



# House of Representatives

General Assembly

**File No. 188**

January Session, 2015

Substitute House Bill No. 6895

*House of Representatives, March 24, 2015*

The Committee on Aging reported through REP. SERRA of the 33rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT REQUIRING THE STATE OMBUDSMAN TO INVESTIGATE COMPLAINTS CONCERNING RECIPIENTS OF HOME AND COMMUNITY-BASED CARE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17a-405 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2015*):

3 (a) As used in this chapter:

4 (1) "State agency" means the Department on Aging.

5 (2) "Office" means the Office of the Long-Term Care Ombudsman  
6 established in this section.

7 (3) "State Ombudsman" means the State Ombudsman established in  
8 this section.

9 (4) "Assistant State Ombudsman" means the person appointed by  
10 the State Ombudsman to assist the State Ombudsman in carrying out

11 the duties of the State Ombudsman pursuant to section 17a-408, as  
12 amended by this act.

13 [(4)] (5) "Program" means the long-term care ombudsman program  
14 administered by the Office of the Long-Term Care Ombudsman  
15 established in this section.

16 [(5)] (6) "Representative" includes the Assistant State Ombudsman, a  
17 regional ombudsman, a residents' advocate or an employee of the  
18 Office of the Long-Term Care Ombudsman who is individually  
19 designated by the State Ombudsman.

20 [(6)] (7) "Resident" means an [older] individual who resides in or is a  
21 patient in a long-term care facility who is sixty years of age or older.

22 [(7)] (8) "Long-term care facility" means any skilled nursing facility,  
23 as defined in Section 1819(a) of the Social Security Act [,] (42 USC  
24 1395i-3(a)); any nursing facility, as defined in Section 1919(a) of the  
25 Social Security Act [,] (42 USC 1396r(a)); a board and care facility as  
26 defined in Section 102(19) of the federal Older Americans Act [,] (42  
27 USC 3002(19)); and for purposes of ombudsman program coverage, an  
28 institution regulated by the state pursuant to Section 1616(e) of the  
29 Social Security Act [,] (42 USC 1382e(e)) and any other adult care home  
30 similar to a facility or nursing facility or board and care home.

31 [(8)] (9) "Commissioner" means the Commissioner on Aging.

32 [(9)] (10) "Applicant" means an [older] individual who has applied  
33 for admission to a long-term care facility or for home and community-  
34 based services.

35 (11) "Home and community-based services" means long-term care  
36 provided in a home or community setting, or both, to a recipient who  
37 is sixty years of age or older.

38 (b) There is established an independent Office of the Long-Term  
39 Care Ombudsman within the Department on Aging. The  
40 Commissioner on Aging shall appoint a State Ombudsman who shall

41 be selected from among individuals with expertise and experience in  
42 the fields of long-term care and advocacy to head the office and the  
43 State Ombudsman shall appoint [assistant] an Assistant State  
44 Ombudsman and regional ombudsmen. In the event the State  
45 Ombudsman [or an assistant regional ombudsman] is unable to fulfill  
46 the duties of the office, the commissioner shall appoint an acting State  
47 Ombudsman. [and] In the event the Assistant State Ombudsman or a  
48 regional ombudsman is unable to fulfill the duties of the office, the  
49 State Ombudsman shall appoint an acting [assistant] Assistant State  
50 Ombudsman or an acting regional ombudsman, as the case may be.

51 (c) Notwithstanding the provisions of subsection (b) of this section,  
52 on and after July 1, 1990, the positions of State Ombudsman, Assistant  
53 State Ombudsman and regional ombudsmen shall be classified service  
54 positions. The State Ombudsman and regional ombudsmen holding  
55 said positions on said date shall continue to serve in their positions as  
56 if selected through classified service procedures. As vacancies occur in  
57 such positions thereafter, such vacancies shall be filled in accordance  
58 with classified service procedures.

