

Memo to Providers

Date: August 3, 2020

To: All Nursing and Assisted Living Facilities

From: Patty Ducayet, State Long-Term Care Ombudsman

Re: Ombudsmen Reentering Facilities



Due to health concerns related to COVID-19 for residents, facility staff, and ombudsmen, the State Long-Term Care Ombudsman Program has not conducted visits to facilities since March 2020. Effective immediately, certified ombudsmen will resume conducting visits at facilities.

We understand you are under tremendous stress and are trying to keep COVID-19 out or minimize the spread of it in your building. We share that goal, and for that reason your ombudsman wishes to coordinate with you prior to our initial visit. When contacted by an ombudsman, I request that the administrator or manager promptly respond or delegate someone within your facility to promptly respond to the ombudsman. The purpose of our prior contact is to coordinate and work in accordance with your facility screening protocols.

Precautions

When entering your facility, ombudsmen will comply with your screening protocols, adhere to hand hygiene protocols, maintain physical distance of at least six feet from others, and wear appropriate PPE. Ombudsman will provide their own hand sanitizer and PPE. When possible, ombudsmen will also conduct visits outdoors and meet with residents who wish to speak with an ombudsman outdoors. Ombudsmen are never allowed to visit when ill, are monitoring themselves for COVID-19 symptoms, and are required to follow CDC guidelines regarding when it is safe to discontinue isolation and precautions if the ombudsman has symptoms of COVID-19.

Prior to conducting a visit, an ombudsman must complete training, including CDC training on hand hygiene and PPE, HHSC training regarding infection control, and National Ombudsman Resource Center training regarding ombudsman visitation during COVID-19 and responding to trauma, grief, and loss related to COVID-19.

Information Requested

A long-term care ombudsman will request information from you about the facility's screening protocols and infection control practices. This is to help us understand what precautions are expected by essential service and critical assistance providers.

If you have not recently provided resident census and contact information, the ombudsman will request this information from you. The ombudsman will also request contact information for a resident's legally authorized representative (LAR) for residents who are incapacitated or who request that the ombudsman speak with the resident's LAR. Having contact information allows the ombudsman to communicate through technology and reduce the risk of transmission of COVID-19

to residents and staff of your building.

Your cooperation with these requests is appreciated.

Authority

In accordance with state rules regarding nursing and assisted living facilities, an ombudsman has immediate and unimpeded access to residents and resident records, nursing facilities, and assisted living facilities. During the public health emergency, HHSC adopted emergency rules in [40 TAC §19.2801\(b\)\(2\)](#) and [26 TAC §553.45\(b\)\(2\)](#) that reinforce an ombudsman's access, "Persons with legal authority to enter include, but are not limited to, law enforcement officers, representatives of the long-term care ombudsman's office, and government personnel performing their official duties."

Regarding nursing facilities regulated by the Center for Medicare and Medicaid Services, CMS issued QSO [20-28-NH-Revised](#), which specifies that a certified ombudsman has access to a nursing facility. Specifically, the memo states:

Access to Ombudsman

Sections 1819(c)(3)(A) and 1919(c)(3)(A) of the Social Security Act (the Act) and implementing regulations at 42 CFR 483.10(f)(4)(i)(C), require that a Medicare and Medicaid certified nursing home provide representatives of the State Long-Term Care Ombudsman with immediate access to any resident, however during this Public Health Emergency (PHE) in-person access may be restricted. If in-person access is not advisable due to infection control concerns and transmission of COVID-19, facilities must facilitate resident communication (e.g., by phone or through use of other technology) with the ombudsman. Additionally, through this memo, CMS is ensuring nursing homes and other stakeholders are aware of the implementation of the recent CARES Act which states State Long-Term Care Ombudsman shall have continued direct access (or other access through the use of technology) to residents of long term care facilities during any portion of the public health emergency relating to coronavirus until September 30, 2020.

The CARES Act does not repeal or amend CMS requirements under sections 1819 or 1919 of the Act or implementing regulations. Nor does it place a time limit or expiration date (e.g., until September 30, 2020) on the CMS requirements providing for resident access to the Ombudsman program, but instead affirms that the current pandemic requires the Ombudsman program and long term care facilities to support resident access and communication in a variety of methods. For additional information regarding resident access to the Ombudsman please see [Frequently Asked Questions \(FAQ\) on Nursing Home Visitation](#).

Questions

If you have questions pertaining to this memo, contact the Office of the State Long-Term Care Ombudsman at ltc.ombudsman@hhsc.state.tx.us. To reach the State Long-Term Care Ombudsman, call Patty Ducayet at 737-704-9075 or email patty.ducayet@hhsc.state.tx.us.