



Ohio Revised Code

Section 173.20 Access to records; subpoena power.

Effective: September 29, 2013

Legislation: House Bill 59 - 130th General Assembly

(A) If consent is given and unless otherwise prohibited by law, a representative of the office of the state long-term care ombudsman program shall have access to any records, including medical records, of a resident or a recipient that are reasonably necessary for investigation of a complaint.

Consent may be given in any of the following ways:

(1) In writing by the resident or recipient;

(2) Orally by the resident or recipient, witnessed in writing at the time it is given by one other person, and, if the records involved are being maintained by a long-term care provider, also by an employee of the long-term care provider designated under division (E)(1) of this section;

(3) In writing by the guardian of the resident or recipient;

(4) In writing by the attorney in fact of the resident or recipient, if the resident or recipient has authorized the attorney in fact to give such consent;

(5) In writing by the executor or administrator of the estate of a deceased resident or recipient.

(B) If consent to access to records is not refused by a resident or recipient or the resident's or recipient's legal representative but cannot be obtained and any of the following circumstances exist, a representative of the office of the state long-term care ombudsman program, on approval of the state long-term care ombudsman, may inspect the records of a resident or a recipient, including medical records, that are reasonably necessary for investigation of a complaint:

(1) The resident or recipient is unable to express written or oral consent and there is no guardian or attorney in fact;

(2) There is a guardian or attorney in fact, but the guardian or attorney in fact cannot be contacted



within three working days;

(3) There is a guardianship or durable power of attorney, but its existence is unknown by the long-term care provider and the representative of the office at the time of the investigation;

(4) There is no executor or administrator of the estate of a deceased resident or recipient.

(C) If a representative of the office of the state long-term care ombudsman program has been refused access to records by a guardian or attorney in fact, but has reasonable cause to believe that the guardian or attorney in fact is not acting in the best interests of the resident or recipient, the representative may, on approval of the state long-term care ombudsman, inspect the records of the resident or recipient, including medical records, that are reasonably necessary for investigation of a complaint.

(D) A representative of the office of the state long-term care ombudsman program shall have access to any records of a long-term care provider reasonably necessary to an investigation conducted under this section, including but not limited to: incident reports, dietary records, policies and procedures of a facility required to be maintained under section 5165.06 of the Revised Code, admission agreements, staffing schedules, any document depicting the actual staffing pattern of the provider, any financial records that are matters of public record, resident council and grievance committee minutes, and any waiting list maintained by a facility in accordance with section 5165.08 of the Revised Code, or any similar records or lists maintained by a provider of community-based long-term care services. Pursuant to division (E)(2) of this section, a representative shall be permitted to make or obtain copies of any of these records after giving the long-term care provider twenty-four hours' notice. A long-term care provider may impose a charge for providing copies of records under this division that does not exceed the actual and necessary expense of making the copies.

The state ombudsman shall take whatever action is necessary to ensure that any copy of a record made or obtained under this division is returned to the long-term care provider no later than three years after the date the investigation for which the copy was made or obtained is completed.

(E)(1) Each long-term care provider shall designate one or more of its employees to be responsible



for witnessing the giving of oral consent under division (A) of this section. In the event that a designated employee is not available when a resident or recipient attempts to give oral consent, the provider shall designate another employee to witness the consent.

(2) Each long-term care provider shall designate one or more of its employees to be responsible for releasing records for copying to representatives of the office of the long-term care ombudsman program who request permission to make or obtain copies of records specified in division (D) of this section. In the event that a designated employee is not available when a representative of the office makes the request, the long-term care provider shall designate another employee to release the records for copying.

(F) A long-term care provider or any employee of such a provider is immune from civil or criminal liability or action taken pursuant to a professional disciplinary procedure for the release or disclosure of records to a representative of the office pursuant to this section.

(G) A state or local government agency or entity with records relevant to a complaint or investigation being conducted by a representative of the office shall provide the representative access to the records.

(H) The state ombudsman, with the approval of the director of aging, may issue a subpoena to compel any person the ombudsman reasonably believes may be able to provide information to appear before the ombudsman or the ombudsman's designee and give sworn testimony and to produce documents, books, records, papers, or other evidence the state ombudsman believes is relevant to the investigation. On the refusal of a witness to be sworn or to answer any question put to the witness, or if a person disobeys a subpoena, the ombudsman shall apply to the Franklin county court of common pleas for a contempt order, as in the case of disobedience of the requirements of a subpoena issued from the court, or a refusal to testify in the court.

(I) The state ombudsman may petition the court of common pleas in the county in which a long-term care facility is located to issue an injunction against any long-term care facility in violation of sections 3721.10 to 3721.17 of the Revised Code.

(J) Any suspected violation of Chapter 3721. of the Revised Code discovered during the course of



an investigation may be reported to the department of health. Any suspected criminal violation discovered during the course of an investigation shall be reported to the attorney general or other appropriate law enforcement authorities.

(K) The department of aging shall adopt rules in accordance with Chapter 119. of the Revised Code for referral by the state ombudsman and regional long-term care ombudsman programs of complaints to other public agencies or entities. A public agency or entity to which a complaint is referred shall keep the state ombudsman or regional program handling the complaint advised and notified in writing in a timely manner of the disposition of the complaint to the extent permitted by law.