59 Sec. 2. Subsection (a) of section 17a-406 of the general statutes is  
60 repealed and the following is substituted in lieu thereof (*Effective July*  
61 *1, 2015*):

62 (a) Residents' advocates shall be appointed by the State  
63 Ombudsman, in consultation with the regional ombudsmen, for each  
64 region in sufficient number to serve the long-term care facilities and  
65 recipients of home and community-based services within such region.  
66 Such residents' advocates shall, if possible, be residents of the region in  
67 which they will serve, and shall have demonstrated an interest in the  
68 care of the elderly. Residents' advocates shall serve without  
69 compensation but may be reimbursed for reasonable expenses  
70 incurred in the performance of their duties, within available  
71 appropriations.

72 Sec. 3. Section 17a-408 of the general statutes is repealed and the  
73 following is substituted in lieu thereof (*Effective July 1, 2015*):

74 (a) The State Ombudsman shall establish and operate ombudsman  
75 programs in this state pursuant to Sections 711 to 713, inclusive, of the  
76 federal Older Americans Act of 1965, as amended from time to time.

77 (b) The State Ombudsman shall serve on a full-time basis, and shall  
78 personally or through representatives of the office:

79 (1) Identify, investigate and resolve complaints that:

80 (A) Are made by, or on behalf of, residents of long-term care  
81 facilities and recipients of home and community-based services or, as  
82 to complaints involving the application for admission to a long-term  
83 care facility or for home and community-based services, by or on  
84 behalf of applicants; and

85 (B) Relate to action, inaction or decisions that may adversely affect  
86 the health, safety, welfare or rights of the residents of long-term care  
87 facilities and recipients of home and community-based services,  
88 including the welfare and rights of the residents and recipients with  
89 respect to the appointment and activities of guardians and  
90 representative payees, of (i) providers or representatives of providers  
91 of long-term care services, (ii) public agencies, or (iii) health and social  
92 service agencies;

93 (2) Provide services to protect the health, safety, welfare and rights  
94 of the residents of long-term care facilities and recipients of home and  
95 community-based services;

96 (3) Inform the residents of long-term care facilities and recipients of  
97 home and community-based services about means of obtaining  
98 services provided by providers or agencies described in subparagraph  
99 (B) of subdivision (1) of this subsection or services described in  
100 subdivision (2) of this subsection;

101 (4) Ensure that the residents of long-term care facilities and  
102 recipients of home and community-based services and, as to issues  
103 involving applications for admission to long-term care facilities or for  
104 home and community-based services, applicants have regular and

105 timely access to the services provided through the office and that the  
106 residents, recipients and complainants receive timely responses from  
107 representatives of the office to complaints;

108 (5) Represent the interests of the residents of long-term care facilities  
109 and recipients of home and community-based services, and of  
110 applicants in relation to issues concerning applications to long-term  
111 care facilities and for home and community-based services, before  
112 governmental agencies and seek administrative, legal and other  
113 remedies to protect the health, safety, welfare and rights of the  
114 residents of long-term care facilities and recipients of home and  
115 community-based services;

116 (6) Provide administrative and technical assistance to  
117 representatives and training in areas including, but not limited to,  
118 Alzheimer's disease and dementia symptoms and care;

119 (7) (A) Analyze, comment on and monitor the development and  
120 implementation of federal, state and local laws, regulations, and other  
121 governmental policies and actions that pertain to the health, safety,  
122 welfare and rights of the residents of long-term care facilities and  
123 recipients of home and community-based services with respect to the  
124 adequacy of long-term care facilities and home and community-based  
125 services in this state and to the rights of applicants in relation to  
126 applications to long-term care facilities or for home and community-  
127 based services;

128 (B) Recommend any changes in such laws, regulations, policies and  
129 actions as the office determines to be appropriate; and

130 (C) Facilitate public comment on such laws, regulations, policies  
131 and actions;

132 (8) Advocate for:

133 (A) Any changes in federal, state and local laws, regulations and  
134 other governmental policies and actions that pertain to the health,  
135 safety, welfare and rights of residents of long-term care facilities and

136 recipients of home and community-based services with respect to the  
137 adequacy of long-term care facilities and services in this state and to  
138 the health, safety, welfare and rights of applicants [which] that the  
139 State Ombudsman determines to be appropriate;

140 (B) Appropriate action by groups or agencies with jurisdictional  
141 authority to deal with problems affecting individual residents, [and the  
142 general resident population and applicants] the general resident  
143 population of and applicants to long-term care facilities and recipients  
144 of home and community-based services in relation to issues  
145 concerning applications to long-term care facilities and for home and  
146 community-based services; and

