

## OMBUDSMAN REFERENCES IN FEDERAL NURSING HOME REQUIREMENTS

| TOPIC   | SUMMARY  | SOURCE  |
|---|--|---|
| <p><b>Acronyms:</b><br/>           CFR: Code of Federal Regulations<br/>           CMP: Civil Monetary Penalties<br/>           LTCOP: Long-term Care Ombudsman Program<br/>           RN: Registered Nurse</p> | <p>SA: State Survey Agency<br/>           SLTCOP: State Long-term Care Ombudsman Program<br/>           SLTCO: State Long-term Care Ombudsman<br/>           SOM: State Operations Manual<br/>           USC: United States Code</p>               |   |
| <p><b>Access</b></p>  | <p>Facilities must provide the LTCOP with immediate access to residents</p>  | <p>42 CFR 483.10<br/>           42 USC 1395i-3 (c)(3)(A)<br/>           42 USC 1396r (c)(3)(A)<br/>           SOM Appendix PP pg. 36-38</p> |
|   | <p>Access to resident medical records with permission from the resident or legal representative</p>  | <p>42 CFR 483.10<br/>           42 USC 1395i-3 (c)(3)(E)<br/>           42 USC 1396r (c)(3)(E)<br/>           SOM Appendix PP pg. 36-38</p> |
|   | <p>The location of the pharmacist's findings are part of the resident's clinical records and should be kept in a consistent location in order to facilitate communication between the resident, staff and LTCOP</p>                                | <p>SOM Appendix PP pg. 543-544</p>  |
| <p><b>Complaint Investigation</b></p>   | <p>General complaint intake process and other public entities that should receive information from the SA and/or perform investigations including the LTCOP</p>  | <p>5010 SOM Chapter 5</p>   |
|   | <p>To assist the SA in the investigation planning process they should consult with the LTCOP</p>   | <p>5070 SOM Chapter 5</p>   |
|   | <p>When the SA refers a complaint to another agency such as the LTCOP the SA must request a written report on the results of the investigation as the SA has the responsibility to assess compliance with Federal regulations and requirements</p> | <p>5075.6 SOM Chapter 5</p>   |

|  |   |  |
|--|---|--|
| <b>Consultation/Coordination with Ombudsman Program</b>      | In order to review the accuracy of Nursing Home Compare the Secretary of the U.S. Department of Health and Human Services must consult with the SLTCOP  | 42 USC 1395i-3 (i)(2)(B)(i)<br>42 USC 1396r (i)(2)(B)(i) |
|  | The SA should share information and consult with the LTCOP  | 3000B SOM Chapter 3                                      |
|  | States are encouraged to include at least one person in the decision making process in the information dispute resolution process that was not directly involved in the survey such as an ombudsman | 7212.3.9 SOM Chapter 7                                   |
|  | Facilities utilize the LTCOP to provide in-service training regarding quality of life and residents' rights   | 7502.3 Chapter 7   |
|  | The SA should consult the LTCOP when investigating eligible candidates for placement as a temporary facility manager  | 7550.4 SOM Chapter 7                                     |
|  | The SA should ask residents if they are able to retain and use personal possessions   | SOM Appendix PP pg. 39                                   |
|  | The SA should ask the LTCOP if he/she has been involved in a care plan meeting as the resident advocate and about the process   | SOM Appendix PP pg. 137-139                              |
|  | To ensure the facility has an appropriate Quality Assessment and Assurance process and committee gather available information from the LTCOP  | SOM Appendix PP pg. 657                                  |
| <b>Information to resident regarding rights and services</b> | Facilities must furnish a written description of legal rights which includes the posting of contact information for the LTCOP   | 42 CFR 483.10  |

