

STATE OF WISCONSIN
Department of Health and Family Services
Division of Long Term Care

DLTC Info Memo Series: 2010-07

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Index Title: Cooperation with Ombudsman Programs

Supersedes DLTC Info Memo 2008-13

To: Listserv

For: Managed Care Organizations
Aging and Disability Resource Centers

From: Susan Crowley
Administrator

Subject: Cooperation with Ombudsman Programs

Document Summary

This memo details the Department's expectations for the working relationship between MCOs, ADRCs, and ombudsman services provided through the Board on Aging and Long Term Care Ombudsman Program and Disability Rights Wisconsin's (DRW) Family Care and IRIS Ombudsman Program. This memo is intended to further interpret and implement the language of Wis. Adm. Code § DHS 10.57.

Background

As of October 1, 2008 the Department of Health Services has contracted with Disability Rights Wisconsin (DRW) for Ombudsman services to current or potential enrollees of the Family Care and Family Care Partnership programs, or to their families or guardians, as required by Wis. Stats. § 46.281(1n)(e) (2007-8). Through 2009 Act 406, Wis. Stats. § 46.281 (1n) (e) was amended to include ombudsman services for IRIS participants ages 18-59.

The Family Care and IRIS Ombudsman program at DRW is in addition to the existing Ombudsman Program through the Wisconsin Board on Aging and Long Term Care (BOALTC). Both of these Ombudsman programs are available to the current or potential enrollees of the Family Care and Family Care Partnership programs or to their families or guardians. The DRW Family Care and IRIS Ombudsman program serves current or potential enrollees who are age 18-59 and the BOALTC Ombudsman program serves current or potential enrollees who are age 60 and older.

Regional Ombudsmen are available to respond to current or potential enrollees' concerns in a timely fashion. Both Ombudsman programs will assist current or potential enrollees in navigating the programs and resolving issues using informal negotiations, whenever possible. Some of the ombudsman services include:

- Assistance with ensuring quantity and quality of services
- Complaint investigation
- Mediation and resolution of conflicts
- Provision of information and education on current and potential enrollees' rights and benefits
- Assistance with preparation for and representation at appeals, grievances and fair hearings

Cooperation with Ombudsman

It is the Department's expectation that each ADRC and MCO informs current and potential enrollees of their rights to ombudsman services, and shall cooperate with any Ombudsman under this program selected by an enrollee or potential enrollee. As provided in the rule, below, cooperation does not allow the unauthorized release of enrollee information or abridge the enrollee's right to confidentiality.

HFS 10.57 Cooperation with advocates.

(1) DEFINITIONS.

In this section:

- (a) "Advocate" means an individual or organization whom a client has chosen to assist him or her in articulating the client's preferences, needs and decisions.
- (b) "Cooperate" means:
 1. To provide any information related to the client's eligibility, entitlement, cost sharing, care planning, care management, services or service providers to the extent that the information is pertinent to matters in which the client has requested the advocate's assistance.
 2. To assure that a client who requests assistance from an advocate is not subject to any form of retribution for doing so.

(2) COOPERATION WITH ADVOCATES. The department and each resource center and CMO shall cooperate with any advocate selected by a client. Nothing in this section allows the unauthorized release of client information or abridges a client's right to confidentiality.

Information related to services or service providers includes contract language between the managed care organization and service providers. The contract language between the Department and a managed care organization is available online for the Ombudsman.

If an Ombudsman under the contract with DRW is requesting information that falls within the definition of protected health information (PHI) under HIPAA, the ADRC and/or the MCO should explain their local policies and procedures related to release of protected member information.

Board on Aging and Long Term Care Statutory Authority

The BOALTC Ombudsman program has, by statute, authority to obtain access to all residents and tenants of Wisconsin nursing homes, Community Based Residential Facilities (CBRF's), Residential Care Apartment Complexes (RCAC's), and persons served by the Community Options Program and Family Care/Partnership programs. The BOALTC ombudsman program is not under contract with DHS because the program was mandated by Congress through the Older Americans Act and operating in Wisconsin since 1972.

The BOALTC has authority through Wis. Stat. § 16.009 (4)(1)(e) to have access to person specific information without consent in limited circumstances:

- If the resident's guardian refuses to consent;
- If the ombudsman or designated representative has reason to believe that the guardian is not acting in the best interested of the resident; and
- For investigations only by a designated representative, if the designated representative obtains the approval of the ombudsman.

It is the general practice of the BOALTC to use a standard release that they have an individual sign to authorize access to records.

The Department is pleased to have Ombudsman programs available for all current and potential enrollees. The Ombudsman programs along with the MCOs' Member Rights Specialists are integral to protecting the enrollees' rights and ensuring quality.

Ombudsman Programs Contact Information:

Per the Department contract with the Managed Care Organizations, the Ombudsman Programs contact information should appear in each Managed Care Organization's member handbook and notice of action form.

- **Disability Rights Wisconsin** (DRW) Ombudsmen from this agency provide advocacy to Family Care and Partnership members age 18-59.

131 W. Wilson St., Suite 700
Madison, WI 53703
608-267-0214
TTY: 888-758-6049
Fax: 608-267-0368
Madison Toll-free: 800-928-8778
Milwaukee Toll-free: 800-708-3034
Rice Lake Toll-free: 877-338-3724
<http://www.disabilityrightswi.org>
(includes contact information for other locations)

- **Wisconsin Board on Aging and Long Term Care** Ombudsmen from this agency provide advocacy to Family Care and Partnership members 60 and older.

Board on Aging and Long Term Care
1402 Pankratz Street, Suite 111
Madison, WI 53704-4001
Toll-free: 800-815-0015
Fax: 608-246-7001
<http://longtermcare.wi.gov/>

DHS CENTRAL OFFICE CONTACT:

Rebecca Murray
1 W. Wilson, Rm. 518
Madison, WI 53703
Rebecca.Murray@dhs.wisconsin.gov

MEMO WEB SITE: http://dhs.wisconsin.gov/dsl_info/

cc: All DLTC Councils and Committees
Disability Rights Wisconsin
Board on Aging and Long Term Care
Wisconsin Council of Independent Living Centers
Independent Living Council of Wisconsin
Grass Roots Empowerment Program
People First
ARC Wisconsin
Wisconsin Homes and Services for the Aging
OFCE staff
Area Administrators / Human Services Area Coordinators