147 (C) The enactment of legislative recommendations by the General  
148 Assembly and of regulatory recommendations by commissioners of  
149 Connecticut state agencies;

150 (9) (A) Provide for training representatives of the office;

151 (B) Promote the development of citizen organizations to participate  
152 in the program; and

153 (C) Provide technical support for the development of resident and  
154 family councils to protect the well-being and rights of residents of  
155 long-term care facilities and recipients of home and community-based  
156 services;

157 (10) Coordinate ombudsman services with the protection and  
158 advocacy systems for individuals with developmental disabilities and  
159 mental illnesses established under (A) Part A of the Development  
160 Disabilities Assistance and Bill of Rights Act (42 USC 6001, et seq.), and  
161 (B) The Protection and Advocacy for Mentally Ill Individuals Act of  
162 1986 (42 USC 10801 et seq.);

163 (11) Coordinate, to the greatest extent possible, ombudsman services  
164 with legal assistance provided under Section 306(a)(2)(C) of the federal  
165 Older Americans Act of 1965 [,] (42 USC 3026(a)(2)(C)), as amended  
166 from time to time, through the adoption of memoranda of

167 understanding and other means;

168 (12) Create, and periodically update as needed, a training manual  
169 for nursing home facilities identified in section 19a-522c that provides  
170 guidance on structuring and implementing the training required by  
171 said section;

172 (13) Provide services described in this subsection [L] to residents  
173 under age sixty living in a long-term care facility, if (A) a majority of  
174 the residents of the facility where the younger person resides are over  
175 age sixty and (B) such services do not weaken or decrease service to  
176 older individuals covered under this chapter;

177 (14) [Implement and administer, on and after July 1, 2014, a pilot  
178 program that serves home and community-based care recipients in  
179 Hartford County] Provide services described in this subsection to  
180 recipients of home and community-based services; and

181 (15) Carry out such other activities and duties as may be required  
182 under federal law.

183 Sec. 4. Section 17a-409 of the general statutes is repealed and the  
184 following is substituted in lieu thereof (*Effective July 1, 2015*):

185 The State Ombudsman is authorized to investigate and make  
186 reports and recommendations concerning any act or the failure to act  
187 by any agency, official or public employee, with respect to [their] his or  
188 her responsibilities and duties in connection with long-term care  
189 facilities or home and community-based services, except the courts and  
190 [their] court personnel, legislative bodies and [their] personnel and the  
191 chief executive of the state and the chief executive's personal staff and  
192 all elected officials.

193 Sec. 5. Section 17a-410 of the general statutes is repealed and the  
194 following is substituted in lieu thereof (*Effective July 1, 2015*):

195 The regional ombudsmen shall, in accordance with the policies and  
196 procedures established by the Office of the Long-Term Care

197 Ombudsman:

198 (1) Provide services to protect the health, safety, welfare and rights  
199 of residents of long-term care facilities and recipients of home and  
200 community-based services;

201 (2) Ensure that residents of long-term care facilities and recipients of  
202 home and community-based services in service areas have regular  
203 timely access to representatives of the program and timely responses  
204 to complaints and requests for assistance;

205 (3) Identify, investigate and resolve complaints made by or on  
206 behalf of residents of long-term care facilities and recipients of home  
207 and community-based services that relate to action, inaction or  
208 decisions that may adversely affect the health, safety, welfare or rights  
209 of the residents or recipients or by, or on behalf of, applicants in  
210 relation to issues concerning applications to long-term care facilities or  
211 for home and community-based services;

212 (4) Represent the interests of residents of long-term care facilities  
213 and recipients of home and community-based services and applicants  
214 [ in relation to their applications to long-term care facilities,] to long-  
215 term care facilities or for home and community-based services before  
216 government agencies and seek administrative, legal and other  
217 remedies to protect the health, safety, welfare and rights of the  
218 residents;

219 (5) (A) Review and, if necessary, comment on any existing and  
220 proposed laws, regulations and other government policies and actions  
221 that pertain to the rights and well-being of residents of long-term care  
222 facilities and recipients of home and community-based services and  
223 applicants in relation to their applications to long-term care facilities,  
224 or for home and community-based services, and (B) facilitate the  
225 ability of the public to comment on the laws, regulations, policies and  
226 actions;

227 (6) Support the development of resident and family councils; and

228 (7) Carry out other activities that the State Ombudsman determines  
229 to be appropriate.

