18/00.]

**WAC 365-18-030 Contractor, subcontractor, and ombudsman qualifications.** (1) The contractor shall be a private nonprofit organization with demonstrated capability to carry out the responsibilities of the state long-term care ombudsman, including, but not limited to, an ability to receive, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities statewide.

Subcontractors shall have demonstrated the capability to carry out the responsibilities of their respective contracts. The contractor and subcontractors shall also be free of conflicts of interest, including:

(a) Not be an agency or organization that is responsible for licensing, certifying, or regulating long-term care facilities;

(b) Not be an association, or an affiliate of such an association, of long-term care facilities; and

(c) Have no pecuniary interest in any long-term care facility.

(2) The state long-term care ombudsman and assistant state long-term care ombudsman shall have demonstrated expertise and experience in the fields of long-term care and resident advocacy, and be free of conflicts of interest as defined in WAC 365-18-040.

(3) Ombudsmen shall have demonstrated capability to carry out the responsibilities of their respective offices, and

be free of conflicts of interest as defined in WAC 365-18-040.

(4) All prospective regional and volunteer ombudsmen shall successfully complete the training program designated by the state office prior to becoming certified and beginning work as ombudsmen. In addition, during the period of their assignment as ombudsmen, all ombudsmen are expected to attend periodic training events designed to increase their knowledge and expertise with regard to long-term care ombudsman issues.

(5) Prior to becoming an ombudsman, all prospective ombudsmen shall, at a minimum, successfully pass a criminal history background check as provided by chapter 43.43 RCW.

(6) Once a person becomes an ombudsman, he or she shall successfully pass a criminal history background check as provided by chapter 43.43 RCW every three years at a minimum.

[Statutory Authority: Chapter 43.190 RCW and Older Americans Act of 1965 (42 U.S.C., 3001 et seq., as amended). 00-09-060, § 365-18-030, filed 4/17/00, effective 5/18/00.]

**WAC 365-18-040 Conflicts of interest.** (1) All ombudsmen shall be free from conflicts of interests, including:

(a) No ombudsman shall be or have been employed by or participated in the management of any long-term care facility, or have or have had the right to receive remuneration from a long-term care facility, including work as a paid consultant or independent contractor, currently or within the past year;

(b) No ombudsman or member of his or her immediate family shall have, or have had within the past year, any pecuniary interest in a long-term care facility or a long-term care service;

(c) No ombudsman shall have a direct involvement in the licensing, certification, or regulation of a long-term care facility or of a long-term care service during his or her tenure as an ombudsman or within the past year;

(d) No ombudsman shall be assigned to or work in a long-term care facility in which the ombudsman or a member of his/her immediate family resides;

(e) No ombudsman shall solicit or be the beneficiary of gifts, money or estate property from residents in any facility in which he or she has served or is serving as ombudsman. This subsection shall not prohibit an ombudsman from receiving gifts, money, or estate property from a resident who is a relative of the ombudsman;

(f) No ombudsman may work for an agency or entity in which the ombudsman has direct personal involvement in the provision or establishment of involuntary services or in the involuntary commitment of a resident.

(2) No individual, or immediate family member of such an individual, who is involved in the designation or removal of the state ombudsman, or the designation or revocation of the contractor or subcontractors, or who administers or oversees the contractor's or subcontractor's contract, may be an official or employee of any agency or organization that conducts the licensing, certification, or regulation of long-term care facilities, or that owns, operates, or manages such facilities.

[Statutory Authority: Chapter 43.190 RCW. 02-17-018, § 365-18-040, filed 8/9/02, effective 9/9/02. Statutory Authority: Chapter 43.190 RCW and Older Americans Act of 1965 (42 U.S.C., 3001 et seq., as amended). 00-09-060, § 365-18-040, filed 4/17/00, effective 5/18/00.]

