

WSR 21-02-037

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed December 29, 2020, 2:47 p.m., effective January 29, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Grievance requirements for long-term care ombudsman program (LTCOP).

Citation of Rules Affected by this Order: Amending WAC 365-18-060.

Statutory Authority for Adoption: Chapter 43.190 RCW.

Adopted under notice filed as WSR 20-17-121 on August 18, 2020.

Changes Other than Editing from Proposed to Adopted Version:

Based on stakeholder comments, the department updated the language to ensure it mirrors the federal language for grievance requirements. The updated language will comply with the federal requirement that state ombuds have the sole authority over certification and decertification by removing the language "highest level of appeal shall be the contractor and the contractor's governing board."

The department also removed the word "appeal" from the two places it appears in the WAC. The term "appeal" suggests a multileveled review process. A multilevel appeal is not required by the federal law on grievances and is difficult to implement without violating other LTCOP laws.

The department also clarified that the grievance process must include notification to the long-term ombudsman with a copy delivered to the contractor's governing board.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 29, 2020.

Dave Pringle
Rules Coordinator

OTS-2461.3

AMENDATORY SECTION (Amending WSR 00-09-060, 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 receipt and review of grievances regarding the determinations or actions of any long-term care ombudsman. The (~~highest level of appeal shall be the contractor and~~) grievance process shall include notification to the long-term care ombudsman with a copy delivered to the contractor's governing board. Such process shall include an opportunity for reconsideration of any decision of the state long-term care ombudsman to grant, refuse, suspend, or remove the designation and certification of an individual long-term care ombudsman or a regional long-term care ombudsman program. Notwithstanding the grievance process, the state long-term care ombudsman shall make the final determination to grant, refuse, suspend, or remove the designation and certification of an individual long-term care ombudsman or a regional long-term care ombudsman program. The grievance (~~procedure~~) process is not intended to supplant any contracting or subcontracting agency's internally established grievance procedure for (~~disputes~~) grievances 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 picture 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). WSR 00-09-060, § 365-18-060, filed 4/17/00, effective 5/18/00.]