

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 308  
Senate Health Care Committee Substitute Adopted 7/21/15

Short Title: Clarify Reasonable Health Insur/LTC Ombudsman.

(Public)

Sponsors:

Referred to:

March 23, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS PERTAINING TO THE MEDICAL SUPPORT AND HEALTH INSURANCE COVERAGE RELATING TO CHILD SUPPORT TO ALIGN STATE LAW WITH FEDERAL GUIDELINES THAT NO LONGER INCLUDE THE PROVISION THAT EMPLOYER-PROVIDED GROUP HEALTH INSURANCE IS AUTOMATICALLY CONSIDERED "REASONABLE" AND TO MODIFY THE LONG-TERM CARE OMBUDSMAN PROGRAM TO CONFORM WITH FEDERAL GUIDELINES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 50-13.11(a1) reads as rewritten:

"(a1) The court shall order the parent of a minor child or other responsible party to maintain health insurance for the benefit of the child when health insurance is available at a reasonable cost. If health insurance is not presently available at a reasonable cost, the court shall order the parent of a minor child or other responsible party to maintain health insurance for the benefit of the child when health insurance becomes available at a reasonable cost. As used in this subsection, health insurance for the benefit of the child is considered reasonable in cost if it is employment related or other group health insurance, regardless of service delivery mechanism, the coverage for the child is available at a cost to the parent that does not exceed five percent (5%) of the parent's gross income. In applying this standard, the cost is the cost of (i) adding the child to the parent's existing coverage, (ii) child-only coverage, or (iii) if new coverage must be obtained, the difference between the cost of self-only and family coverage. The court may require one or both parties to maintain dental insurance."

**SECTION 2.** Part 14D of Chapter 143B of the General Statutes reads as rewritten:

"Part 14D. 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 Health and Human Services, within available resources and pursuant to its duties under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., and regulations promulgated thereunder, 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.



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**"§ 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-3(4) or any adult care home as defined in G.S. 131D-20(2).
- (1b) "Programmatic supervision" means the monitoring of the performance of the duties of the Regional Ombudsman and ensuring that the Area Agency on Aging does not have personnel policies or practices that conflict with the laws and policies governing the Ombudsman Program as performed by the State Ombudsman.
- (1c) "Regional Ombudsman" means a person employed by an Area Agency on Aging who is certified and designated by the State Ombudsman to carry out the functions of the Regional Ombudsman Office established by this Article, 42 U.S.C. § 3001, et seq. and regulations promulgated thereunder.
- (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, 42 U.S.C. § 3001 et seq., and regulations promulgated thereunder, who carries out the duties and functions established by this ~~Article~~Article and 42 U.S.C. § 3001, et seq. and regulations promulgated thereunder.
- (4) "Willful interference" means actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman or a representative of the Office from performing any of the functions, responsibilities, or duties set forth in 42 U.S.C. § 3001 et seq., and regulations promulgated thereunder.

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

The Secretary of Department of Health and Human Services 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~~amended, and as set forth in 42 U.S.C. § 3001 et seq. and regulations promulgated thereunder. 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~~shall perform the duties provided below:

- (1) Promote community involvement with long-term care providers and residents of long-term care facilities and serve as liaison between residents, residents' families, facility personnel, and facility ~~administration~~administration.
- (2) Supervise the Long-Term Care Program pursuant to rules adopted by the Secretary of the Department of Health and Human Services pursuant to ~~G.S. 143B-10~~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~~standards.
- (3a) Designate certified Regional Ombudsmen as representatives of the State Ombudsman Office as well as refuse, suspend, or remove designation as a

1 representative of the Office in accordance with the Office of the State  
 2 Ombudsman Policies and Procedures.