**WAC 365-18-050 Duties—Department.** The department shall, consistent with federal and state laws:

(1) Establish procedures for designating and contracting with a qualified private, nonprofit organization to provide the state long-term care ombudsman program services, including legal services;

(2) Facilitate the exchange of information among appropriate state agencies and organizations regarding issues relating to the long-term care ombudsman program;

(3) Help the state long-term care ombudsman obtain direct access to the directors and key staff of state governmental entities with responsibilities that impact residents of long-term care facilities;

(4) Provide other assistance to the ombudsman program as the department deems appropriate;

(5) Monitor program activities and the expenditure of state and federal funds under the contract with the state office for appropriate utilization of funds, compliance with state and federal laws, and fulfillment of contract obligations; and

(6) Assure, along with the state office, that no ombudsman is subject to a conflict of interest.

[Statutory Authority: Chapter 43.190 RCW and Older Americans Act of 1965 (42 U.S.C., 3001 et seq., as amended). 00-09-060, § 365-18-050, filed 4/17/00, effective 5/18/00.]

**WAC 365-18-060 Duties—State ombudsman.** The state long-term care ombudsman shall assure performance of the following duties:

(1) Identify, investigate, and resolve complaints that:

(a) Relate to actions, inactions, or decisions that may adversely affect the health, safety, welfare, or rights of residents;

(b) Are made by:

(i) A resident, a resident's relatives, friends, or associates;

(ii) Providers, or representatives of providers, of long-term care or health care services;

(iii) Public agencies;

(iv) Health and social service agencies; or

(v) Guardians, representative payees, holders of powers of attorney, or other resident representatives;

(2) In coordination with the appropriate state or local government agencies, develop referral procedures for all long-term care ombudsmen to refer complaints when necessary to any appropriate state or local government agency; such referral procedures must conform to the appropriate state law for referring reports of potential abuse, neglect, exploitation or abandonment and shall contain wherever possible the information specified in the appropriate state reporting laws and shall not abridge the confidentiality requirements of this chapter;

(3) Offer and provide services to assist residents and their representatives in protecting the health, safety, welfare, and rights of the residents;

(4) Inform the residents, their representatives and others about resident rights and about the means of obtaining needed services, and work with the department of social and

health services and long-term care facility administrators to assure that notices containing the name, address, and telephone number of the appropriate long-term care ombudsman are posted prominently in every long-term care facility;

(5) Ensure that residents and their representatives have regular and timely access to the services provided through the ombudsman program, and ensure that the residents and complainants receive timely responses from representatives of the ombudsman program. Provision shall be made by facilities and the ombudsman to secure privacy for the purpose of the ombudsman carrying out his or her duties, including, but not limited to, building relationships with and providing information to residents;

(6) Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(7)(a) Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to long-term care facilities and services in the state;

(b) Recommend changes in laws, regulations, policies, and actions that will further promote the interests, well-being and rights of residents;

(c) Provide such information as the state office determines to be necessary to public and private agencies, legislators, and other persons, regarding:

(i) The problems and concerns of individuals residing in long-term care facilities; and

(ii) Recommendations related to these problems and concerns; and

(d) Facilitate public comment on laws, regulations, policies, and actions related to residents of long-term care facilities and the ombudsman program;

(8)(a) Establish procedures for the training and supervision of prospective regional long-term care ombudsmen, regional long-term care staff ombudsmen, and certified volunteer ombudsmen, and ensure that all ombudsmen are educated in the fields of long-term care and advocacy, including, but not limited to, conflict resolution, laws that govern long-term care resident populations, and issues in long-term care facilities pertaining to residents with mental illness, dementia, developmental and physical disabilities, and substance abuse problems;

(b) Monitor and provide administrative and policy direction and technical assistance to the regional long-term care ombudsmen; and

(c) Coordinate the activities of long-term care ombudsmen throughout the state;

(9)(a) Promote the development of citizen groups to participate in the ombudsman program; and

(b) Provide support for the development of resident councils and family councils to protect the interests, well-being and rights of residents;

(10) Assure that representative stakeholder advisory councils are established and maintained for the state and regional ombudsman programs. All councils should include representation from a broad spectrum of interests served by the program, including, but not limited to, mental illness,

dementia, and developmental and physical disabilities. All vacancies to councils should be filled where possible within six months of the vacancy;

