

**CHAPTER 600: ACCESS TO RESIDENTS AND FACILITIES,
RESIDENTS' RECORDS, STATE AND FACILITY RECORDS AND
PARTICIPANTS AND PARTICIPANTS' RECORDS**

601: Access to Residents and Facilities

602: Access to Residents' Records

603: Access to State and Facility Records

604. Access to Participants and Participants' Records

601: Access to Residents and Facilities

- A. An Ombudsman is entitled under both federal and state law to immediate access to all long-term care facilities to observe all areas, except the living area of any resident who declines, and to visit and talk with all residents, staff, and others. Ombudsmen have access to residents regardless of whether a resident has an authorized legal representative.
- B. An Ombudsman shall notify the facility staff of his/her presence upon entering the facility by signing the visitor log or verbally telling a facility staff member. The Ombudsman should be prepared to show his/her Program identification to facility staff or residents upon request. An Ombudsman is entitled to communicate privately and without restriction with any resident who consents to the communication. Whenever possible, the Ombudsman, will seek to talk with residents at times convenient for the resident.
- C. If an Ombudsman is denied immediate access to a facility, to a resident, or to resident records by a facility employee or agent, the Ombudsman shall request of the facility administrator or highest ranking available employee the reason for the denial of access to the facility or to any resident.
 1. If the explanation appears reasonable, the Ombudsman shall seek the earliest opportunity to visit the resident or facility.
 2. If the explanation does not appear reasonable to the Ombudsman, or if access is being denied arbitrarily, the Ombudsman or the Regional Ombudsman shall inform the highest ranking available employee or administrator of the facility of the legal right of the Program to visit the facility and to communicate with residents.
- D. When a denial of access continues after the steps listed in Section 601(C) of this Manual are attempted, the Ombudsman shall contact the Regional Ombudsman. The Regional Ombudsman or his/her designee:
 1. shall request an explanation in writing from the administrator or highest ranking employee available an explanation in writing as to the reasons for the refusal of access to a facility or resident be given to the Regional Program and the Office;
 2. shall immediately notify the State Ombudsman and provide supporting documentation concerning the facility's refusal of access; and

3. may request a hearing under the Section 2-110(d) of the Nursing Home Care Act [210 ILCS 45/2-110(d)].
- E. The Office, upon notice by the Regional Ombudsman of an unreasonable refusal by the facility to permit access to a resident or a facility, shall consult with the Department's General Counsel to determine all available options to secure residents' access to Program services. After consultation with the General Counsel and the Regional Program, the Office may determine that a prosecution is necessary to protect resident access to Program services. In such cases, the Office shall notify the Director of the problem and attempted resolution strategies. The Director, in consultation with the Office, shall notify the Office of the Attorney General or the appropriate State's Attorney that an apparent violation of 20 ILCS 105/4.04 has occurred, and request prosecution of the facility for a business offense under that Act. The Regional Ombudsman shall be notified of the Office's actions relative to the Regional Program's report of an unreasonable denial of access to a facility or resident.

602: Access to Residents' Records

- A. Under both federal and state law, certified Ombudsmen have access to review the medical, social, personal, clinical, financial, and other records of a resident.

- B. In order to empower residents, an Ombudsman should examine a resident's records with the resident, whenever possible, and should explain to the resident how to read and use the records. Depending on the functional and legal status of the resident, the Ombudsman shall seek to access the records in accordance with the following:
 - 1. When a resident is capable of giving informed consent, even when the resident has executed a durable power of attorney, the Ombudsman may, with the express permission of the resident, examine a resident's clinical, social, medical, financial, and other records. The Ombudsman shall, whenever possible, seek to have this consent in writing. When a written consent is not possible, oral authorization by the resident must be documented in Program case records. The Ombudsman must make a good faith judgment as to the capacity of a resident to give informed consent to access the resident's records;

 - 2. If a resident with a durable power of attorney for health care decisions is not able to give informed consent, the Ombudsman may seek informed consent from the agent or attorney-in-fact, appointed by the resident under the durable power of attorney. The Ombudsman shall, whenever possible, seek to have this consent in writing. When a written consent is not possible from the resident's agent or attorney-in-fact, oral authorization by the agent or attorney-in-fact under the durable power of attorney for health care must be documented in Program case records;

 - 3. When a guardian of the person has been appointed by a court for the resident, the Ombudsman may examine a resident's clinical, social, medical, financial and other records with the informed consent of the resident. The Ombudsman shall, whenever possible, seek to have this consent in writing. When a written consent is not possible, oral authorization by the resident must be documented in Program case records. The Ombudsman must make a good faith judgment as to the capacity of a resident to give informed consent to access the resident's records;

 - 4. If a resident with a guardian is not able to give informed consent, the Ombudsman may seek informed consent from the court appointed guardian. The Ombudsman shall, whenever possible,

- seek to have this consent in writing. When a written consent is not possible, oral authorization by the guardian must be documented in Program case records;
5. If the Ombudsman is investigating an allegation of financial exploitation, the Ombudsman may demand copies of receipts, disbursements and records of significant actions from the agent appointed by the resident under a durable power of attorney for property. The Ombudsman may seek a court order requiring production of records, and the recovery of court costs and attorney's fees, pursuant to 755 ILCS 45/2-7.5;
 6. When a resident is incapable of giving informed consent for access to records, Ombudsman may access that resident's records when:
 - a. The Ombudsman has conducted a face-to-face visit with the resident and concluded the resident is incapable of giving informed consent and determined;
 - b. That the resident has no legally authorized representative empowered to make decisions for the resident; or
 - c. That the resident's legally authorized representative is implicated in the complaint; or
 - d. that the resident's legally authorized representative is not acting in the best interests of the resident; or
 - e. that the resident's legally authorized representative cannot be located within 24 hours despite a reasonable effort by the Ombudsman to do so;
 - f. a review of the incapable resident's records is necessary to resolve a complaint or to protect the resident's rights; and
 - g. The State Ombudsman, Regional Ombudsman, or Community Ombudsman is authorized to make a written request to the facility for the resident's record based on the completion of all the steps.
- C. When an Ombudsman is denied access to a resident's records by the custodian of such records, after presenting appropriate consent from a resident, the resident's guardian or legal representative, or State Ombudsman, Regional Ombudsman or Community Ombudsman, the Regional Ombudsman and State Program should follow the procedures prescribed in Section 601 (D) and (E) of this Manual.

- D. The records of a resident shall be treated with the highest degree of confidentiality, and be disclosed only as necessary to seek resolution of a complaint, and only to persons with an absolute need for the information.
- E. "Access to Records of a Resident Incapable of Giving Consent" form is in Appendix L.

603: Access to State Regulatory Agency Records and Officials

- A. The Program is entitled to copies of all licensing and certification records maintained by state regulatory agencies with respect to all Illinois long-term care facilities, medical assistance waiver providers and managed care organization providers. To obtain a specific record at no cost, the Regional Ombudsman shall forward a specific request to the Office who will make the request to the Department of Public Health or the Department of Healthcare and Family Services, as applicable.

- B. The Program has direct access to directors of governmental entities with responsibilities which impact on residents of long-term care facilities.