



State of South Carolina
Department on Aging

Henry McMaster
Governor

Connie D. Munn
Director

January 6, 2021

Dr. L. Brannon Traxler, MD, MPH
Public Health Interim Director
S.C. Department of Health & Environmental Control
2600 Bull Street
Columbia, SC 29201

Dear Dr. Traxler,

I am writing to respectfully request that staff from the Long Term Care Ombudsman Program (Ombudsman) and the Vulnerable Adult Guardian ad Litem Program (VAGAL), two divisions within the S.C. Department on Aging, be given priority status for receipt of the COVID-19 vaccine. Both federal and state law mandate the duties performed by each of these programs on behalf of vulnerable adults throughout the State of South Carolina, thereby conferring upon them the status of essential workers. I have outlined each of the programs and their mandates under both federal and state law below so that that the Department of Health and Environmental Control (“DHEC”) and the vaccination task force will have the necessary facts for them to make their decision.

The Long-Term Care Ombudsman Program

The United States Congress, through the Older Americans Act (42 U.S.C. § 3001 et. seq.), mandates that the State Long-Term Care Ombudsman and representatives of the office identify, investigate, and resolve complaints made by or on behalf of residents in long-term care facilities that affect the health, safety, welfare and rights of said residents.¹ This includes allegations of abuse, neglect, and exploitation as well as matters of residents’ rights and standard of care. Representatives of the Ombudsman office investigate complaints made by or on behalf of residents in intermediate care facilities, residential care facilities, as well as facilities operated by or contracted for operation by the Department of Mental Health in addition to the Department of Disabilities and Special Needs, as outlined in the South Carolina Code of Laws.² In short, Long Term Care Ombudsmen advocate for the resident to ensure quality care is provided to them.

In a document entitled, “*FAQs for Nursing Homes and Assisted Living Facilities*,” issued by DHEC on June 24, 2020, the agency clarified that Ombudsman representatives are not considered “visitors” and

¹ 42 U.S.C. § 3058g(a) (see also S.C. Code Ann. §43-35-15(B)).

² S.C. Code Ann. § 43-38-10.

that residents should have continued access to the program and its representatives at facilities in South Carolina, except where infection control concerns are present.

The Vulnerable Adult Guardian ad Litem Program

The VAGAL program is responsible for providing guardians ad litem for vulnerable adults who are in the custody of the Adult Protective Services division of the S.C. Department of Social Services. According to state law, the Family Court in each circuit within the State must appoint a guardian ad litem within ten days of Adult Protective Services petitioning the court for protective services for the vulnerable adult.³

By law, guardians ad litem must conduct an assessment of the facts and the needs of the vulnerable adult relevant to his or her situation⁴, and VAGAL program representatives must legally meet with and observe the vulnerable adult on at least one occasion.⁵ In most situations, the Guardian ad Litem meets with the vulnerable adult at a hospital, skilled nursing facility, assisted living facility, or the adult's home.

In closing, I believe the mandates under both federal and state law for each of these programs grant their representatives status as essential workers and should prioritize those program representatives for vaccination should they consent to do so. Both the Long Term Care Ombudsman Program and the VAGAL program continue to follow all required safeguards/protocols when conducting visits. Vaccinating representatives from these programs will help to ensure that they can safely continue to conduct their essential duties, and protect the vulnerable adults and seniors they serve.

I greatly appreciate the opportunity to advocate for these two groups of essential workers to have the vaccines available to them in phase 1-B and thank you in advance for your consideration.

Sincerely,



Connie Munn

³ S.C. Code Ann. § 43-35-45(B)-(C).

⁴ Id. at § 43-35-220(A)(2).

⁵ Id. At §43-35-220(B)(2).