

CALIFORNIA DEPARTMENT OF AGING
PROPOSED REGULATORY LANGUAGE

Article 1. Long-Term Care Provisions

Changes to the original language are shown in single underline for new text and single ~~strikethrough~~ for deleted text.

Amend Section 8010 of Article 1 of Division 1.8 of Title 22 of the California Code of Regulations as follows:

§ 8010. Posting of Notice.

(a) The Ombudsman Notice shall be prominently posted by the licensee in one or more publicly accessible locations in the long-term care facility. It shall be in plain view of, and readable by, patients and residents in the long-term care facility, and of all persons visiting the facility. This includes individuals ~~confined to~~ who use wheelchairs or other mobility devices.

(b) The Ombudsman Notice shall be in the form approved by the Office. The licensee shall not modify, reduce, cover, or take any action that detracts from or denigrates the approved Ombudsman Notice.

Note: Authority cited: Sections 9102, 9105 and 9745, Welfare and Institutions Code. Reference: Section 9718, Welfare and Institutions Code.

Article 2. Ombudsman Duties

Amend Section 8020 of Article 2 of Division 1.8 of Title 22 of the California Code of Regulations as follows:

§ 8020. Facility Entry.

(a) Any ombudsman coordinator, designated ombudsman, or other representative of the Office of the State Long-Term Care Ombudsman (hereinafter "Office") shall have the right of entry to any long-term care facility, as defined under Section 9701~~(a)~~ (b) of the Welfare and Institutions Code, to carry out the responsibilities of the Office as provided in Sections 9712.5, 9722, and 9726.1 of the Welfare and Institutions Code. The State Long-Term Care Ombudsman deems necessary and reasonable hours for such facility entry to be between 7:00 a.m. and 10:00 p.m. seven days a week.

(b) Entry by ~~an~~ Ombudsman representative between 10:00 p.m. and 7:00 a.m. shall be made after a request is made to, and after express authorization is received from, the State Long-Term Care Ombudsman or his/her designated representative. The ~~substate~~ ombudsman coordinator, as defined under Section 9701~~(e)~~ (d) of the Welfare and Institutions Code, shall notify the State Long-Term Care Ombudsman of any planned

entry and shall describe the circumstances making the entry necessary. If the State Long-Term Care Ombudsman or his/her designated representative is unavailable, authorization for such entry may be given by the ~~substate~~ ombudsman coordinator, followed by notice to the State Office and a description of the circumstances making the entry necessary.

Note: Authority Cited: Sections 9102, 9105 and 9745, Welfare and Institutions Code. Reference: Sections 9701 and 9722, Welfare and Institutions Code.

Article 3. Violations and Enforcement

Amend Section 8040 of Article 3 of Division 1.8 of Title 22 of the California Code of Regulations as follows:

§ 8040. Interference with Actions of Office.

~~(a)~~ No licensee, employee, agent or other person connected with a long-term care facility shall willfully interfere with any lawful action of the Office. Violations of this Section may be the basis for the assessment of a civil penalty under Section 8045. No person shall:

~~(a)(1)~~ Willfully prevent, impede, or interfere with entry into a long-term care facility by duly authorized representatives of the Office in the lawful exercise of their responsibilities.

(A) Whenever a representative of the Office is seeking entry into a long-term care facility, they shall have on their person clearly visible photographic identification that is issued by the Office.

(B) Whenever a representative of the Office is seeking entry into a long-term care facility, they shall make available for viewing by representatives of the facility a written copy of the laws and regulations that authorize the Office to, in performance of their duties, access the facility, residents and records.

(C) A person's interference with a representative of the Office, as a result of the representative's failure to satisfy sub-paragraphs (A) and (B) when attempting access into a long-term care facility, shall not be deemed willful.

~~(b)(2)~~ Willfully prevent or interfere with the interviewing of confidential communications with complainants, patients, residents, or witnesses by representatives of the Office in their investigation and resolution of complaints lawful exercise of their responsibilities.

~~(e)(3)~~ Willfully prevent or interfere with access to, and the examination or copying of patients' or residents' medical or personal records requested under Section 9724 of the Welfare and Institutions Code, or other records necessary to carry out the

responsibilities of the Office requested under Section 9723 of the Welfare and Institutions Code.

~~(e)(4) Willfully prevent, impede, or interfere in any other way with the lawful work of duly authorized representatives of the Office in the investigation and resolution of complaints.~~

~~(d)(5) Willfully discriminate, discipline, or retaliate against any employee, patient, resident, or volunteer in a long-term care facility for any communication made, or information given, to aid the Office in carrying out its duties and responsibilities. This subdivision does not apply to any communication made, or information given or disclosed, that was done maliciously or without good faith.~~

(b) For purposes of subsections (a)(1), (2), (3), and (4), any interference with the lawful actions of the Office shall be deemed willful if the interference persists after the representative of the Office makes available to such person(s) photographic identification issued by the Office and a written copy of the laws and regulations that authorize the Office access.

(1) This subsection shall not apply when the person interfering with the representative of the Office is acting under the direction of an identified person who is authorized to take or recommend the taking of adverse employment actions against them.

(2) Any representative of the licensee who is authorized to take or recommend adverse employment action against an employee of a long-term care facility and who authorizes that employee to interfere with the lawful actions of the Office shall be deemed to have committed a willful violation under this section.

(c) The representative of the Office whose lawful actions under this section are interfered with shall, no later than twenty-four hours after such interference, submit a report describing the interference to the appropriate licensing agency and to the State Ombudsman.

(d) The representative of the Office whose lawful actions under this section are interfered with may seek the assistance of law enforcement as needed to carry out their responsibilities.

(e) If the State Ombudsman determines that any person or persons are continuing to interfere with the lawful duties of the Office, the State Ombudsman has the discretion to pursue appropriate legal remedies.

Note: Authority cited: Sections 9102, 9105 and 9745 Welfare and Institutions Code. Reference: Sections 9712.5, 9715, 9717, 9720, 9722, 9723, 9724, 9725, 9730 and 9732, Welfare and Institutions Code.