

## Chapter 47.62.

# OFFICE OF THE LONG TERM CARE OMBUDSMAN

### Sec. 47.62.010. Office established.

- (a) The office of the long term care ombudsman is established in the Alaska Mental Health Trust Authority ([AS 47.30.011](#)).
- (b) The ombudsman shall be hired by the authority. A member of the authority who has a financial interest in a long term care facility in the state, or who has any other conflict of interest, may not participate in the hiring of the ombudsman. The ombudsman is a full-time position in the classified service. The ombudsman shall be compensated at no less than Range 21 of the pay plan for state employees under [AS 39.27.011](#).
- (c) The ombudsman may not have a financial interest in a long term care facility in the state. The authority shall adopt regulations to ensure that the ombudsman, and employees and volunteers of the office, do not have a conflict of interest or an appearance of a conflict of interest.

### Sec. 47.62.015. Duties and powers of the long term care ombudsman.

- (a) The ombudsman shall investigate and resolve a complaint made by or on behalf of an older Alaskan who resides in a long term care facility in the state if the complaint relates to a decision, action, or failure to act by a provider or a representative of a provider of long term care services, or by a public agency or social services agency, that may adversely affect the health, safety, welfare, or rights of the older Alaskan.
- (b) The ombudsman may investigate and resolve a complaint made by or on behalf of an older Alaskan relating to the long term care or residential circumstances of the older Alaskan. Complaints under this subsection may relate to any issue not covered under (a) of this section, including the older Alaskan's landlord, senior citizen housing, a public assistance program, a public grant program for services to older Alaskans, public utilities, health care facilities, and health care providers.
- (c) The ombudsman may
  - (1) subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with a complaint described under (a) of this section; the powers described in this paragraph shall be enforced by the superior court;
  - (2) pursue administrative, legal, or other appropriate remedies on behalf of an older Alaskan who resides in a long term care facility in the state.

### Sec. 47.62.020. Training and certification of staff.

- (a) The ombudsman shall provide for the training and certification of office staff, including volunteers and other representatives of the office. Training must include instruction in federal, state, and local laws and policies relating to long term care facilities in the state, and in investigative techniques. The ombudsman may require

other appropriate training. The ombudsman may decertify a person under this section for good cause in accordance with regulations adopted by the authority.

- (b) An employee, volunteer, or other representative of the office may not investigate a complaint under AS 47.62.015 unless certified as having completed training under this section and approved by the ombudsman as qualified to investigate the complaint.

**Sec. 47.62.025. Access to long term care facilities, older Alaskans, and records.**

- (a) A person may not deny access to a long term care facility or to an older Alaskan by the ombudsman or an employee, volunteer, or other representative of the office.
- (b) Notwithstanding the provisions of AS 47.62.015 (c)(1), the ombudsman may obtain medical or other records of an older Alaskan who resides in a long term care facility in the state only with the consent of the older Alaskan or the older Alaskan's legal guardian or, if the older Alaskan is unable or incompetent to consent and does not have a legal guardian, only with a court order.

**Sec. 47.62.030. Confidentiality.**

- (a) Records obtained or maintained by the ombudsman are confidential, are not subject to inspection or copying under AS 40.25.110 - 40.25.120 and, except as provided in (b) of this section, may be disclosed only at the discretion of the ombudsman.
- (b) The identity of a complainant or an older Alaskan on whose behalf a complaint is made may not be disclosed without the consent of the identified person or the person's legal guardian, unless required by court order.

**Sec. 47.62.035. Immunity from liability.**

- (a) A person who, in good faith, makes a complaint described in AS 47.62.015 is immune from civil or criminal liability that might otherwise exist for making the complaint.
- (b) The ombudsman, or an employee, volunteer, or other representative of the office, is immune from civil or criminal liability for the good faith performance of official duties.

**Sec. 47.62.040. Interference with the long term care ombudsman and retaliation prohibited.**

- (a) A person may not intentionally interfere with the ombudsman, or an employee, volunteer, or representative of the office, in the performance of official duties under AS 47.62.015 .
- (b) If a person makes a good faith complaint described in AS 47.62.015, an employer or supervisor of the person, or a public or private agency or entity that provides benefits, services, or housing to the person, may not discharge, demote, transfer, reduce the pay or benefits or work privileges of, prepare a negative work performance evaluation of, deny or withhold benefits or services, evict, or take other detrimental action against the person because of the complaint. The person making

the complaint may bring a civil action for compensatory and punitive damages against an employer, supervisor, agency, or entity that violates this subsection. In the civil action there is a rebuttable presumption that the detrimental action was retaliatory if it was taken within 90 days after the complaint was made.

(c) A person who violates this section is guilty of a class B misdemeanor.

**Sec. 47.62.050. Legal counsel for the long term care ombudsman.**

The attorney general shall provide legal advice and representation in connection with any matter relating to the powers, duties, and operation of the office, and in any legal action brought against the ombudsman or an employee, volunteer, or other representative of the office. If the attorney general cannot provide legal advice or representation because of a conflict of interest, the ombudsman may employ private legal counsel.

**Sec. 47.62.060. Cooperative agreements.**

The authority shall enter into cooperative agreements concerning the operations of the office, including protocols for investigations, with state and local agencies that have jurisdiction over long term care facilities or over the abuse and neglect of older Alaskans.

**Sec. 47.62.090. Definitions.**

In [AS 47.62.010](#) - 47.62.090,

- (1) "authority" means the Alaska Mental Health Trust Authority established in AS 47.30.011 ;
- (2) "long term care facility" means an assisted living home that is required to be licensed under AS 47.33 and a nursing home as defined in AS 08.70.180 ;
- (3) "office" means the office of the long term care ombudsman;
- (4) "older Alaskan" means a resident who is 60 years of age or older;
- (5) "ombudsman" means the long term care ombudsman hired under AS 47.62.010;
- (6) "senior citizen housing" has the meaning given "senior housing" in AS 18.56.799 .