

**CHAPTER 800: CONFIDENTIALITY, MONITORING, DISCLOSURE, AND  
MAINTENANCE**

- 801: Confidentiality of Program Records**
- 802: Monitoring the Records of the Regional Program**
- 803: Disclosure of Information**
- 804: Receiving Resident Information**
- 805: Program Record Maintenance**

**801: Confidentiality of Program Records**

- A. Program records are the property of the State Ombudsman. The Office shall have access to Program records at all times.
- B. No state agency, AAA, Provider Agency, or legal representative shall require an Ombudsman to disclose Program records without consent of the resident, participant or complainant.
- C. Program records shall be confidential and shall be disclosed only in limited circumstances specifically provided by applicable law and Section 803 of this Manual.
- D. Each Ombudsman and, as necessary, Program support staff trained in Program services and confidentiality, has access to Program records of the Regional Program for which he or she serves.
- E. When required to provide temporary coverage for another Regional Program, an Ombudsman may have access to the Program records of another Regional Program to the extent necessary to provide such coverage.
- F. The Regional Ombudsman shall:
  - 1. limit access of Program records to authorized Program personnel;
  - 2. maintain Program records in a secure location controlled by the Regional Ombudsman; and
  - 3. ensure that the Ombudsman employer provides for safe transmissions of records by electronic mail or facsimile.

**802: Monitoring the Records of the Regional Program**

- A. AAAs have an active and ongoing responsibility in monitoring; however, AAAs do not have access to Program records which contain identifying information about residents.
- B. The Department, AAAs, and Provider Agencies shall not have access to resident records. Aggregate data and the Ombudsman monitoring tool should be used for purposes of oversight and monitoring of the Regional Programs.
- C. The supervisor of the Regional Ombudsman shall not review Program files.
- D. The Regional Ombudsman shall conduct an annual review of selected Program records in accordance with the standardized tool developed by the Office. The results of the review shall be submitted to the Provider Agency, the relevant AAA and the Office.
- E. The Office shall conduct a review of the Regional Program files at least once every three (3) years and report the results of the review to the Provider Agency and the AAA. This report shall not contain any resident, representative or complainant identifying information.
- F. More frequent reviews may be conducted at the request of the Provider Agency, the AAA, or the Office.
- G. The Deputy State Home Care Ombudsman shall conduct an annual review of select Home Care Ombudsman records for quality assurance.

**803: Disclosure of Information**

- A. The State Ombudsman shall have the sole authority to make or delegate determinations concerning the disclosure of the files, records and other information maintained by the Ombudsman program. The State Ombudsman shall comply with section 712(d) of the Older Americans Act, and implementing regulations, in responding to requests for disclosure of files, records and other information, regardless of the format of such file, record or other information, the source of the request and the sources of funding to the Ombudsman program.
- B. Ombudsmen shall not disclose the identity of, or any information that would lead to the identification of a resident, participant or complainant involved in a complaint, report or investigation, unless the individual (or his or her representative) has consented to the disclosure, or such disclosure is required by a court order.
- C. The Ombudsman shall make every effort to obtain written consent from the resident, participant or representative. Consent may also be made orally, visually, or through the use of auxiliary aids and services.
- D. The consent to disclose information shall be on forms developed by the Office and shall be properly signed and dated, regardless of how consent is communicated.
- E. Consent shall be documented contemporaneously in the case notes by the Ombudsman.
- F. When a request is made by any party for any Program records containing resident or participant information, the Office shall be contacted immediately by the Regional Ombudsman, the Deputy State Home Care Ombudsman, or his or her designee. Program records containing resident or participant information may not be released or disclosed to anyone who is not an Ombudsman without the written permission of the Office.
- G. The Office shall determine whether to disclose all or part of the records as follows:
  - 1. the Office may require that the request for Program records be made in writing and may require a copy of the request before determining the appropriate response. Where the request is made orally by a resident, participant or representative, the request must be documented in the Program case record by the Ombudsman to whom the request was communicated in order to meet this requirement;
  - 2. the Office shall review the request with the relevant Program staff to determine whether the release of all or part of the records would be consistent with the wishes or interest of the relevant resident or

participant;

3. in consultation with the Department's General Counsel, the Office shall determine whether any part of the records should be redacted (i.e., all identifying information removed). The identities of residents, participants or complainants who have not provided express consent for the release of their names shall not be revealed; and
4. the Office, in consultation with the Department's General Counsel, shall consider the source of the request (e.g., resident, facility, complainant, another agency, or any other party) and the type of request (written request, Freedom of Information Act request, subpoena, court order) in determining whether to disclose all or any part of the records. Requests coming from residents or participants should generally be honored. The Program may provide the resident or participant copies of records that are directly related to him or her and such records shall be redacted to protect the identity of other residents, participants and complainants.

**804: Receiving Resident Records**

- A. Ombudsmen shall use the forms prescribed by the Office when a resident is granting an Ombudsman permission to access information or records from another entity.
- B. When the Ombudsman receives records from another entity, those documents shall be treated as confidential per Section 801 of this Manual.

**805: Program Record Maintenance**

- A. Documents relating to casework should be scanned and attached electronically to the case file.
- B. Once saved electronically, the hard copy of these documents shall be destroyed no later than when the case is closed. The electronic files shall be maintained by the Office pursuant to the required retention schedule.
- C. When hard copies of documents relating to casework are maintained pending investigation and case closure, these documents shall be stored in a secured location.
- D. Case documentation shall not be stored electronically outside of the Office approved case documentation system.
- E. No case documentation or confidential information shall be stored on the Ombudsman's personal computer or personal device.
- F. Documents relating to confidential activities shall be scanned and attached electronically to the activity entry. Once saved electronically, the hard copy of these documents shall be destroyed.
- G. Volunteer notes sent via email to the Regional Program shall be attached to the facility visit entry to which it corresponds. Once the information has been attached to the database, the original report shall be destroyed.
- H. Failure to follow confidentiality policies may result in de-certification and termination pursuant to Chapter 304 of this Manual.