

CHAPTER 600: ACCESS

601: Access to Residents and Facilities

602: Access to Resident and Participant Records

603: Access to State Regulatory Agency Records and Officials

601: Access to Residents and Facilities

- A. An Ombudsman is empowered under both federal and state law to immediate access to all long-term care facilities to observe all areas, except the living area of any resident who declines, and to visit and talk with all residents, staff, and others. Ombudsmen have access to residents regardless of whether a resident has an authorized legal representative.
- B. An Ombudsman shall notify the facility staff of his or her presence upon entering the facility by signing the visitor log or verbally telling a facility staff member. The Ombudsman shall wear his or her Program identification when entering facilities.
- C. An Ombudsman has authority to communicate privately and without restriction with any resident who consents to the communication. Whenever possible, the Ombudsman will seek to talk with residents at times convenient for the residents.
- D. If an Ombudsman is denied immediate access to a facility, a resident or a resident's records by a facility employee or agent, the Ombudsman shall request of the facility administrator or highest-ranking available employee the reason for the denial of access to the facility or to any resident or resident record.
 - 1. If the explanation appears reasonable, the Ombudsman shall seek the earliest opportunity to visit the resident or facility or to obtain records.
 - 2. If the explanation does not appear reasonable to the Ombudsman, or if access is being denied arbitrarily, the Ombudsman or the Regional Ombudsman shall inform the highest-ranking available employee or administrator of the facility of the legal right of the Ombudsman to visit the facility and to communicate with residents.
- E. When a denial of access continues after the steps listed in Section 601(D) of this Manual are attempted, the Ombudsman shall contact the Regional Ombudsman. The Regional Ombudsman or, his or her designee:
 - 1. shall request from the administrator, or highest-ranking employee available, an explanation in writing as to the reasons for the refusal of access to a facility, a resident or a resident record be given to the Regional Program and the Office;
 - 2. shall immediately notify the State Ombudsman and provide supporting documentation concerning the facility's refusal of access;

3. may recommend to the Office the need to consider the denial of access as a business offense in violation of Section 4.04(f) of the Illinois Act on the Aging [210 ILCS 105/4.04(f)]
 4. may request a hearing under the Section 2-110(d) of the Nursing Home Care Act [210 ILCS 45/2-110(d)].
- F. The Office, upon notice by the Regional Ombudsman of an unreasonable refusal by the facility to permit access to a resident, resident records or a facility, may notify the State's Attorney of the county in which the long-term care facility is located, or the Attorney General. The Regional Ombudsman shall be notified of the Office's actions relative to the Regional Ombudsman's report of an unreasonable denial of access.

602: Access to Resident and Participant Records

- A. Under both federal and state law, certified Ombudsmen have access to review the medical, social, personal, clinical, financial and other records of a resident or participant. This includes access to the name and contact information of the representative, if any, where needed to perform the duties of the Program.
- B. The records of a resident or participant shall be treated with the highest degree of confidentiality and obtained only as necessary to seek resolution of a complaint.
- C. Resident or participant private health information may be released by the covered entity to the Ombudsman Program for purposes of Ombudsman investigation or advocacy under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule [45 CFR 1324.11(e)(2)(vii)].
- D. In order to empower residents and participants, an Ombudsman should examine a resident's or participant's records with the resident or participant, whenever possible, and should explain to the resident or participant how to read and use the records. Depending on the functional and legal status of the resident or participant, the Ombudsman shall seek to access the records in accordance with the following:
 - 1. When a resident or participant is able to communicate informed consent, even when the resident or participant has designated a representative including having executed a Power of Attorney, the Ombudsman may, with the express permission of the resident or participant, examine the clinical, social, medical, financial and other records. The Ombudsman shall, whenever possible, seek to have this consent in writing. When a written consent is not possible, oral authorization by the resident or participant or communication of informed consent via the use of auxiliary aids and services must be documented in Program case records. The Ombudsman must make a good faith judgment as to the capacity to give informed consent to access records.
 - 2. If a resident or participant with a representative is not able to communicate informed consent, the Ombudsman may seek informed consent from the representative. The Ombudsman shall, whenever possible, seek to have this consent in writing. When written consent is not possible from the representative, oral authorization or authorization through the use of auxiliary aids and services must be documented in Program case records.

3. When a guardian of the person has been appointed by a court, the Ombudsman may examine the clinical, social, medical, financial and other records with the informed consent of the resident or participant. The Ombudsman shall, whenever possible, seek to have this consent in writing. When a written consent is not possible, oral authorization by the resident or participant or communication of informed consent via auxiliary aids and services must be documented in Program case records. The Ombudsman must make a good faith judgment as to the capacity of a resident or participant to give consent to access records.
4. If the Ombudsman is investigating an allegation of financial exploitation of a resident, the Ombudsman may demand copies of receipts, disbursements and records of significant actions from the agent appointed by the resident under a durable power of attorney for property pursuant to the Illinois Power of Attorney Act [755 ILCS 45/2-7]. The Ombudsman shall notify the State Ombudsman if the agent fails to provide the requested documentation and further action is needed.
5. When a resident or participant is not able to communicate informed consent for access to records, the Ombudsman may access records when the Ombudsman has conducted a face-to-face visit with the resident or participant and concluded the resident or participant is not able to communicate informed consent and determined:
 - a) access to the records is necessary in order to investigate the complaint;
 - b) the resident or participant has no representative to make decisions on behalf of the resident or participant; or
 - c) the representative refuses to consent to the access, and:
 - (1) the Ombudsman has reasonable cause to believe the representative is not acting in the best interest of the resident or participant;
 - (2) the representative cannot be located within 24 hours despite a reasonable effort by the Ombudsman to do so and the Ombudsman has documented the attempts in the Office-approved case documentation system; and
 - (3) the Ombudsman obtains approval from the State Ombudsman.

- E. When an Ombudsman is denied access to a resident's records by the custodian of such records after presenting appropriate consent from a resident, representative, or an Ombudsman, the Regional Ombudsman and the Office shall follow the procedures prescribed in Section 601(D) and (E) of this Manual.

- F. When an Ombudsman is denied access to a participant's records by the custodian of such records, after presenting appropriate consent from a participant or representative, the Ombudsman shall notify the Deputy State Home Care Ombudsman and the Deputy State Home Care Ombudsman shall notify the State Ombudsman.

603: Access to State Regulatory Agency Records and Officials

- A. The Program is entitled to copies of all licensing and certification records maintained by state regulatory agencies with respect to all Illinois long-term care facilities, home and community-based services waivers and managed care organizations to which residents, participants, or the general public have access. To obtain a specific record at no cost, the Ombudsman shall forward a specific request to the Office which will make the request to the Department of Public Health or the Department of Healthcare and Family Services, or other entity as applicable.

- B. The Program has direct access to directors of governmental entities with responsibilities which impact residents and participants.