

### **§5107-A. Long-term care ombudsman program**

In accordance with the program established pursuant to section 5106, subsection 11-C, the ombudsman may enter onto the premises of any residential care facility, as defined in section 7852, subsection 14, licensed according to section 7801, any assisted living facility licensed pursuant to chapter 1663 or 1664 and any nursing facility licensed according to section 1817 to investigate complaints concerning those facilities or to perform any other functions authorized by this section or other applicable law or rules. The ombudsman shall investigate complaints received on behalf of individuals receiving long-term care services provided by home-based care programs, the Medicaid waiver program, licensed home health agencies, assisted living services providers, certified homemaker agencies and licensed adult day care agencies. To carry out this function, any staff member or volunteer authorized by the ombudsman may enter onto the premises of any residential care facility, assisted living facility or nursing facility during the course of an investigation, speak privately with any individual in the facility who consents to the conversation and inspect and copy all records pertaining to a resident as long as the resident or the legal representative of the resident consents in writing to that inspection. The consent, when required and not obtainable in writing, may be conveyed orally or otherwise to the staff of the facility. When a resident is not competent to grant consent and has no legal representative, the ombudsman may inspect the resident's records and may make copies without the written consent of a duly appointed legal representative. The ombudsman may authorize as many individuals as necessary, in addition to staff, to carry out this function except that these individuals may not make copies of confidential client information. Appropriate identification must be issued to all such persons. In accordance with the federal 1987 Older Americans Act, 42 United States Code, as amended, a person may not serve as an ombudsman without training as to the rights and responsibilities of an ombudsman or without a specific plan of action under direction of the ombudsman. The ombudsman shall renew the authorization and issue identification annually. The findings of the ombudsman must be available to the public upon request. [PL 2001, c. 596, Pt. B, §9 (AMD); PL 2001, c. 596, Pt. B, §25 (AFF).]

The ombudsman and volunteers shall visit, talk with and make personal, social and legal services available to residents; inform residents of their rights, entitlements and obligations under federal and state laws by distributing education materials and meeting with groups or individuals; assist residents in asserting their legal rights regarding claims for public assistance, medical care and social security benefits or in actions against agencies responsible for those programs, as well as in all other matters in which residents are aggrieved, including, but not limited to, advising residents to litigate; investigate complaints received from residents or concerned parties regarding care or other matters concerning residents; and participate as observer and resource in any on-site survey or other regulatory review performed by state agencies pursuant to state or federal law. [PL 1993, c. 284, §1 (AMD).]

The ombudsman may provide advocacy during the hospital discharge process to assist patients with complex medical needs who experience significant barriers in accessing long-term services and supports. If the ombudsman provides advocacy, the ombudsman shall ensure that the patient has information regarding available options including, but not limited to: home and community-based services provided under MaineCare or funded by the State; admission to a residential care facility as defined in section 7852, subsection 14 and licensed according to section 7801; admission to a nursing facility licensed according to section 1817; and admission to an assisted living facility or program licensed pursuant to chapter 1663 or 1664. The ombudsman also may provide assistance to the patient after discharge from the hospital. [PL 2015, c. 506, §1 (NEW).]

Information or records maintained by the ombudsman concerning complaints may not be disclosed unless the ombudsman authorizes the disclosure. The ombudsman may not disclose the identity of any complainant or resident unless the complainant, the resident or a legal representative of either consents in writing to the disclosure or a court orders the disclosure. [PL 1991, c. 622, Pt. QQ, §2 (NEW).]

A complainant, a resident or a legal representative of either, in providing the consent, may specify to whom such identity may be disclosed and for what purposes, in which event no other disclosure is authorized. [PL 1991, c. 622, Pt. QQ, §2 (NEW).]

Any person, official or institution that in good faith participates in the registering of a complaint pursuant to this section or in good faith investigates that complaint or provides access to those persons carrying out the investigation about an act or practice in any residential care facility licensed according to section 7801, any assisted living facility or program or any nursing facility licensed according to section 1817 or that participates in a judicial proceeding resulting from that complaint is immune from any civil or criminal liability that otherwise might result from these actions. For the purpose of any civil or criminal proceedings, there is a rebuttable presumption that any person acting pursuant to this section did so in good faith. [PL 1995, c. 670, Pt. B, §4 (AMD); PL 1995, c. 670, Pt. D, §5 (AFF).]

#### SECTION HISTORY

PL 1991, c. 622, §QQ2 (NEW). PL 1993, c. 284, §1 (AMD). PL 1995, c. 670, §§B3,4 (AMD). PL 1995, c. 670, §D5 (AFF). PL 2001, c. 596, §B9 (AMD). PL 2001, c. 596, §B25 (AFF). PL 2015, c. 506, §1 (AMD).

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