

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 403
SENATE BILL 80

AN ACT TO ESTABLISH A LONG-TERM CARE OMBUDSMAN PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 4D. Long-Term Care Ombudsman Program.

"§ 143B-181.15. Long-Term Care Ombudsman Program/Office; policy.

The General Assembly finds that a significant number of older citizens of this State reside in long-term care facilities and are dependent on others to provide their care. It is the intent of the General Assembly to protect and improve the quality of care and life for residents through the establishment of a program to assist residents and providers in the resolution of complaints or common concerns, to promote community involvement and volunteerism in long-term care facilities, and to educate the public about the long-term care system. It is the further intent of the General Assembly that the Department of Human Resources, within available resources and pursuant to its duties under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001-3057g, ensure that the quality of care and life for these residents is maintained, that necessary reports are made, and that, when necessary, corrective action is taken at the Department level.

"§ 143B-181.16. Long-Term Care Ombudsman Program/Office; definition.

Unless the content clearly requires otherwise, as used in this Article:

- (1) 'Long-term care facility' means any skilled nursing facility and intermediate care facility as defined in G.S. 131A-(4) or any domiciliary home as defined in G.S. 131D-20(2).
- (2) 'Resident' means any person who is receiving treatment or care in any long-term care facility.
- (3) 'State Ombudsman' means the State Ombudsman as defined by the Older Americans Act of 1965, as amended, who carries out the duties and functions established by this Article.
- (4) 'Regional Ombudsman' means a person employed by an Area Agency on Aging to carry out the functions of the Regional Ombudsman Office established by this Article.

"§ 143B-181.17. Office of State Long-Term Care Ombudsman Program/Office; establishment.

The Secretary of Department of Human Resources shall establish and maintain the Office of State Long-Term Ombudsman in the Division of Aging. The Office shall carry out the functions and duties required by the Older Americans Act of 1965, as

amended. This Office shall be headed by a State Ombudsman who is a person qualified by training and with experience in geriatrics and long-term care. The Attorney General shall provide legal staff and advice to this Office.

"§ 143B-181.18. Office of State Long-Term Care Ombudsman Program/State Ombudsman duties.

The State Ombudsman shall:

- (1) Promote community involvement with long-term care provider and residents of long-term care facilities and serve as liaison between residents, residents' families, facility personnel, and facility administration;
- (2) Supervise the Long-Term Care Program pursuant to rules adopted by the Secretary of the Department of Human Resources pursuant to G.S. 143B-10;
- (3) Certify regional ombudsmen. Certification requirements shall include an internship training in the aging process, complaint resolution, long-term care issues, mediation techniques, recruitment and training of volunteers, and relevant federal, State, and local laws, policies, and standards;
- (4) Attempt to resolve complaints made by or on behalf of individuals who are residents of long-term care facilities, which complaints relate to administrative action that may adversely affect the health, safety, or welfare of residents;
- (5) Provide training and technical assistance to regional ombudsmen;
- (6) Establish procedures for appropriate access by regional ombudsmen to long-term care facilities and residents' records including procedures to protect the confidentiality of these records and to ensure that the identity of any complainant or resident will not be disclosed without the written consent of the complainant or resident or upon court order;
- (7) Analyze data relating to complaints and conditions in long-term care facilities to identify significant problems and recommend solutions;
- (8) Prepare an annual report containing data and findings regarding the types of problems experienced and complaints reported by residents as well as recommendations for resolutions of identified long-term care issues;
- (9) Prepare findings regarding public education and community involvement efforts and innovative programs being provided in long-term care facilities; and
- (10) Provide information to public agencies, and through the State Ombudsman, to legislators, and others regarding problems encountered by residents or providers as well as recommendations for resolution.

"§ 143B-181.19. Office of Regional Long-Term Care Ombudsman; Regional Ombudsman; duties.

(a) An Office of Regional Ombudsman Program shall be established in each of the Area Agencies on Aging, and shall be headed by a Regional Ombudsman who shall carry out the functions and duties of the Office. The Area Agency on Aging administration shall provide administrative supervision to each Regional Ombudsman.