230 Sec. 6. Section 17a-414 of the general statutes is repealed and the  
231 following is substituted in lieu thereof (*Effective July 1, 2015*):

232 (a) The state agency shall ensure that:

233 (1) Adequate legal counsel is available and is able, without conflict  
234 of interest, to: (A) Provide advice and consultation needed to protect  
235 the health, safety, welfare and rights of residents of long-term care  
236 facilities, recipients of home and community-based services and  
237 applicants in relation to their applications to long-term care facilities or  
238 for home and community-based services; and (B) assist the  
239 [ombudsman] State Ombudsman and representatives of the office in  
240 the performance of the official duties of the ombudsman and  
241 representatives; and

242 (2) Administrative, legal and other appropriate remedies are  
243 pursued on behalf of residents of long-term care facilities, recipients of  
244 home and community-based services and applicants in relation to their  
245 applications to long-term care facilities or for home and community-  
246 based services.

247 (b) The Assistant State Ombudsman, regional ombudsmen and  
248 residents' advocates shall be considered state employees under section  
249 4-141 for the purposes of any civil action for damages on account of  
250 any act or omission that is not wanton, wilful or malicious and that is  
251 within the scope of employment or duties under sections 17a-405 to  
252 17a-417, inclusive, as amended by this act, 19a-531 and 19a-532.

253 Sec. 7. Section 17a-415 of the general statutes is repealed and the  
254 following is substituted in lieu thereof (*Effective July 1, 2015*):

255 (a) The [ombudsman] State Ombudsman and representatives of the  
256 office shall have:

257 (1) Access to long-term care facilities and residents;

258 (2) Appropriate access to review the medical and social records of a  
259 resident of a long-term care facility or recipient of home and  
260 community-based services, if (A) the representative has the permission  
261 of the resident or recipient, or the legal representative of the resident or  
262 recipient, (B) the resident or recipient is unable to consent to the review  
263 and has no legal representative, or (C) access to the records is  
264 necessary to investigate a complaint and a legal guardian of the  
265 resident or recipient refuses to give permission, a representative of the  
266 office has reasonable cause to believe that the guardian is not acting in  
267 the best interests of the resident or recipient, and the representative  
268 obtains the approval of the [ombudsman] State Ombudsman;

269 (3) Access to the administrative records, policies and documents, to  
270 which the residents have, or the general public has access, of long-term  
271 care facilities; and

272 (4) Access to and, on request, copies of all licensing and certification  
273 records maintained by the state with respect to long-term care facilities  
274 and providers of home and community-based services.

275 (b) Any person or entity who wilfully interferes with  
276 representatives of the office in the performance of the official duties of  
277 the representatives, or any long-term care facility or other entity which  
278 retaliates or exacts reprisals with respect to any resident, recipient of  
279 services, employee or other person for filing a complaint with,  
280 providing information to, or otherwise cooperating with any  
281 representative of the office, or long-term care facility which refuses to  
282 permit the State Ombudsman or any regional ombudsman or any  
283 residents' advocate entry into such facility or any such facility or  
284 provider that refuses to cooperate with the State Ombudsman, or any  
285 regional ombudsman or any residents' advocate in the carrying out of  
286 [their] his or her mandated duties and responsibilities enumerated  
287 under sections 17a-405 to 17a-417, inclusive, as amended by this act,  
288 19a-531 and 19a-532 or refuses to permit residents, recipients of  
289 services or staff to communicate freely with the State Ombudsman or  
290 any regional ombudsman or any residents' advocate shall be subject to

291 the penalty prescribed for a class B violation under section 19a-527.

