

**RULES
OF
TENNESSEE COMMISSION ON AGING**

**CHAPTER 0030—1—9
ADVOCACY ASSISTANCE PROGRAM**

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0030—1—9—.01 LONG TERM CARE OMBUDSMAN PROGRAM AUTHORITY, SCOPE, AND DEFINITIONS.

- (1) Pursuant to the requirements set forth in 42 U.S.C. 307 (a) (12), the state agency on aging shall operate a statewide long-term care ombudsman program in cooperation with the area agencies on aging.
- (2) The purview of ombudsman services shall extend to residents and potential residents of long-term care facilities.
- (3) Definitions:
 - (a) The term "ombudsman" means a person working within the state aging network to carry out responsibilities mandated by 42 U.S.C. 307 (a) (12).
 - (b) The term "designated ombudsmen" means persons designated by either the state agency on aging or by area agencies on aging to carry out responsibilities of the statewide ombudsman program as mandated by 42 U.S.C. 307 (a) (12), and Sections 0030—9—3 and 0030—9—4 of Policies and Procedures for Programs on Aging, the state agency policy manual, which is available in the state agency on aging and all area agency on aging offices.
 1. The term "state ombudsman" means the designated ombudsman of the state agency on aging (as required by 45 CFR 1321.43 (c) to carry out state agency responsibility as required by 42 U.S.C. 307 (a) (12) and Sections 0030—9—3 and 0030—9—4 of Policies and Procedures for Programs on Aging.
 2. The term "district ombudsmen" means the designated ombudsmen selected by area agencies on aging who are trained to carry out district and community level responsibilities as required by 42 U.S.C. 307 (a) (12) (A) and Sections 0030—9—3 and 0030—9—4 of Policies and Procedures for Programs on Aging.
 - (c) The term "representatives of ombudsmen" means persons, paid or volunteer, who are selected, trained, and supervised by designated ombudsmen to assist district ombudsmen in fulfilling the mandate of 42 U.S.C. 307 (a) (12) (A) and Sections 0030—9—3 and 0030—9—4 of Policies and Procedures for Programs on Aging.

(Rule 0030-1-9-.01, continued)

- (d) The term "long-term care facility" means any nursing home, institutional home for the aged, or residential home for the aged either licensed or subject to licensure by the Tennessee Department of Public Health under provision of T.C.A. §53—1301 et seq.; group homes and boarding homes either licensed or subject to licensure by the Tennessee Department of Mental Health and Mental Retardation under provision of T.C.A. §33—1801 et seq.; and, any similar type of homes operating within the state that are subject to licensure by either state department.
- (e) The term "access" means the right to enter any long-term care facility; to communicate privately and without restriction with any resident who consents to the communication; to seek consent to communicate privately and without restriction with any resident; and to inspect a resident's records under conditions set out in 0030—1—9—.03.

Authority: T.C.A. §14—6—105. *Administrative History:* Original rule filed July 6, 1982; effective August 6, 1982. Amendment filed April 26, 1983; effective May 26, 1983.

0030—1—9—.02 ACCESS TO LONG TERM CARE FACILITIES AND RESIDENTS OF LONG TERM CARE FACILITIES.

- (1) Designated ombudsmen shall have access to long-term care facilities without notice between the hours of 8:00 a.m. and 8:00 p.m. Designated ombudsmen shall also have access between the hours 8:00 p.m. and 8:00 a.m. by prior arrangement with the facility administrator; or with good cause and 24 hours prior notice to the administrator or person in charge of the facility at the time the notice is given. Good cause means that study of a perceived problem requires the presence of an ombudsman in a facility at times other than from 8:00 a.m. and 8:00 p.m., and the study of the problem has been requested by a resident, resident's family, or resident's legal representative.
- (2) Representatives of ombudsmen shall have access to long-term care facilities without prior notice between the hours of 8:00 a.m. and 8:00 p.m.
- (3) The ombudsman, unimpeded and unaccompanied (unless the ombudsman so requests) by staff of the long-term care facility, may proceed to visit privately with residents of the facility. The ombudsman shall announce his presence before entering the room of any resident. Residents may refuse or terminate any visit.
- (4) If a resident's room does not permit private consultation to occur between the ombudsman and resident, or if such consultation infringes the rights of roommates, the ombudsman or his delegate should request, and facility must provide, an appropriate private place for such a meeting. Ombudsmen may also meet with residents in common areas of facilities unless such meetings infringe upon the privacy or other rights of other residents.
- (5) The ombudsman's continued presence in the facility and with a resident or residents shall be at the pleasure of the resident(s) or their legal representative. Only resident(s) may refuse or terminate visits from an ombudsman or ombudsman representative, consistent with inherent constitutional rights of all citizens.
- (6) Ombudsmen shall identify themselves to the responsible facility representative when arriving at any long-term care facility and shall notify a facility representative of their departure. Upon request by the responsible facility representative, the ombudsmen shall provide identification provided by the state agency on aging.

(Rule 0030-1-9-.01, continued)

- (7) Facility staff may refuse or terminate an ombudsman visit when such a visit is a direct threat to the health and safety of the resident as documented by his/her physician in the resident's medical record. An exception to this rule occurs when the resident, willfully and knowingly, with full information related to his/her medical condition, waives medical advice and chooses to meet the ombudsman in spite of the risk. In such situations, the facility may request the resident to sign an appropriate written statement in which he/she takes responsibility for his/her actions. Nothing in this rule is intended to restrict in any way the right of residents to seek legal assistance through any persons of their choice.

Authority: T.C.A. §14—6—105. *Administrative History:* Original rule filed April 26, 1983; effective May 26, 1983.

0030—1—9—.03 ACCESS TO RESIDENT RECORDS.

- (1) Designated ombudsmen shall have access to a resident's personal, medical, and financial records under the following conditions:
- (a) The ombudsman shall be in the process of assisting a resident with the resolution of a specific problem situation.
 - (b) Except as set out in paragraph (d) below, the ombudsman shall obtain and supply to the facility the written permission, Authority, or consent of the resident (or his/her legal representative) whose records are to be inspected prior to reviewing those records. Requests for or inspection of records shall not conflict with any other state or federal law regarding said program.
 - (c) Request to inspect resident records shall be made during ordinary business hours of the facility, except in emergency situations where delay might adversely affect the health, safety, or welfare of the resident. Requested information must relate directly to the specific complaint.
 - (d) In situations where a resident or his/her legal representative cannot give consent, ombudsmen may secure information in personal, medical, or financial records of residents by:
 - 1. Arranging for the records to be reviewed by authorized personnel of the state licensing authorities for purposes of verifying or disclosing the existence of problems associated with the complaint; or
 - 2. Requesting that the Attorney General take appropriate legal action to secure information in resident records.
 - (e) Information from resident records to support investigations regarding general conditions of the facility may be obtained by arranging for inspection of the records by authorized personnel of the state licensing and inspection authorities.
 - (f) Upon reasonable advance notice, the facility shall, at a reasonable charge, provide copies of resident records to the ombudsman when all the aforementioned conditions have been met.
 - (g) The right of access by ombudsmen to a particular resident's records under the aforesaid conditions does not in any manner imply general access to all residents' personal, medical, and financial records; nor does it authorize access to records against the wishes of a resident.

Authority: T.C.A. §14—6—105. *Administrative History:* Original rule filed April 26, 1983; effective May 26, 1983.