

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 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 by subsection 2 of section 25-01.2-01, providing services to developmentally disabled persons is not a long-term care facility.
4. "Resident" means a person residing in and receiving personal care from a long-term care facility.

50-10.1-02. Appointment of state and regional long-term care ombudsmen. The executive director of the department shall appoint a state long-term care ombudsman and such regional long-term care ombudsmen as the executive director deems 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 persons in long-term care facilities or persons who have been discharged from long-term care facilities within nine months 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 reasonable 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. Reasonable access is defined as access by an ombudsman during normal working hours or by appointment and upon notification to the administrator or person in charge of the facility.
2. Have access to all personal and medical records of any resident of a long-term care facility who has sought ombudsman services, or on whose behalf such services have been sought, except that no record may be obtained without the written consent of a resident or a legal representative of a resident, or unless a court orders the disclosure.

50-10.1-05. Chapter to be posted - Retaliation prohibited. A copy of this chapter must be posted in a conspicuous place in each long-term care facility, along with a statement of the right 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 copies of the posted documents 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 regional 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.