292 (c) In carrying out the duties enumerated in sections 17a-405 to 17a-  
293 417, inclusive, as amended by this act, 19a-531 and 19a-532, the State  
294 Ombudsman, the Assistant State Ombudsman, the regional  
295 ombudsmen and the residents' advocates shall have access to all  
296 relevant public records, except [that] records [which] that are  
297 confidential to a resident of a long-term care facility or recipient of  
298 home and community-based services shall only be divulged with the  
299 written consent of the resident or recipient.

300 (d) In the performance of the duties and responsibilities enumerated  
301 under sections 17a-405 to 17a-417, inclusive, as amended by this act,  
302 19a-531 and 19a-532, the State Ombudsman, the Assistant State  
303 Ombudsman, the regional ombudsmen and the residents' advocates  
304 may utilize any other state department, agency or commission, or any  
305 other public or private agencies, groups or individuals who are  
306 appropriate and who may be available.

307 Sec. 8. Section 17a-417 of the general statutes is repealed and the  
308 following is substituted in lieu thereof (*Effective July 1, 2015*):

309 The Commissioner on Aging shall require the State Ombudsman to:

310 (1) Prepare an annual report:

311 (A) Describing the activities carried out by the office in the year for  
312 which the report is prepared;

313 (B) Containing and analyzing the data collected under section 17a-  
314 418, as amended by this act;

315 (C) Evaluating the problems experienced by and the complaints  
316 made by or on behalf of residents of long-term care facilities or  
317 recipients of home and community-based services;

318 (D) Containing recommendations for (i) improving the quality of  
319 the care and life of the residents of long-term care facilities or

320 recipients of home and community-based services, and (ii) protecting  
321 the health, safety, welfare and rights of the residents and recipients;

322 (E) (i) Analyzing the success of the program including success in  
323 providing services to residents of long-term care facilities and  
324 recipients of home and community-based services; and (ii) identifying  
325 barriers that prevent the optimal operation of the program; and

326 (F) Providing policy, regulatory and legislative recommendations to  
327 solve identified problems, to resolve the complaints, to improve the  
328 quality of the care and life of residents of long-term care facilities and  
329 recipients of home and community-based services, to protect the  
330 health, safety, welfare and rights of residents and recipients and to  
331 remove the barriers that prevent the optimal operation of the program.

332 (2) Analyze, comment on and monitor the development and  
333 implementation of federal, state and local laws, regulations and other  
334 government policies and actions that pertain to long-term care facilities  
335 and services, home and community-based services and to the health,  
336 safety, welfare and rights of residents in the state, and recommend any  
337 changes in such laws, regulations and policies as the office determines  
338 to be appropriate.

339 (3) (A) Provide such information as the office determines to be  
340 necessary to public and private agencies, legislators and other persons,  
341 regarding (i) the problems and concerns of older individuals residing  
342 in long-term care facilities or who are the recipients of home and  
343 community-based services; and (ii) recommendations related to the  
344 problems and concerns; and (B) make available to the public and  
345 submit to the federal assistant secretary for aging, the Governor, the  
346 General Assembly, the Department of Public Health and other  
347 appropriate governmental entities, each report prepared under  
348 subdivision (1) of this section.

349 Sec. 9. Section 17a-418 of the general statutes is repealed and the  
350 following is substituted in lieu thereof (*Effective July 1, 2015*):

351 The state agency shall establish a state-wide uniform system to: (1)  
352 Collect and analyze data relating to complaints and conditions in long-  
353 term care facilities [and to residents] and complaints concerning home  
354 and community-based services for the purpose of identifying and  
355 resolving significant problems; and (2) submit the data, on a regular  
356 basis to: (A) The Department of Public Health; (B) other state and  
357 federal entities that the State Ombudsman determines to be  
358 appropriate; and (C) the National Ombudsman Resource Center,  
359 established in Section 202(a)(21) of the federal Older Americans Act of  
360 1965, as amended from time to time.