- 3 (4) Attempt to resolve complaints made by or on behalf of individuals who are  
 4 residents of long-term care facilities, which complaints relate to  
 5 administrative action that may adversely affect the health, safety, or welfare  
 6 of ~~residents;~~residents.
- 7 (5) Provide training and technical assistance to regional  
 8 ~~ombudsmen;~~ombudsmen.
- 9 (6) Establish procedures for appropriate access by regional ombudsmen to  
 10 long-term care facilities and residents' ~~records—files, records, and other~~  
 11 information, including procedures to protect the confidentiality of these  
 12 ~~records~~files, records, and other information and to ensure that the identity of  
 13 any complainant or resident will not be disclosed except as permitted under  
 14 the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq. and  
 15 regulations promulgated thereunder.
- 16 (7) Analyze data relating to complaints and conditions in long-term care  
 17 facilities to identify significant problems and recommend  
 18 ~~solutions;~~solutions.
- 19 (8) Prepare an annual report containing data and findings regarding the types of  
 20 problems experienced and complaints reported by residents as well as  
 21 recommendations for resolutions of identified long-term care ~~issues;~~issues.
- 22 (9) Prepare findings regarding public education and community involvement  
 23 efforts and innovative programs being provided in long-term care ~~facilities;~~  
 24 ~~and~~facilities.
- 25 (10) Provide information to public agencies, and through the State Ombudsman,  
 26 to legislators, and others regarding problems encountered by residents or  
 27 providers as well as recommendations for resolution.
- 28 (11) Provide leadership for statewide systems advocacy efforts of the Office on  
 29 behalf of long-term care residents, including independent determinations and  
 30 positions that shall not be required to represent the position of the State  
 31 agency or other agency within which the Ombudsman Program is  
 32 organizationally located. Provide coordination of systems advocacy efforts  
 33 with representatives of the Office as outlined in Ombudsman Policies and  
 34 Procedures.
- 35 (12) To the extent required to meet the requirement of the Older Americans Act  
 36 and regulations promulgated thereunder regarding allotments for Vulnerable  
 37 Elder Rights Protection Activities, the State Ombudsman and representatives  
 38 of the Office are excluded from any State lobbying prohibitions under  
 39 requirements to conduct systems advocacy on behalf of long-term care  
 40 residents.
- 41 (13) Determine the use of the fiscal resources appropriated or otherwise available  
 42 for the operations of the Office, including approval of allocations provided  
 43 for local program budgets that are consistent with laws, policies, and  
 44 procedures governing the Ombudsman Program.

45 **"§ 143B-181.19. Office of Regional Long-Term Care Ombudsman; Regional**  
 46 **Ombudsman; duties.**

47 (a) An Office of Regional Ombudsman Program shall be established in each of the  
 48 Area Agencies on Aging, and shall be headed by a designated Regional Ombudsman who shall  
 49 carry out the functions and duties of the Office. The State Long-Term Care Ombudsman shall  
 50 designate all Regional Ombudsmen housed within the Area Agency. The Area  
 51 Agency~~Agencies~~ on Aging ~~administration~~ shall provide administrative supervision to each

1 ~~Regional Ombudsman.~~ Ombudsman limited to the Agency's personnel policies pertaining to  
2 time and attendance, benefits, assigned work space and equipment, and general operations of  
3 the Agency. The State Ombudsman shall ensure that the Area Agency does not have personnel  
4 policies or practices that conflict with the laws and policies governing the Ombudsman  
5 Program.

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

- 8 (1) Promote community involvement with long-term care facilities and residents  
9 of long-term care facilities and serve as a liaison between residents,  
10 residents' families, facility personnel, and facility administration;
- 11 (2) Receive and attempt to resolve complaints made by or on behalf of residents  
12 in long-term care facilities;
- 13 (3) Collect data about the number and types of complaints handled;
- 14 (4) Work with long-term care providers to resolve issues of common concern;
- 15 (5) Work with long-term care providers to promote increased community  
16 involvement;
- 17 (6) Offer assistance to long-term care providers in staff training regarding  
18 residents' rights;
- 19 (7) Report regularly to the office of State Ombudsman about the data collected  
20 and about the activities of the Regional Ombudsman;
- 21 (8) Provide training and technical assistance to the community advisory  
22 committees; and
- 23 (9) Provide information to the general public on long-term care ~~issues.~~ issues  
24 and with the authorization of the Office of the State Long-Term Care  
25 Ombudsman conduct systems advocacy activities on behalf of long-term  
26 care residents.