|  |   |  |
|--|---|--|
| <b>Notice and disclosure to the Ombudsman Program</b>  | Notification when a penalty, assessment or exclusion becomes final  | 42 CFR 402.11<br>42 USC 1395i-3 (g)(5)(B)<br>42 USC 1396r (g)(5)(B)<br>3024 SOM Chapter 3<br>42 CFR 1003.129   |
|  | Notice of a waiver for nurse staffing requirements (i.e. 24-hour licensed nursing, provide an RN for 8 consecutive hours a day, 7 days a week and an RN designated as Director of Nursing on a full-time basis) | 42 CFR 483.30<br>42 USC 1395i-3 (b)(4)(C)(ii)(IV)<br>42 USC 1396r (b)(4)(C)(ii)(IV)<br>7014.1 SOM Chapter 7<br>SOM Appendix PP pg. 451-455                                 |
|  | Disclosure of results of inspections (including form CMS-2567), investigation activities, proposed remedies, the facilities' request for informal dispute resolution, appeal and results of the appeal          | 42 CFR 488.325<br>42 USC 1395i-3 (g)(5)(B)<br>42 USC 1396r (g)(5)(B)<br>7212.3 SOM Chapter 7<br>7904.1 SOM Chapter 7   |
|  | Proposal to exclude from Medicare and Medicaid programs   | 42 CFR 1003.105  |
|  | Waiver for requirements for nurse aide training and competency evaluation programs  | 42 USC 1395i-3 (f)(2)(C)(iii)<br>42 USC 1396r (f)(2)(C)(iii)<br>4132.1E SOM Chapter 4  |
|  | The Monthly Quality Indicator Comparison report were designed for family members of a resident, potential residents and their families and state Ombudsman  | 3319E SOM Chapter 3  |
|  | <b>Survey Preparation and Process</b>   | During offsite preparation for complaint investigation the SA should contact the LTCOP to discuss the nature of the complaints and potential history of similar complaints |
| The State should notify the LTCOP of the survey according to the protocol determined by the State and the SLTCO  |   | 7207.2 SOM Chapter 7<br>SOM Appendix P pg. 14-15   |
| CMS will contact the SA regarding a Federal survey and the SA should notify the LTCOP of the Federal survey on behalf of CMS   |   | 7904.2 SOM Chapter 7   |
| During the survey, the SA should invite the Ombudsman to the resident group interview (after securing resident permission), discuss observations with the Ombudsman (as appropriate), interview the Ombudsman and share resident concerns with the Ombudsman (after gaining resident permission) |   | SOM Appendix P pg. 23 and 40   |

|  |   |  |
|--|---|--|
| <b>Survey Preparation and Process (continued)</b>                  | The SA should conduct resident interviews in private unless the resident wants to include a family member, staff person or Ombudsman  | SOM Appendix P pg. 66  |
|  | The SA should invite the Ombudsman to the exit conference   | SOM Appendix P pg. 86  |
| <b>Transfer, Discharge, Readmission and Admission of residents</b> | Facilities must include contact information for the LTCOP in transfer or discharge notices  | 42 CFR 483.12<br>42 USC 1395i-3 (c)(2)(B)(iii)(II)<br>42 USC 1396r (c)(2)(B)(iii)(II)<br>SOM Appendix PP pg. 47-48 |
|  | The SA should ask the LTCOP about facility compliance with transfer requirements  | SOM Appendix PP pg. 41-42, 45-46   |
|  | The SA should ask the LTCOP if there are any problems with residents being readmitted to the facility after hospitalization   | SOM Appendix PP pg. 50-51  |
|  | The SA should ask the LTCOP if the facility treats residents differently in transfer, discharge and covered services based on source of payment   | SOM Appendix PP pg. 52-53  |
|  | If resident/family interviews reveal possible problems with admission contracts the SA should review the contracts for potential violations of requirements and refer to outside agencies if necessary, i.e. LTCOP or Office for Civil Rights | SOM Appendix PP pg. 614-615  |

**Sources:**

- 42 CFR: [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title42/42tab\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title42/42tab_02.tpl)
- 42 USC 1395i-3: [http://www.ssa.gov/OP\\_Home/ssact/title18/1819.htm](http://www.ssa.gov/OP_Home/ssact/title18/1819.htm)
- 42 USC 1396r: [http://www.ssa.gov/OP\\_Home/ssact/title19/1919.htm](http://www.ssa.gov/OP_Home/ssact/title19/1919.htm)
- SOM: <http://www.cms.gov/manuals/iom/itemdetail.asp?itemid=CMS1201984>