

Ombudsman Questions and Answers about COVID-19

Introduction and Purpose

This document provides instructions and answers to questions for Texas Long-Term Care (LTC) Ombudsmen regarding the novel coronavirus, also known as COVID-19. Future revisions to the original document will be indicated by *red, italicized text*, and the version dated at the bottom of the document. Unless specified, each reference to “staff ombudsman” in this document includes the managing local ombudsman (MLO). “State office” refers to the HHS Office of the State LTC Ombudsman.

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Program Operations

1. Can an ombudsman visit a nursing facility or assisted living facility (ALF)?

No. All volunteers and staff are temporarily restricted from making an onsite facility visit. In special circumstances, an MLO may obtain approval from the State Ombudsman to conduct a facility visit to investigate a complaint.

2. How long are ombudsman visits restricted?

The restriction began on Friday, March 13, and will extend until at least April 15, 2020. The State Ombudsman will extend this time frame if necessary for the health and safety of LTC facility residents.

3. Should I respond to complaints differently right now?

Yes, some complaints must be reprioritized. Inform the complainant that your ability to work to resolve a complaint is temporarily limited to telephone and email contact with facility staff. Explain that facilities are instructed to prioritize issues related to infection control and abuse, and therefore, these are the issues you are also prioritizing. See guidance in the Complaint Procedures section of this document.

4. How does an ombudsman work to resolve complaints during this time?

Complaint intake, investigation, and resolution must be conducted by phone, email, and video calls such as FaceTime, Skype, and Duo. Specific procedures for this work are described in the "complaint procedures" section of this document.

5. What information should I give to residents, their family members, and other concerned citizens?

For information about COVID-19 and LTC facility operations, refer to the COVID-19 sections of these sites:

- www.dshs.gov
- www.hhsc.gov
- www.cdc.gov
- www.cms.gov

Provide government-issued resources such as information from the CDC and CMS to LTC facilities. State-recommended resources are distributed to staff ombudsmen for distribution to volunteer ombudsmen, residents, facility staff, etc.

6. Should I cancel in-person volunteer training?

Yes. Suspend all in-person training through at least April 15. If possible, provide training by webinar (preferred) or conference call. Subject to availability, our state office GoToMeeting license and support can be provided to you for training.

7. What is the best way to communicate with the regional office of LTC Regulatory Services right now?

Most regulatory staff are temporarily teleworking, so email communication is preferred. Include details on an issue, the facility name and location, and the facility staff, if any, that you have been in contact with about the issue. If you need help with email addresses, request a list from the regional director, or ask state office staff for an address.

Ombudsman Access to Facilities, Residents, and Resident Information

1. Does an ombudsman have access to enter an ALF or a nursing facility during COVID-19 restrictions?

No. CMS has restricted access to LTC facilities for everyone except essential health care personnel and visitors for “compassionate care situations” such as during a resident’s end of life (See Section “Complaint Procedures and Questions Related to COVID-19” for more information on compassionate care situations). Volunteer and staff ombudsmen are prohibited from entering an LTC facility. An MLO must have permission from the State Ombudsman before seeking entry into an LTC facility.

2. What information is an ombudsman entitled to from an LTC facility?

Per 26 TAC §553.801 and 40 TAC §19.413, an ALF and a nursing facility is required to provide an ombudsman immediate and unimpeded access to the name and contact information of an LAR or a responsible party if the ombudsman determines the information is needed to perform a function of the Ombudsman Program. Under the circumstances of ombudsmen not visiting onsite in a facility, the information is needed to perform the function of providing services to protect the health, safety, welfare, and rights of the residents in the facility.

3. What should an ombudsman do if a facility administrator or other employee refuses to provide information necessary to perform the functions of the Ombudsman Program?

Inform the facility staff person of the legal requirements found in 26 TAC §553.801 and 40 TAC §19.413 and escalate the request to facility management as appropriate. If the person does not provide the information within a reasonable time frame, inform the state office of the situation, including the name of the facility, contact information, and other details.

4. I have a care plan meeting scheduled and need to follow up on a complaint, may I be permitted to go onsite to the facility?

No. For the time being, arrange to participate and investigate any complaints by telephone and email. An MLO may only enter a facility if approved by the State Ombudsman.

Complaint Procedures and Questions about COVID-19 Visitation

1. Who may enter a nursing facility?

According to CMS guidance, only essential health care personnel, visitors for “compassionate care situations”, and HHS LTC Regulatory Services can enter a nursing facility.

