

CHAPTER 800: CONFIDENTIALITY, DISCLOSURE, AND RETENTION

801: Confidentiality of Program Records

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803: Disclosure of Information

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801: Confidentiality of Program Records

- A. Program records shall be confidential and shall be disclosed only in limited circumstances specifically provided by applicable law and this Manual.
- B. All Program records are the property of the State Ombudsman. The State Ombudsman and his/her designee have access to all Program records at all times.
- C. Each Ombudsman and, as necessary, Program support staff trained in Program services and confidentiality, has access to Program records of the Regional Program for which he or she serves.
- D. When required to provide temporary coverage for another Regional Program, an Ombudsman may have access to the Program records of another Regional Program to the extent necessary to provide such coverage.
- E. The Regional Ombudsman shall:
 - 1. limit access of Program records to authorized Program personnel;
 - 2. maintain Program records in a secure location controlled by the Regional Ombudsman; and
 - 3. ensure that the Ombudsman employer provides for safe transmissions of records by electronic mail or facsimile.

802: Monitoring the Records of the Regional Program

- A. For purposes of monitoring and supervising the Regional Program, the AAA and Provider Agency may review reports for specific purposes which reflect the activities of the Regional Program.
- B. The Regional Ombudsman shall conduct an annual review of selected Program records in accordance with the standardized tool developed by the Office. The results of the review shall be submitted to the Provider Agency, the relevant AAA and the Office.
- C. The Office shall conduct a review of the Regional Program files at least once every three years and report the results of the review to the Provider Agency and the AAA. More frequent reviews may be conducted at the request of the Provider Agency, the AAA, or the Department. The Office may perform a series of different types of data and record reviews including electronic data point reviews, electronic case reviews, and on-site reviews of records. The frequency and types of reviews will vary but at a minimum 15% of cases will be reviewed for each Regional Program yearly.
- D. The supervisor of the Regional Ombudsman may not review resident Program records files without consent and approval of the Office.
- E. No state agency, AAA, Provider Agency, or legal representative may require an Ombudsman to disclose the identity of a resident or complainant without consent of the resident or complainant.
- F. AAA's shall not be allowed access to Program records AAAs may report programmatic concerns to the Office.

803: Disclosure of Information

- A. Ombudsmen shall not disclose the identity of, or any information that would lead to the identification of a participant, complainant or resident involved in a complaint, report, or investigation, unless the individual (or an authorized guardian or legal representative) has expressly consented to the disclosure, or such disclosure is required by court order. Verbal consent must be documented contemporaneously in the case notes by the Ombudsman.
- B. The consent to disclose information shall be on forms developed by the Office or the Regional Program, provided the Regional Program's form contains the information on the form developed by the Office, and shall be properly signed and dated.
- C. The Ombudsman shall make every effort to obtain written consent from the participant, resident or authorized representative.
- D. When a request is made by any party for any Program records, the Office shall be contacted immediately by the Regional Ombudsman or his/her designee. Program records may not be released or disclosed to anyone who is not a representative of the Office without the written permission of the Office.
- E. The Office shall determine whether to disclose all or part of the records as follows:
 - 1. the Office may require that the request for Program records be made in writing and may require a copy of the request before determining the appropriate response. Where the request is made orally by a resident, complainant, or legal representative of the resident or complainant, the request must be documented immediately in the Program case record by the Ombudsman to whom the request was communicated in order to meet this requirement;
 - 2. the Office shall review the request with the relevant Regional Program staff to determine whether the release of all or part of the records would be consistent with the wishes or interest of the relevant resident(s);
 - 3. with advice from General Counsel, the Office shall determine whether any part of the records should be redacted (i.e. all identifying information removed). The identities of residents and complainants who have not provided express consent for the

release of their names shall not be revealed; and

4. the Office, in consultation with the Department's General Counsel, shall consider the source of the request (i.e. resident, facility, complainant, another agency, or any other party) and the kind of request (written request, Freedom of Information Act request, subpoena, court order) in determining whether to disclose all or any part of the records. For example, requests coming from residents should, generally, be honored by the Program and the resident provided copies of records that are directly related to him and that have redacted the identity of other residents and complainants. Also, in cases of records request by law enforcement officials, formal court discovery requests, subpoena, or court order, the Office, in consultation with the Department's General Counsel, may seek a motion to quash a protective order where the release of records would be inconsistent with the wishes or interests of a resident.

804: Record Retention

- A. Documents relating to casework should be scanned and attached electronically to the case file. Once saved electronically, the hard copy of these documents may be destroyed.
- B. All documentation relating to casework or ombudsmen activities that is not scanned and documented electronically shall be retained for a minimum of three years from the date completed.
- C. Volunteer notes sent via email to the Regional Program should be attached to the Regular Presence visit entry to which it corresponds. Once the information has been attached to the database, the original report shall be destroyed.
- D. When a case is closed, a copy of the case shall be saved within the Regional Program. The copy may be:
 - 1. an electronic copy of the case file backed up on a local secure server;
or
 - 2. a hard copy of the case file kept in a secure location.
- E. Closed cases saved at the local level, whether stored electronically or in the form of a hard copy, must be retained for a minimum of three years.
- F. Personnel records for paid and volunteer ombudsmen shall be retained for a minimum of five years.