

CHAPTER 50-10.1 LONG-TERM CARE OMBUDSMEN

50-10.1-01. Definitions.

As used in this chapter:

1. "Administrative action" means any action or decision made by an owner, employee, or agent of a long-term care facility, or by a public agency, which affects the provision of services to a resident of a long-term care facility.
2. "Department" means the department of health and human services.
3. "Long-term care facility" means any skilled nursing facility, basic care facility, nursing home as defined in subsection 3 of section 43-34-01, assisted living facility, or swing-bed hospital approved to furnish long-term care services; provided, that a facility, as defined in section 25-01.2-01, providing services to individuals with developmental disabilities is not a long-term care facility.
4. "Resident" means an individual residing in and receiving personal care from a long-term care facility.

50-10.1-02. Appointment of state and local long-term care ombudsmen.

The department shall employ a state long-term care ombudsman and local long-term care ombudsmen as the department determines necessary within the limits of legislative appropriations.

50-10.1-03. Duties of state long-term care ombudsman.

The state long-term care ombudsman shall:

1. Investigate and resolve complaints about administrative actions that may adversely affect or may have adversely affected the health, safety, welfare, or personal or civil rights of individuals in long-term care facilities or individuals who have been discharged from long-term care facilities within one month of the complaint against the facility.
2. Monitor the development and implementation of federal, state, and local laws, regulations, and policies that relate to long-term care facilities in the state.
3. Gather and disseminate information to public agencies about the problems of persons in long-term care facilities.
4. Train volunteers and assist in the development of citizen organizations to participate in the ombudsman programs.
5. Report to any state agency those factors found by the state long-term care ombudsman to relate to those duties of that agency which impact on the care given to residents of a long-term care facility in this state.
6. Act as an advocate for residents of long-term care facilities.
7. Carry out any activities consistent with the requirements of this chapter, including the delegation to regional or volunteer community long-term care ombudsmen of any duties imposed by this chapter, which the executive director of the department deems appropriate.
8. Adopt rules in accordance with chapter 28-32 consistent with and necessary for the implementation and enforcement of this chapter.

50-10.1-04. Access to facilities and records.

To carry out the powers and duties of this chapter, the state long-term care ombudsman and the ombudsman's authorized agents shall:

1. Have access to all long-term care facilities within the state and shall have private access to any resident within any long-term care facility within the state.
2. Have access to all social and medical records of a resident if:
 - a. The ombudsman or the ombudsman's authorized agent has the permission of the resident or the legal representative of the resident;

- b. Access to the records is necessary to investigate a complaint and the resident is unable to consent to the review and has no legal representative; or
- c. A legal representative of the resident refuses to give the permission and the ombudsman or the ombudsman's authorized agent has reasonable cause to believe that the legal representative is not acting in the best interests of the resident and the state long-term care ombudsman approves access.

50-10.1-05. Information to be posted - Retaliation prohibited.

Information about the ombudsman program must be posted in a conspicuous place in each long-term care facility, along with how to file a complaint concerning administrative actions which affect any resident and the address where a complaint may be filed. Each resident, the spouse of each resident having a spouse, and any designated representative of a resident must be provided with information about the ombudsman program at the time the resident is admitted to the long-term care facility. A long-term care facility, and its agents, may not take or threaten retaliatory action against a resident, employee, or any other person on account of the filing of a complaint by or on behalf of that resident, or on account of the providing of information to a long-term care ombudsman constituting or relating to a complaint.

50-10.1-06. Establishment of reporting system - Recognition of reports by ombudsmen.

The department shall establish a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems. The department shall submit this information to the appropriate state agency which is responsible for the licensing or certification of the long-term care facility involved and to the appropriate federal agency. Each state agency responsible for licensing or certification of long-term care facilities shall coordinate its activities with the statewide uniform reporting system by submitting to the department in a timely manner all complaints and information it receives on conditions that adversely affect the health, safety, welfare, or personal or civil rights of residents; provided, that the information is not privileged under the law. The ombudsman program may recognize investigative reports conducted by an appropriate agency or organization.

50-10.1-07. Confidentiality and disclosure of records and files.

Those records and files of the state and local ombudsman, and their authorized agents, which relate to, or identify any resident of a long-term care facility or a complainant, are confidential and may not be disclosed unless:

1. A resident, or a legal guardian or attorney in fact, consents in writing to the release of the information and designates to whom the information must be disclosed;
2. The ombudsman authorizes a disclosure which does not reveal the identity of any complainant or resident; or
3. A court of competent jurisdiction orders the disclosure.