2. I cover ALFs. Does the CMS guidance apply to them?

That is unclear. Recommend that ALFs apply CMS guidance in their facilities, but because ALFs are not federally regulated by CMS, at this time it serves as a recommendation to ALF operations, not a requirement. If a city or county government issues a more specific restriction on visitors that identifies ALFs, it will apply to ALFs in that city or county.

3. What is a “compassionate care situation?”

This refers to residents who are on hospice or are experiencing the end of life. Compassionate care visitors (family, clergy, bereavement counselors) are required to use personal protective equipment (PPE) and are subject to approval based on the results of screening for recent travel, fever, and respiratory symptoms.

4. How should an ombudsman respond to a complaint about restricted visits to a facility?

Refer to CMS Quality, Safety, and Oversight [memo](#), last updated March 13, 2020. Begin by explaining and providing the CMS guidance regarding restricted visitation. Determine on a case by case basis whether the circumstances of the complaint include an end of life situation, and work to advocate for visitation in those situations. As you work to resolve a visitation complaint with a facility, use the CMS guidance and advocate for the facility to only restrict in accordance with it.

If the case is not an end of life situation, advocate for alternative means of contacting the resident, such as via phone call or video call. If the complainant provided regular care to a resident, such as feeding the resident meals or providing incontinence care, schedule a phone call with the complainant, facility staff,

ombudsman, and resident (to the extent possible) to discuss how facility staff will be meeting these needs.

Discharge

1. A facility set policy to immediately discharge a resident if they leave the facility. If a resident goes out of the facility to a hospital, visit family, or go to a store in the community, can the resident re-enter the building?

The facility has the right and responsibility to screen a resident who leaves the facility, but the facility must allow the resident re-entry and take appropriate precautions (isolation, if appropriate). This is the regulatory perspective as of today. If State or local orders become stricter in the future, this perspective may change.

2. How do I help a resident with a new discharge appeal, or participate in a fair hearing that is already scheduled?

Request an appeal if a discharge notice is received and consent is obtained from the resident or LAR. If the ombudsman is unable to reach the resident who is being discharged by phone, the ombudsman must sign the ombudsman appeal request form and submit it to the State Ombudsman for approval. The State Ombudsman will sign and submit the appeal request form to the OES email address for processing.

If a resident and the ombudsmen are fully prepared for a hearing and the resident can independently call in to participate, proceed with a hearing as scheduled with the ombudsman participating by phone. If a resident needs assistance to join a fair hearing call and agrees to allow the facility staff to assist, coordinate with facility staff to provide phone assistance to the resident. If the resident is unable to participate in the hearing without the ombudsman present or is not comfortable with the facility staff assisting, contact the Fair Hearings Officer on the notice to request a continuance.

Move Out

A family member wants to take their loved one home to temporarily live with them, and the facility is not allowing it. What can an ombudsman do?

Advocate with the facility by phone or email to support a resident's choice to move out of the facility. Involve the facility social worker and the residents MCO service coordinator, if the resident is Medicaid eligible, to identify and establish home care services. Inform the resident and family member that unless Medicaid rules change, after 30 days of living outside of the nursing facility, the resident's nursing facility Medicaid may lapse and in that case the resident must reapply for Medicaid if the resident returns to a nursing facility.

If the facility refuses to allow the resident to leave under similar circumstances, contact the state office and your regional office of LTC Regulatory Services.

Social Distancing of Residents

Per CMS guidance to curtail group activities and communal dining, residents will feel isolated. How can the ombudsman help?

Contact the facility and review [CMS guidance](#) regarding facilitating phone and video calls. An ombudsman can make outreach calls to any residents for whom you have a phone number and may request resident and family members' contact information from the facility. Volunteers can assist in this effort. Advocate with the facility to provide residents activities for reducing boredom, such as arts, reading, movies, and games. Advocate for staff to take residents one at a time, or in small groups, to outdoor areas.

Suspected Case of COVID-19

What should I do if I learn about a resident, family member, facility staff, or ombudsman who may have been exposed to COVID-19?

If the person is a resident, family member, or facility staff, immediately contact the regional office of LTC Regulatory Services and the state office to report the situation. If the person is an ombudsman, instruct the person to contact their health care provider and stay home except to seek medical care. Immediately inform the state office of the name of the ombudsman and name and location of any facilities visited in the previous 14 days.