(11) Coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illness including making appropriate referrals, and with legal services funded under Title III of the Older Americans Act, through the development of memoranda of understanding and other means;

(12) Establish a grievance procedure for the purpose of providing an appeal process for any individual dissatisfied with the actions of any ombudsman. The highest level of appeal shall be the contractor and the contractor's governing board. The grievance procedure is not intended to supplant any contracting or subcontracting agency's internally established grievance procedure for disputes not related to ombudsman duties;

(13) Establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems;

(14) Prepare an annual report:

(a) Describing the activities carried out by the ombudsman program in the prior year;

(b) Evaluating the problems experienced by, and the complaints made by, or on behalf of, residents;

(c) Containing recommendations for:

(i) Improving quality of the care and life of the residents; and

(ii) Protecting the health, safety, welfare, and rights of the residents;

(d)(i) Analyzing the success and needs of the ombudsman program, including the success or gaps in providing services to residents of long-term care facilities; and

(ii) Identifying barriers that prevent the optimal operation of the ombudsman program;

(e) Providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers; and

(f) Make available to the federal Commissioner on Aging, the governor, the Washington state legislature, the department of social and health services, the department of health, the department of community, trade, and economic development, and other appropriate governmental entities and interested members of the public, the annual report described in this subsection;

(15) The state long-term care ombudsman may subcontract for long-term care ombudsman services, including regional long-term care ombudsman services, throughout the state. The state long-term care ombudsman has the authority to designate and certify regional long-term care ombudsmen. The state long-term care ombudsman has the authority to revoke, when good cause is shown, the subcontract or the designation and certification of the individual regional long-term care ombudsman;

(16) The state long-term care ombudsman has the authority to designate qualified individuals as certified volunteer long-term care ombudsmen representing the ombudsman program. Such individuals shall receive a certificate and pic-

ture identification card from the state office signed by the state long-term care ombudsman. The state long-term care ombudsman has the authority to revoke, when good cause is shown, this certification.

(17) Nothing in this chapter shall be construed to empower the state long-term care ombudsman or any other long-term care ombudsman with statutory or regulatory licensing or sanctioning authority.

[Statutory Authority: Chapter 43.190 RCW and Older Americans Act of 1965 (42 U.S.C., 3001 et seq., as amended). 00-09-060, § 365-18-060, filed 4/17/00, effective 5/18/00.]

**WAC 365-18-070 Duties—Regional and regional staff long-term care ombudsmen.** Regional and regional staff long-term care ombudsmen shall, in accordance with the policies and procedures established by the state office, have the following duties:

(1) Inform residents, their representatives, and others about their rights, and offer and provide services to protect the health, safety, welfare, and rights of residents;

(2) Ensure that residents and their representatives in the service area have regular, timely access to representatives of the ombudsman program and timely responses to complaints and requests for assistance. Provision shall be made by facilities and ombudsmen to secure privacy for the purpose of the ombudsman carrying out his or her duties, including, but not limited to, building relationships with and providing information to residents;

(3) Identify, investigate, and resolve complaints that:

(a) Relate to actions, inactions, or decisions, that may adversely affect the health, safety, welfare, or rights of residents;

(b) Are made by:

(i) A resident, a resident's relatives, friends, or associates;

(ii) Providers, or representatives of providers, of long-term care or health care services;

(iii) Public agencies;

(iv) Health and social service agencies; or

(v) Guardians, representative payees, holders of powers of attorney, or other resident representatives;

(4) Recruit, train, place and supervise volunteer and staff ombudsmen who have been certified by the state ombudsman;

(5) Represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(6) Review, and if necessary, comment on any existing and proposed laws, regulations, and other governmental policies and actions, that pertain to the rights and well-being of residents; and facilitate the ability of the public to comment on the laws, regulations, policies, and actions;

(7) Assure that regional stakeholder advisory councils are established and maintained for the regional ombudsman programs. Efforts should be made to include representation on the councils from a broad spectrum of interests served by the program, including, but not limited to, mental illness, dementia, and developmental and physical disabilities. All vacancies to councils should be filled where possible within six months of the vacancy;

(8) Promote the development of resident councils, family councils, and citizen advocacy groups; and

(9) Carry out other activities that the state long-term care ombudsman determines to be appropriate.