(b) Pursuant to policies and procedures established by the State Office of Long-Term Care Ombudsman, the Regional Ombudsman shall:

- (1) Promote community involvement with long-term care facilities and residents of long-term care facilities and serve as a liaison between residents, residents' families, facility personnel, and facility administration;
- (2) Receive and attempt to resolve complaints made by or on behalf of residents in long-term care facilities;
- (3) Collect data about the number and types of complaints handled;
- (4) Work with long-term care providers to resolve issues of common concern;
- (5) Work with long-term care providers to promote increased community involvement;
- (6) Offer assistance to long-term care providers in staff training regarding residents' rights;
- (7) Report regularly to the office of State Ombudsman about the data collected and about the activities of the Regional Ombudsman;
- (8) Provide training and technical assistance to the community advisory committees; and
- (9) Provide information to the general public on long-term care issues.

"§ 143B-181.20. State/Regional Long-Term Care Ombudsman; authority to enter; cooperation of government agencies; communication with residents.

(a) The State and Regional Ombudsman may enter any long-term care facility and may have reasonable access to any resident in the reasonable pursuit of his function. The Ombudsman may communicate privately and confidentially with residents of the facility individually or in groups. The Ombudsman shall have access to the patient records of any resident, under procedures established by the State Ombudsman pursuant to G.S.143B-181.18(6), provided that the medical and personal financial records pertaining to an individual resident may be inspected only with the permission of the resident or his legally appointed guardian, if any. Entry shall be conducted in a manner that will not significantly disrupt the provision of nursing or other care to residents and if the long-term care facility requires registration of all visitors entering the facility, then the State or Regional Ombudsman must also register. Any State or Regional Ombudsman who discloses any information obtained from the patient's medical or personal financial records without a court order or without authorization in writing from the resident, or his legal representative, is guilty of a general misdemeanor.

(b) The State or Regional Ombudsman shall identify himself as such to the resident, and the resident has the right to refuse to communicate with the Ombudsman.

(c) The resident has the right to participate in planning any course of action to be taken on his behalf by the State or Regional Ombudsman, and the resident has the right

to approve or disapprove any proposed action to be taken on his behalf by the Ombudsman.

(d) The State or Regional Ombudsman shall meet with the facility administrator or person in charge before any action is taken to allow the facility the opportunity to respond, provide additional information, or take appropriate action to resolve the concern.

(e) The State and Regional Ombudsman may obtain from any government agency, and this agency shall provide, that cooperation, assistance, services, data, and access to files and records that will enable the Ombudsman to properly perform his duties and exercise his powers, provided this information is not privileged by law.

(f) If the subject of the complaint involves suspected abuse, neglect, or exploitation, the State or Regional Ombudsman shall notify the county department of social services' Adult Protection Services section of the county department of social services, pursuant to Article 6 of Chapter 108A of the General Statutes.

"§ 143B-181.21. State/Regional Long-Term Care Ombudsman; resolution of complaints.

(a) Following receipt of a complaint, the State or Regional Ombudsman shall attempt to resolve the complaint using, whenever possible, informal technique of mediation, conciliation, and persuasion.

(b) Complaints or conditions adversely affecting residents of long-term care facilities that cannot be resolved in the manner described in subsection (a) of this section shall be referred by the State or Regional Ombudsman to the appropriate licensure agency pursuant to G.S. 131E-100 through 110 and G.S.131D-2.

"§ 143B-181.22. State/Regional Long-Term Care Ombudsman; confidentiality.

The identity of any complainant, resident on whose behalf a complaint is made, or individual providing information on behalf of the resident or complainant relevant to the attempted resolution of a complaint is confidential and may be disclosed only with the express permission of the person. The information produced by the process of complaint resolution may be disclosed by the State Ombudsman or Regional Ombudsman only if the identity of any such person is not disclosed by name or inference. If the identity of any such person is disclosed by name or inference in such information, the information may be disclosed only with his express permission. If the complaint becomes the subject of a judicial proceeding, the investigative information may be disclosed for the purpose of the proceeding.

"§ 143B-181.23. State/Regional Long-Term Care Ombudsman; prohibition of retaliation.

No person shall discriminate or retaliate in any manner against any resident or relative or guardian of a resident, any employee of a long-term care facility, or any other person because of the making of a complaint or providing of information in good faith to the State Ombudsman or Regional Ombudsman.

"§ 143B-181.24. Office of State/Regional Long-Term Care Ombudsman; immunity from liability.

No representative of the Office shall be liable for good faith performance of official duties.

"§ 143B-181.25. Office of State/Regional Long-Term Care Ombudsman; penalty for willful interference.

Willful or unnecessary obstruction with the State or Regional Long-Term Care Ombudsman in the performance of his official duties is a general misdemeanor."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1989.