Required Activities by a Local Ombudsman Entity (LOE)

What are the required activities of an LOE by a staff ombudsman?

An LOE must ensure that a staff ombudsman does the following within 15 days of receipt of this guidance:

- Contact the administrator or manager of each LTC facility to which the staff is assigned to:
 - Request a copy of the current resident census and contact information for residents with personal cell phones to be sent via encrypted email or fax;
 - Request a list of the name and contact information of all legally authorized representatives (LARs) or responsible parties of residents in the facility to be sent via encrypted email or fax;

- Request a copy of facility policies that are temporarily in place regarding visitation, employee and visitor screening, and infection control and quarantine measures;
 - On each call with the administrator of a facility, ask if any residents, facility staff, or visitors tested positive for or suspected of having COVID-19, and immediately report any indication of possible cases to the state office and the regional director of LTC Regulatory Services; and
 - On each call with the administrator of a facility, ask if any incidents have occurred since your last contact with the person regarding abuse, neglect, exploitation, accidents or injuries, and similar serious incidents, and advise the facility to self-report as needed.
- Attempt contact with the president of each facility’s resident council or group, including by facility phone when necessary.
 - Periodically conduct outreach calls to residents with personal cell phones, using guidance in Outreach Calls to Residents and Family Members.
 - Periodically conduct outreach calls to family members whose contact information is available, using guidance in Outreach Calls to Residents and Family Members.
 - Document non-complaint related contact with facility staff, residents, and others as “Information and Assistance” or other appropriate activity categories in accordance with the Ombudsman Policies and Procedures Manual (OPPM).
 - Report other COVID-19 work, even if it is not an action that would typically be reportable as an activity. For example, if you spend 30 minutes reaching out to facilities about COVID-19 but the discussion does not meet the definition of providing “Information and Assistance”, enter that work as "COVID-19 Other". Include a facility name, time spent, and comments to describe the activity.
 - Document complaints received. Include “COVID19” in the reference title of the case record.

Considerations for Remote Work

What should an ombudsman do if their agency requires teleworking?

Most state office staff will temporarily telework. Be prepared to telework if instructed by your host agency.

Plan to:

- access necessary electronic files;
- have your office phone forwarded or be able to regularly check your voicemail;
- set up or update your voicemail message on the phone you will use to work remotely;
- access a secure WiFi network at home;
- designate a location where you have privacy for confidential phone conversations;
- have contact information for staff, volunteers, and the state office;
- send encrypted email; and
- document your work while teleworking.

Staff ombudsmen should never send confidential information via text or from a personal email account. Any messages or notes related to Ombudsman Program work are considered Ombudsman Program records and confidentiality is required.

Suggested Activities for Volunteers

What can volunteers do instead of facility visits?

Provide volunteers with alternative Ombudsman Program work, such as:

- Attend care plan meetings by phone, being sure to obtain permission from the resident or LAR to attend.
- Conduct outreach phone calls to residents, families, and facility staff (See the section titled "Outreach Calls..." below).
- Catch up or get ahead on continuing education hours with [NORC](#) recorded webinars and online training. The state office will release updated instructions on watching the CMS Hand in Hand Dementia Care series that is available online.
- Ask volunteers to write a story about someone they helped in the last year. Use this information in reports and future volunteer recruitment. Examples include a discharge case, why ombudsmen are needed in ALFs, how we can improve the Ombudsman Program, and why volunteers are a special resource to the Ombudsman Program.

Suggested Activities by Staff

What are some things that staff can do instead of facility visits?

Staff will likely be very busy with complaints and other inquiries from facility staff, residents, and family members. After prioritizing complaints, staff ombudsmen can:

- Inform residents, their family members, and facility staff that an ombudsman is available to participate by phone for care plans if the resident or LAR consents to the ombudsman's participation or if the resident is incapacitated and has no LAR.
- Make time for extra volunteer support calls. Develop a short list of things to talk about with a volunteer to help them see that there will be an end to this situation, such as:
 - While we are not visiting, let's think about one or two things we want to help the facility achieve when operations are back to normal. What do you recommend we focus on?
 - Encourage volunteers to take this month to complete all continuing education hours for the year. Provide the NORC website and any relevant recorded Texas ombudsman webinars as resources.
- Ask the facility administrator or manager to have a video call with you and walk through the facility to give the ombudsman a visual of the environment.

Suggested Activities for MLOs

What are some things I should do as a manager of the program?