361 Sec. 10. Subdivision (2) of section 17a-419 of the general statutes is  
362 repealed and the following is substituted in lieu thereof (*Effective July*  
363 *1, 2015*):

364 (2) Prohibit the disclosure of the identity of any complainant or  
365 resident of a long-term care facility or recipient of home and  
366 community-based services with respect to whom the office maintains  
367 such files or records unless (A) the complainant, [or] resident or  
368 recipient, or the legal representative of the complainant, [or] resident  
369 or recipient, consents to the disclosure and the consent is given in  
370 writing; or (B) (i) the complainant, [or] resident or recipient gives  
371 consent orally; and (ii) the consent is documented contemporaneously  
372 in a writing made by a representative of the office in accordance with  
373 such requirements as the state agency shall establish; or (iii) the  
374 disclosure is required by court order.

375 Sec. 11. Subdivision (3) of section 17a-421 of the general statutes is  
376 repealed and the following is substituted in lieu thereof (*Effective July*  
377 *1, 2015*):

378 (3) Ensure that the State Ombudsman: (A) Does not have a direct  
379 involvement in the licensing or certification of a long-term care facility  
380 or of a provider of a long-term care service or a home and community-  
381 based service; (B) does not have an ownership or investment interest,  
382 represented by equity, debt or other financial relationship, in a long-  
383 term care facility or a long-term care service or a home and

384 community-based service; (C) is not employed by, or participating in  
 385 the management of, a long-term care facility or a provider of a home  
 386 and community-based service; and (D) does not receive, or have the  
 387 right to receive, directly or indirectly, remuneration, in cash or in kind,  
 388 under a compensation arrangement with an owner or operator of a  
 389 long-term care facility or a provider of a home and community-based  
 390 service; and

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2015	17a-405
Sec. 2	July 1, 2015	17a-406(a)
Sec. 3	July 1, 2015	17a-408
Sec. 4	July 1, 2015	17a-409
Sec. 5	July 1, 2015	17a-410
Sec. 6	July 1, 2015	17a-414
Sec. 7	July 1, 2015	17a-415
Sec. 8	July 1, 2015	17a-417
Sec. 9	July 1, 2015	17a-418
Sec. 10	July 1, 2015	17a-419(2)
Sec. 11	July 1, 2015	17a-421(3)

**Statement of Legislative Commissioners:**

In Section 8(2), "home and community-based services" was added after "services," and in Section 11(3)(A) and 11(3)(B), "or a home and community-based service" was added after "service" for internal consistency.

**AGE** Joint Favorable Subst. -LCO

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 16 \$</b>	<b>FY 17 \$</b>
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	75,368	103,505
State Department of Aging	GF - Cost	195,000	267,800

**Municipal Impact:** None

### **Explanation**

This bill establishes a new position of Assistant State Ombudsman, and expands the duties of the Office of the Long-Term Care Ombudsman to include oversight of home and community based services. Currently, the Office only oversees home and community based services on a pilot basis in Hartford County.

It is anticipated that these changes will require at least four new positions at the Department on Aging, at a cost of \$270,368 in FY 16 and \$371,305 in FY 17. These positions include the new Assistant position (with an estimated salary of \$80,000) and three new regional ombudsmen (with an estimated salary of \$60,000) to carry out the expanded oversight of home and community based services.

### **The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Department of Administrative Services website

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 38.65% of payroll in FY 16 and FY 17.

**OLR Bill Analysis****sHB 6895*****AN ACT REQUIRING THE STATE OMBUDSMAN TO INVESTIGATE COMPLAINTS CONCERNING RECIPIENTS OF HOME AND COMMUNITY-BASED CARE.*****SUMMARY:**

This bill expands the Office of the Long-Term Care Ombudsman's (OLTCO) oversight to include home and community-based care recipients, in addition to residents in nursing and residential care homes and assisted living facilities (i.e., long-term care facilities). The bill defines "home and community-based services" as long-term care provided to an individual age 60 or older in a home or community setting, or both.

Among other things, the bill:

1. expands the duties the state ombudsman and regional ombudsmen must perform to cover recipients of, and applicants for, home and community-based services;
2. extends the ombudsman's investigative authority to home and community-based services;
3. gives the ombudsman or her representatives the same access to home and community-based service records that she currently has with respect to long-term care facility records;
4. applies the same \$3,000 civil penalty to certain actions concerning home and community-based services and their recipients as currently applies to long-term care facilities and residents;
5. requires the ombudsman to include certain information about its

home and community-based services activities in its annual report;

6. expands the Department on Aging's (DoA) uniform data collection system to include data and analysis relating to complaints and conditions of home and community-based services;
7. requires DoA to extend certain disclosure and conflict of interest provisions to the state ombudsman regarding home and community-based services; and
8. requires DoA to ensure the provision of legal counsel to recipients of such services.

