

**CALIFORNIA DEPARTMENT OF AGING**  
**FINAL STATEMENT OF REASONS**

A public hearing was not held.

Subject Matter of Proposed Regulations: Posting of Notice, Facility Entry, Interference with Actions of the Office

Sections Affected: Sections 8010, 8020, and 8040 of Articles 1, 2 and 3 of Division 1.8, Title 22 of the California Code of Regulations

Updated Information:

The Initial Statement of Reasons is included in the file. The information contained therein is updated to reflect modifications that were made to the proposed regulatory text as follows:

Proposed CCR section 8040(a)(1)(B) was changed to provide that representatives of the Office shall make available, upon request, a written copy of the laws and regulations that authorize the Office, in the performance of its duties, to access facilities, residents and records. This change was made as the result of a written comment received during the 45-day comment period that questioned the necessity of providing a copy of the laws and regulations every time an Ombudsman representative seeks entry into a long-term care facility. The Department concurred with the comment and changed the proposed language accordingly to make the laws and regulations available upon request.

Proposed CCR section 8040(a)(1)(C) was rephrased to more clearly state that a person's interference with a representative of the Office, after the representative has complied with proposed CCR sections 8040(a)(1)(A) and (B) shall be deemed willful.

Local Mandate:

The proposed regulations do not impose a mandate on local agencies or school districts.

Small Business Impact:

The proposed regulations will not have an adverse economic impact on small businesses, including the ability of California businesses to compete with businesses in other states. This determination is based on the fact that the proposed regulations delete obsolete language, correct references and simplify language to be consistent with existing law, identify the scope of services provided by Ombudsman representatives, clarify what constitutes willful interference with lawful actions of the Office and the statutory remedies available.

### Anticipated Benefits of this Regulatory Action:

The proposed regulatory actions update the regulatory language to be consistent with law and easier to understand. As Ombudsman representatives begin quarterly visits to each long-term care facility, the proposed regulations clarify the role of the Ombudsman, lessen confusion and interference by facility personnel since each representative will have photographic identification issued by the State Ombudsman and make available a copy of the laws and regulations that authorize access to long-term care facilities, residents, patients and their medical and personal records. The proposed regulations clearly state what constitutes willful interference and what the consequences are if the law is not followed. Reducing the possibility of willful interference will help Ombudsman representatives meet their statutory obligation to advocate for the health, safety, welfare and rights of long-term care residents and patients.

### Consideration of Alternatives:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which it was proposed or less burdensome to affected private persons than the adopted regulations. There was also no alternative that would be more cost effective to affected private persons or equally effective in implementing the statutory policy or other provisions of law.

### Objections or Recommendations/Responses:

The following comment was made regarding the proposed action:

#### Comment:

A comment was received from Nicole Howell, Executive Director of Ombudsman Services in Contra Costa, Solano, and Alameda, via email on May 13, 2020. Ms. Howell had a question regarding providing information to facilities about the Ombudsman's right to enter facilities. She highlighted proposed CCR section 8040(a)(1)(B) and stated "So, all staff and volunteers would be required to carry this and give it to the facility? Is this on every visit? How do you see this issue?"

#### Response:

The Department agreed that providing a copy of the laws and regulations every time an Ombudsman representative visits a facility would not be necessary. The intent of the proposed regulation is to eliminate confusion and educate facility staff if they question an Ombudsman representative's legal authority to access facilities, residents, and records, by providing a copy of the laws and regulations. The Department proposed modified text as noted in the Updated Information section above.

Summary of Comments Received During the 45-day Comment Period:

The proposed text was made available to the public for comment from March 27, 2020 to May 15, 2020. Two comments were received. The first comment, from Nicole Howell, is addressed above in the Objections or Recommendations/Responses section. The other comment is summarized below.

A comment was received from Paula Franco, Program Coordinator for the Merced Long-Term Care Ombudsman Program, on May 15, 2020. Ms. Franco voiced her support of the proposed rulemaking actions noting that the regulations are important to Ombudsmen when advocating to protect and promote resident rights and for the advocacy system on both state and local levels. She said that it is significant to have a regulation that is inclusive to residents who are disabled or have limitations and that we must allow every resident, no matter their status, an equal opportunity to access the Long-Term Care Ombudsman Program. She also expressed her opinion of the importance of allowing Ombudsman representatives access to facilities after hours to ensure that residents receive a timely response in the event of emergency situations.

Summary of Comments Received during the 15-day Notice Period for Modified Text:

The modified proposed text was made available to the public for comment from May 22, 2020 to June 12, 2020. No public comments were received during the 15-day comment period.