In addition to the tasks listed in the section above (Suggested Activities by Staff) an MLO can:

- Start a "lessons learned" document from this crisis and get the team's input on it – what would you do again, do differently, etc. Keep it going as you encounter new questions and problems.
- Update your Volunteer Recruitment and Training Plan for this year and 2021, with tentative dates. Set calendar reminders of your plans and tasks to complete.
- Give staff one task a day that's not related to COVID19 to help direct their energy toward the future.
- Work on a systems advocacy project, such as:

- Collecting stories from ombudsmen, residents, and other stakeholders about the work of the Ombudsman Program. These stories can promote the work of the Ombudsman Program to legislators and other stakeholders.
 - Developing ideas for future systems advocacy. For example, what problems do you see that affect many residents?
 - Based on “lessons learned” from the COVID-19 crisis, what recommendations do you have to improve emergency response in the future?
- Update facility and volunteer contact lists.
 - Update and improve your public resources like program information for facility admission packets, advice to someone choosing a facility, and volunteer promotion materials.
 - Organize your files.
 - Develop continuing education plans for the remainder of the year, such as agendas for conference calls, lessons on residents’ rights, and Ombudsman Program work,

Outreach Calls to Residents and Family Members

1. What should I say to a resident or a resident’s family member, if I initiate an outreach call?

Introduce yourself. If you have not called the person before, explain that you got their number from the facility so that you could call and check on how they are doing. Ask:

- how the resident is doing with temporary changes;
- if they have any questions; and
- whether they have seen staff take extra precaution with hand washing and other infection control.

Give your contact information and encourage them to call you if they have questions or concerns in the future.

Seek permission to work any complaints and involve the resident to the maximum extent possible, such as arranging a phone call with management or arranging for the facility staff person to meet the resident in their room and call you to discuss.

2. I use a personal cell phone for work. What can I do to prevent my number from being visible to callers?

If using your personal cell phone, you can block your phone number from being visible by dialing *67, then dialing the phone number you wish to call. When possible, let a resident or family member who expects a return call from you that your number will show "Unknown Caller", or similar, on their phone, and ask them to accept those calls.

3. How do I maintain privacy on a call with a resident?

If staff help is needed, ask the staff person to leave the room and close the door after you connect with the resident. If continuous help is needed, ask the resident to name the staff person he or she is most comfortable getting help from and make the request.

4. How do I verify a complaint by phone and email?

Because you are unable to observe the environment (unless video evidence is available to you), consider the account given by the complainant and attempt to corroborate the account with a second person. Speak with a resident (or second resident) when appropriate. Determine the credibility of the sources and decide if the complaint can be verified. Seek the perspective of an appropriate facility staff when feasible.

Performance Measure Relief

1. Because we cannot make facility visits, will my required visits be reduced for the year?

Yes. Effective 3/15/2020, the required facility visits described in the OPPM are reduced by one visit per facility in the local ombudsman entity's service area. If restrictions are extended past one month, additional relief will be granted, including quarterly visit requirements to each facility.

2. Will not making a facility visit affect an ombudsman's status as an "active certified ombudsman"?

No. Inactivity in the form of facility visits will be ignored during this time frame. This condition will also apply to considerations regarding Certified Ombudsman II status.

3. Do I need to document a leave of absence for volunteers?

No. During the suspension of visits, leave of absence does not need to be recorded for each volunteer and staff.

4. Will 2020 recruitment and volunteer certification goals set by the state office change?

We understand that you may be unable to fulfill recruitment and certification goals for the fiscal year. Many of you have fulfilled your goals or are on track to do so, and we hope that this crisis may bring attention to the need for our services once the crisis has passed. We will revisit volunteer recruitment after the crisis passes and adjust goals when we understand the extent of its effects on volunteerism with LTC facilities.

Resources

[https://volpro.net/coronavirus-and-volunteers/?utm_source=colleague_email&utm_medium=email&utm_campaign=bl
og](https://volpro.net/coronavirus-and-volunteers/?utm_source=colleague_email&utm_medium=email&utm_campaign=bl
og)

<https://www.cdc.gov/coronavirus/2019-ncov/healthcare-facilities/prevent-spread-in-long-term-care-facilities.html>

https://www.cdc.gov/coronavirus/2019-ncov/downloads/novel-coronavirus-2019-Nursing-Homes-Preparedness-Checklist_3_13.pdf

<https://www.cms.gov/files/document/qso-20-14-nh-revised.pdf>