The bill creates the position of assistant state ombudsman to assist the state ombudsman in carrying out her duties. It requires the state ombudsman to appoint (1) the assistant state ombudsman and (2) someone to act for the assistant whenever he or she cannot perform the duties of the office.

The bill also (1) repeals a pilot program requiring OLTCO to serve home and community based residents in Hartford County and (2) makes minor, technical and conforming changes.

EFFECTIVE DATE: July 1, 2015

## **OLTCO DUTIES**

### ***State Ombudsman and Regional Ombudsmen***

By law, the state ombudsman and regional ombudsmen must perform specific duties concerning residents and applicants of long-term care facilities. The bill expands these duties to cover recipients of, and applicants for, home and community-based services. Specifically, the state ombudsman, either personally or through her representatives, and regional ombudsmen must:

1. identify, investigate and resolve complaints made by, or on behalf of, home and community-based services recipients and

applicants that relate to action, inaction, or decisions that may adversely affect the recipients' health, safety, welfare, or rights, including their welfare and rights with respect to the appointment and activities of guardians and certain payees;

2. provide services to protect their health, safety, welfare, and rights;
3. represent their interests before governmental agencies and seek administrative, legal, and other remedies to protect their health, safety, welfare, and rights; and
4. ensure that (a) they have regular and timely access to OLTCO services and (b) OLTCO responds to their complaints in a timely way.

### **State Ombudsman**

The bill additionally requires the state ombudsman to:

1. inform recipients and applicants about how to obtain services provided by long-term care facilities, public agencies, and health and social service agencies;
2. (a) analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, policies, and actions that pertain to home and community-based services recipients and applicants, (b) recommend changes in them, and (c) facilitate public comment on them;
3. advocate for (a) changes in federal, state, and local laws, regulations, policies, and actions pertaining to recipients' and applicants' health, safety, welfare, and rights with respect to the adequacy of home and community-based services and anything else the ombudsman determines appropriate, and (b) appropriate action by groups or agencies with jurisdiction to deal with problems affecting home and community-based services recipients and applicants; and

4. provide (a) technical support for the development of family councils to protect recipients' well-being and rights, and (b) other services reflecting OLTCO's additional responsibilities.

By law, the state ombudsman appoints, in consultation with regional ombudsmen, residents' advocates in sufficient number to serve each region's residents of long-term care facilities. The bill requires them to also appoint residents' advocates to each region sufficient to serve its recipients of home and community based services. Residents' advocates are volunteers with demonstrated interest in elderly care.

### ***Regional Ombudsman***

In addition to the duties described above, the bill requires regional ombudsmen to review, and comment on if necessary, any existing and proposed laws, regulations, policies, and actions pertaining to the rights and well-being of home and community-based services recipients or applicants. Existing law requires them to do so for long-term care facility residents.

### **INVESTIGATIVE AUTHORITY**

Existing law authorizes the state ombudsman to investigate, report on, and make recommendations concerning an agency's, official's, or public employee's act or failure to act with respect to responsibilities and duties connected with long-term care facilities. The bill extends this authorization to home and community-based services.

By law, the state ombudsman's authority does not extend to (1) the courts and court personnel, (2) legislative bodies and personnel, (3) the state's chief executive and his or her personal staff, and (4) all elected officials.

### **RECORDS ACCESS**

Existing law gives the state ombudsman and her representatives access to long-term care facilities, residents, and certain medical, social, and administrative records and documents to carry out the office's duties, including investigating complaints. By law, the state

ombudsman has “appropriate” access to these records if:

1. the resident or his or her legal representative consents;
2. the resident is unable to consent and has no legal representative;  
or
3. the access is necessary to investigate a complaint, the resident’s legal guardian refuses permission, and an OLTCO representative has reasonable cause to believe the guardian is not acting in the resident’s best interest and obtains the ombudsman’s approval.

