

173-14-19**Case records and reporting of core services.**

- (A) The complaint case record shall include only objective observations of items such as the consumer's physical condition, behavior, conversations, and other facts that are revealed during the course of the investigation. In addition, where appropriate to the complaint, all complex complaint case records shall contain the data required in ODIS.
- (B) Documentation of advocacy and general-information services shall include only objective information required in ODIS.
- (C) All records shall be retained by the SLTCO or regional programs for three years after the case is closed.
- (D) Representatives shall contemporaneously document all activity in ODIS within six days after the activity is performed. For the purposes of this paragraph, "contemporaneously" means activity is documented within six days after the activity is performed.
- (E) Access to case records and other reports of ombudsman activity contained in ODIS is limited to representatives.
- (F) Information contained in the records maintained by the office and the regional programs shall be released only at the discretion of the SLTCO. Identities of consumers, witnesses, and complainants shall not be released absent a court order.
- (1) When a record, either in whole or in part, or a request to submit to deposition or to testify in an administrative or judicial proceeding, is requested by a party outside of the office, the request must be submitted upon receipt to the office or the regional program in writing for consideration.
- (2) When any representative receives a request for a record, either in whole or in part, the representative shall notify the SLTCO in writing within one business day. When any representative receives a request to submit to deposition or to testify in an administrative or judicial proceeding, the representative shall notify the SLTCO immediately, by telephone.
- (3) Within one business day after notification, the ombudsman shall submit the written request and complete and submit a form approved by the SLTCO to the SLTCO or the designee of the SLTCO by facsimile transmission (in the case of a regional ombudsman receiving the request) describing the case involved, the circumstance for the request, and other required information in a format prescribed by the SLTCO.

- (4) The SLTCO or the designee of the SLTCO shall review the records requested and discuss the circumstance with the ombudsman to discuss whether to release or withhold records.
- (5) As appropriate, the SLTCO or the designee of the SLTCO shall secure permission from the consumer or complainant to release identity. Names and identifying information about consumers, complaints, and/or witnesses shall not be released without written consent of the affected individuals or their legally authorized representatives who have the proper scope of authority to provide such consent, unless required by court order. The SLTCO may request that the regional ombudsman seek the required consent.
- (6) The SLTCO or the designee of the SLTCO shall consult with legal counsel as needed.
- (7) As necessary, and as requested by the SLTCO, the role of the SLTCO's legal counsel shall include the following:
  - (a) Negotiating with the party issuing the request in order to implement the SLTCO determination.
  - (b) Explaining the confidentiality restrictions.
  - (c) Advising the SLTCO on the risks and benefits of disclosure.
  - (d) Taking action to quash the request.
  - (e) Being present during deposition or testimony.
- (8) When an ombudsman advocates for a consumer at an administrative hearing (e.g., discharge hearing, medicare/medicaid appeal hearing) according to an established action plan, the ombudsman may present copies of consumer medical records obtained during the course of the investigation with consumer consent as it is determined necessary to advocate for the consumer and according to ombudsman laws, rules, and policies to protect confidentiality.

Replaces: 173-14-19

Effective:

Five Year Review (FYR) Dates:

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Certification

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Date

Promulgated Under: 119.03

Statutory Authority: 173.01, 173.02, 173.19; 42 U.S.C. 3025(a)(1)(C),  
3058g(a)(5)(D); 45 C.F.R. 1321.11, 1324.11(e)(2),  
1324.11(e)(3), 1324.13(b)(1), 1324.15(b)

Rule Amplifies: 173.19, 173.20; 42 U.S.C. 3058g; 45 C.F.R. 1321.11,  
1324.11(e)(2), 1324.11(e)(3), 1324.19(b)

Prior Effective Dates: 07/11/1991, 12/27/2001, 12/28/2006