



Resident Rights and Relationships in Long-Term Care

This statement paper reflects the current understanding and position of the Long-Term Care Ombudsman Program within the Board on Aging and Long Term Care (BOALTC). It is written from a resident rights perspective and is intended for educational purposes to support resident-focused conversations and decision-making. This document does not constitute legal advice or regulatory or enforcement guidance.

The Ombudsman Program acknowledges and respects the diverse expressions of sexuality and various types of sexual relationships. All individuals residing in long-term care settings retain the full rights guaranteed by both state and federal law. The Ombudsman Program is committed to supporting residents and encouraging staff to listen to residents regarding their personal choices. It is important that we accept and uphold the dignity of each person living in a long-term care community.

Residents have the right to form friendships. When considering intimate and sexual relationships, the community where the resident resides is responsible for ensuring that residents can consent to these relationships. Consent for such relationships is a personal decision and cannot be delegated to anyone else, including legal representatives (e.g. power of attorney for health care, guardian), family, medical doctors, or other providers. Both partners need to be able to consent. If one or both are unable to consent, it would be considered a non-consensual relationship. The outcome of assessments and evaluations of capacity to consent must be care-planned for each partner. Personal choices and judgments of other people should not interfere with a resident's right to a specific friendship or relationship. If there is a valid safety concern, residents and providers will acknowledge it, assess the potential risk, and work together to address it.

Facilities are responsible for ensuring that consent is properly obtained through thorough assessment and that the residents involved in a relationship fully understand the nature of that relationship. The facility must also create and implement care plans that uphold the residents' rights and promote the residents' overall well-being, including physical, emotional, and psychosocial needs. Failing to appropriately care-plan or assess capacity to consent may result in legal consequences, including accusations or findings of sexual assault or harassment as defined in Wisconsin State Statute 940.225(5)(b).

The Ombudsman Program has established guidance for facilities to consider when assessing whether a resident has the capacity to consent. It is recommended that for sexual and intimate relationships, the assessment for consent be ongoing and occur during a care plan review. Additionally, all facility staff should be attentive to and report internally any changes observed in resident relationships or behavior. Staff must know what to look for and feel comfortable sharing their observations with their leadership to ensure timely interventions and reassessments.

Questions? Contact the Wisconsin Long Term Care Ombudsman Program.

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