[Statutory Authority: Chapter 43.190 RCW and Older Americans Act of 1965 (42 U.S.C., 3001 et seq., as amended). 00-09-060, § 365-18-070, filed 4/17/00, effective 5/18/00.]

**WAC 365-18-080 Duties—Certified volunteer long-term care ombudsmen.** Trained and certified volunteer long-term care ombudsmen shall, in accordance with policies and procedures established by the state office, and under the supervision of the regional long-term care ombudsman, have the following duties:

(1) Inform residents, their representatives and others about their rights, and offer and provide services to protect the health, safety, welfare, and rights of residents;

(2) Represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents;

(3) Visit residents in the assigned facility(s) on a regular basis, with provision made by facilities and ombudsmen to secure privacy for the purpose of the ombudsman carrying out his or her duties;

(4) According to program policy, identify, investigate and resolve complaints that:

(a) Relate to actions, inactions, or decisions, that may adversely affect the health, safety, welfare, or rights of residents;

(b) Are made by:

(i) A resident, a resident's relatives, friends, or associates;

(ii) Providers, or representatives of providers, of long-term care or health care services;

(iii) Public agencies;

(iv) Health and social service agencies; or

(v) Guardians, representative payees, holders of powers of attorney, or other resident representatives;

(5) Review, and if necessary, comment on any existing and proposed laws, regulations, and other governmental policies and actions, that pertain to the rights and well-being of residents; and facilitate the ability of the public to comment on the laws, regulations, policies, and actions;

(6) Promote development of resident councils, family councils, and citizen advocacy groups; and

(7) Carry out other activities that the state long-term care ombudsman determines to be appropriate.

[Statutory Authority: Chapter 43.190 RCW and Older Americans Act of 1965 (42 U.S.C., 3001 et seq., as amended). 00-09-060, § 365-18-080, filed 4/17/00, effective 5/18/00.]

**WAC 365-18-090 Legal counsel.** The state agency shall ensure that adequate legal counsel is available, and is able, without conflict of interest, to:

(1) Provide advice and consultation needed to protect the health, safety, welfare and rights of residents;

(2) Pursue administrative, legal, and other remedies on behalf of residents;

(3) Assist representatives of the state office in performance of their duties; and

(4) Provide legal representation to any representative of the state office, including ombudsmen, against whom legal action is threatened or brought in connection with performance of their duties.

[Statutory Authority: Chapter 43.190 RCW and Older Americans Act of 1965 (42 U.S.C., 3001 et seq., as amended). 00-09-060, § 365-18-090, filed 4/17/00, effective 5/18/00.]

**WAC 365-18-100 Ombudsmen access to facilities, residents, and records.** (1) All ombudsmen shall have access to all long-term care facilities and residents at any time deemed necessary and reasonable to effectively carry out the ombudsman duties set forth in this chapter, chapter 43.190 RCW, and federal law. Access to facilities and residents by ombudsmen shall be deemed necessary and reasonable at the following times:

(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.

(2) Upon entering a facility, or as soon as practicable thereafter, all ombudsmen shall report their presence to the facility administration or staff in charge and, upon request, present identification as an ombudsman.

(3) Ombudsmen shall have access to residents to perform the duties set forth in this chapter, chapter 43.190 RCW, and federal law. Provision shall be made by the facility and the ombudsman to secure privacy for the purpose of building relationships, providing information, and hearing, investigating, and resolving complaints of, and rendering advice to, residents of the facility at any time deemed necessary and reasonable by the ombudsmen to effectively carry out the provisions of this chapter.

(4) Ombudsmen shall have private access to residents without willful interference from the facility or the resident's representative, including a guardian, family member, or holders of powers of attorney.