27 **"§ 143B-181.20. State/Regional Long-Term Care Ombudsman; authority to enter;  
28 cooperation of government agencies; communication with residents.**

29 (a) The State and Regional Ombudsman may enter any long-term care facility at any  
30 time during regular visiting hours or at any other time when access may be required by the  
31 circumstances to be investigated, and may have reasonable ~~reasonable~~ access to any resident in the  
32 ~~reasonable~~ pursuit of his function. The Ombudsman may communicate privately and  
33 confidentially with residents of the facility individually or in groups. The Ombudsman shall  
34 have access to the patient records, resident's files, records, and other information as permitted  
35 under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., and regulations  
36 promulgated thereunder, and under procedures established by the State Ombudsman pursuant  
37 to G.S. 143B-181.18(6). Entry shall be conducted in a manner that will not significantly disrupt  
38 the provision of nursing or other care to residents and if the long-term care facility requires  
39 registration of all visitors entering the facility, then the State or Regional Ombudsman must  
40 also register. Any State or Regional Ombudsman who discloses any information obtained from  
41 the patient's resident's records except as permitted under the Older Americans Act of 1965, as  
42 amended, 42 U.S.C. § 3001 et seq., and regulations promulgated thereunder, is guilty of a Class  
43 1 misdemeanor.

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

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

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

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

5 (f) If the subject of the complaint involves suspected abuse, neglect, or exploitation, the  
6 ~~State or Regional Ombudsman shall~~ only with the written informed consent of the resident or  
7 authorization by the State Ombudsman ~~notify the county department of social services' Adult~~  
8 ~~Protection Services section of the county department of social services, pursuant to services.~~  
9 Except as provided herein, the State or Regional Ombudsman is not subject to the reporting  
10 requirements of Article 6 of Chapter 108A of the General Statutes.

11 **"§ 143B-181.21. State/Regional Long-Term Care Ombudsman; resolution of complaints.**

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

15 (b) Complaints or conditions adversely affecting residents of long-term care facilities  
16 that cannot be resolved in the manner described in subsection (a) of this section shall be  
17 referred by the State or Regional Ombudsman to the appropriate licensure agency pursuant to  
18 G.S. 131E-100 through 110 and Part 1 of Article 1 of Chapter 131D of the General Statutes.

19 **"§ 143B-181.22. State/Regional Long-Term Care Ombudsman; confidentiality.**

20 The identity of any complainant, resident on whose behalf a complaint is made, or any  
21 individual providing information on behalf of the resident or complainant relevant to the  
22 attempted resolution of the complaint along with the files, records, and other information  
23 produced by the process of complaint resolution is confidential and shall be disclosed only as  
24 permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.

25 **"§ 143B-181.23. State/Regional Long-Term Care Ombudsman; prohibition of retaliation.**

26 No person shall discriminate or retaliate in any manner against any resident or relative or  
27 guardian of a resident, any employee of a long-term care facility, or any other person because  
28 of the making of a complaint or providing of information in good faith to the State Ombudsman  
29 or Regional Ombudsman. The State Ombudsman shall determine instances of discrimination or  
30 retaliation and assess a monetary penalty in the amount of two thousand five hundred dollars  
31 (\$2,500) per incident. The Department shall adopt rules pertaining to this determination of  
32 discrimination or retaliation.

33 **"§ 143B-181.24. Office of State/Regional Long-Term Care Ombudsman; immunity from**  
34 **liability.**

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

36 **"§ 143B-181.25. Office of State/Regional Long-Term Care Ombudsman; penalty for**  
37 **willful interference.**

38 Willful or unnecessary obstruction with the State or Regional Long-Term Care  
39 Ombudsman in the performance of his official duties is a Class 1 ~~misdemeanor~~misdemeanor  
40 and subject to a fine of two thousand five hundred dollars (\$2,500)."

41 **SECTION 3.** Sections 1 and 3 of this act are effective when this act becomes law  
42 and apply to orders issued or agreements entered into on or after that date. Section 2 of this act  
43 becomes effective July 1, 2016.