

# WEST VIRGINIA CODE: §16-5L-12

## §16-5L-12. Access to records.

(a) The long-term care ombudsman is allowed access to any resident's records, including medical records, reasonably necessary to any investigation carried out pursuant to the provisions of section ten of this article, under the following conditions:

(1) If the resident is competent and has the ability to write, access may only be obtained by the written consent of the resident;

(2) If the resident is competent but unable to write, oral consent may be given in the presence of a third party who shall witness the resident's consent in writing;

(3) If the resident is under a guardianship committee as set forth in article eleven, chapter twenty-seven of this code or has granted a medical power of attorney which is in effect as set forth in article thirty-a, chapter sixteen of this code, or granted any other power of attorney which is in effect, access may only be obtained by the written consent of the guardian or attorney in fact, unless the existence of guardianship, medical power of attorney or attorney in fact is unknown to the long-term care ombudsman upon investigation and to the long-term care facility, or unless the guardian or attorney in fact cannot be reached through normal communications channels within five working days;

(4) If the resident is unable to express written or oral consent and there is no guardian or attorney in fact or the notification of the guardian or attorney in fact is not achieved for the reasons set forth in subsection (3) of this section, or if the resident is deceased, inspection of records may be made by the ombudsman.

(b) The state or regional long-term care ombudsman is allowed access to all records of any long-term care facility that are reasonably necessary for the investigation of a complaint under section ten of this article, including, but not limited to, facility incident reports, dietary records, policies and procedures of the facility that the facility is required to maintain under federal or state law, admission agreements, staffing schedules, any document depicting the actual staffing pattern of the facility and resident council and grievance committee minutes.