

NOTICE REGARDING ACCESS TO FACILITIES AND RECORDS BY LONG-TERM CARE OMBUDSMEN

Under federal and state law, designated representatives of the Long-Term Care Ombudsman Program must be provided access to any portion of a long-term care facility necessary to conduct their duties listed in federal and state law. Ombudsmen are not required to specify why they must enter a particular portion of the facility.

Facilities must also provide ombudsmen with access to individual resident records, including medical records, without interference. See 42 U.S.C. § 3058g (2006); § 400.0081, Fla. Stat. (2010). Access must be granted when an ombudsman verbally states that he or she has obtained consent. Ombudsmen are not required to specify who provided consent or to produce written proof that such consent was obtained. In fact, providing a statement indicating who provided consent or producing a written document may violate a resident's right to privacy and an ombudsman's duty to maintain the resident's confidentiality. A facility staff member that requires such proof violates the resident's rights and his or her actions may constitute interference with an ombudsman's duties.

Willful interference in a designated representative of the Long-Term Care Ombudsman Program in the performance of his or her official duties violates section 400.0083, Florida Statutes and is a second-degree misdemeanor.

The U.S. Administration on Aging classifies the Long-Term Care Ombudsman Program as a "health oversight agency" under the Health Insurance Portability and Accountability Act (HIPAA). Thus, covered entities, such as nursing homes, can share information in response to ombudsman inquiries without fear of violating HIPAA.

Thank you for your cooperation. If you have any questions or concerns about a particular visit, investigation or assessment, please do not hesitate to contact your local Ombudsman District Office or contact the Program at 1-888-831-0404.

Revised 3/2/12