(5) Ombudsmen shall have the following access to a resident's records:

(a)(i) Prompt access to review and timely access to obtain copies of all medical and social records of a resident, and other records relating to the resident if:

(A) The ombudsman has the permission of the resident, or the legal representative of the resident; or

(B) The resident is unable to consent to the review and has no legal representative; or

(ii) Prompt access to review and timely access to obtain copies of all medical, social, and other records of a resident, as is necessary to investigate a complaint if:

(A) A legal representative of the resident, including a guardian, refuses to give the permission;

(B) The ombudsman has reasonable cause to believe that the legal representative or guardian is not acting in the best interest of the resident; and

(C) The ombudsman obtains the prior approval of the state long-term care ombudsman or his or her designee;

(b) Prompt access to review and timely access to obtain copies of any long-term care facility's documents to which the residents or the general public have access, including administrative records and policies; provided, that in licensed

nursing facilities this shall include, but not be limited to, the records and policies set forth in RCW 74.42.430.

(6) Ombudsmen shall have timely access to, and copies where requested, of all licensing and certification records maintained by the state with respect to long-term care facilities.

(7) For any copies obtained under this section, the ombudsman may be charged a reasonable rate not to exceed the community standard.

[Statutory Authority: Chapter 43.190 RCW and Older Americans Act of 1965 (42 U.S.C., 3001 et seq., as amended). 00-09-060, § 365-18-100, filed 4/17/00, effective 5/18/00.]

**WAC 365-18-110 Confidentiality of ombudsman records, communications privileged.** (1) All records and files maintained by the long-term care ombudsman program shall remain confidential. Any disclosure of long-term care ombudsman program records is subject to the following provisions:

(a) No disclosure shall be made without the prior approval of the state ombudsman or his or her representative.

(b) No disclosure of the identities of complainants, witnesses, clients, or residents shall be made unless one of the following conditions has been met:

(i) The complainant or resident, or their legal representative consents in writing to the disclosure; or

(ii) The complainant or resident gives oral consent, and that consent is documented contemporaneously in writing by a representative of the state office; or

(iii) The disclosure is required by court order.

(c) Nonidentifying information or statistics may be disclosed at the discretion of the state ombudsman or his or her representative.

(2) All communications by an ombudsman, if reasonably related to the requirements of that individual's responsibilities under this chapter or federal or state statutes and done in good faith, are privileged. That privilege shall serve as a defense to any action in libel or slander. Ombudsmen are exempt from being required to testify in court, administrative hearings, or depositions as to any confidential matters, except as the court may deem necessary to enforce this chapter.

(3) In monitoring the state office and regional ombudsman programs, subject to the discretion of the state ombudsman, access to the ombudsman files and records, minus identifying information regarding any resident, complainant, or witness, shall be available to the director or one senior manager of the department and the organization in which the ombudsman program is administratively located. The individual who performs this monitoring function shall have no conflict of interest, as provided in WAC 365-18-040(2).

[Statutory Authority: Chapter 43.190 RCW and Older Americans Act of 1965 (42 U.S.C., 3001 et seq., as amended). 00-09-060, § 365-18-110, filed 4/17/00, effective 5/18/00.]

**WAC 365-18-120 Interference with the ombudsman, liability.** (1) It is unlawful under 42 U.S.C. Sec. 3058g(j) and RCW 43.190.090 to take any discriminatory, disciplinary, or retaliatory action against the following persons:

(a) Any employee of a facility or agency;

(b) Any resident or client of a long-term care facility or family member of a resident;

(c) Any ombudsman; or

(d) Any person;

for any communication made, or information given or disclosed, to an ombudsman carrying out his or her duties unless that person acted maliciously or without good faith.

(2) It is unlawful to willfully interfere with ombudsmen in the performance of their official duties.

(3) No ombudsman shall be liable for good faith performance of his or her duties under this chapter, chapter 43.190 RCW, or federal law.

[Statutory Authority: Chapter 43.190 RCW and Older Americans Act of 1965 (42 U.S.C., 3001 et seq., as amended). 00-09-060, § 365-18-120, filed 4/17/00, effective 5/18/00.]