The bill gives the ombudsman and her representative the same access with respect to home and community-based services recipients. The bill also extends their existing access to include (1) licensing and certification records the state keeps on home and community-based service providers and (2) all relevant public records, except confidential records which require an individual’s written consent before being divulged.

#### **PENALTY FOR INTERFERING**

Under the bill, the same \$3,000 civil penalty applies to certain actions concerning home and community-based services and their recipients as currently applies to long-term care facilities and residents. Specifically, the penalty applies to:

1. any person or entity willfully interfering with OLTCO representatives in the performance of their official duties;
2. any entity retaliating or exacting reprisals against a home and community-based services recipient for filing a complaint with, providing information to, or otherwise cooperating with any office representative; and
3. any provider (a) refusing to cooperate with an OLTCO representative or (b) refusing to permit recipients or staff to communicate freely with OLTCO.

By law, the penalty also applies to long-term care facilities that refuse entry to an office representative.

**ASSISTANT OMBUDSMAN**

The bill makes the newly established assistant ombudsman a classified employee. By law, classified employees are civil servants subject to state civil service merit hiring, promotion, and termination requirements.

The bill specifies that the assistant ombudsman has the same immunity from personal liability as other state employees in civil actions for damages on account of acts or omissions while performing their duties, unless such acts are wanton, willful, or malicious.

The bill also extends to the assistant ombudsman authorization to use any other state department, agency, commission or any other appropriate and available public or private agencies, groups, or individuals to carry out his or her duties.

By law, the state ombudsman, regional ombudsmen, and residents' advocates have the same (1) immunity from personal liability and (2) authorization to use additional resources.

**DEPARTMENT OF AGING**

***Annual Report***

By law, the aging commissioner must require the state ombudsman to prepare an annual report that, among other things, describes the office's activities, evaluates residents' problems and complaints, and makes certain recommendations. The bill requires that the report also contain such information about home and community-based services recipients. As it applies to such recipients, the report must:

1. contain and analyze data collected on home and community-based services recipients;
2. evaluate their problems, experiences, and complaints;
3. contain recommendations for (a) improving their quality of care

and life and (b) protecting their health, safety, welfare, and rights;

4. analyze OLTCO's success in providing them with services;
5. provide policy, regulatory, and legislative recommendations to (a) solve identified problems, (b) resolve complaints, (c) improve their quality of care and life and protect their health, safety, welfare, and rights, and (d) remove barriers that prevent program optimization;
6. analyze, comment on, and monitor federal, state and local laws and regulations pertaining to home and community-based services and recommend changes in them as the office determines appropriate; and
7. provide information OLTCO determines to be necessary to public and private agencies, legislators, and others regarding the problems and concerns of older individuals receiving home and community-based care and related recommendations.

By law, the ombudsman must (1) make the report available to the public and (2) submit it to the federal assistant secretary for aging, the Governor, the General Assembly, the Department of Public Health (DPH), and other appropriate government agencies.

### ***Information Collection and Analysis***

The bill expands DoA's statewide uniform data collection system to include data and analysis relating to complaints and conditions of home and community-based services. By law, DoA must collect, analyze, and regularly submit data relating to complaints and conditions in long-term care facilities to (1) DPH, (2) other state and federal entities that the state ombudsman determines to be appropriate, and (3) the National Ombudsman Resource Center.

### ***Disclosure***

By law, DoA must prohibit, with respect to any records or files

OLTCO maintains, identifying a complainant or resident of a long-term care facility without the individual's or their representative's consent, unless ordered by a court. The bill extends this confidentiality to include complainants receiving home or community-based services.

***Conflict of Interest***

The bill requires DoA to ensure the state ombudsman:

1. does not have direct involvement in the licensing or certification of home and community-based service providers;
2. does not have an ownership or investment interest, or other financial relationship, with any such services;
3. does not receive or have a right to receive compensation from any provider; and
4. is not employed by or participating in the management of any provider.

Existing law has similar conflict of interest provisions regarding the state ombudsman and long-term care facilities.

***Legal Counsel***

The bill requires DoA to ensure that:

1. adequate legal counsel is available, without conflict of interest, to provide advice and consultation necessary to protect the health, safety, welfare, and rights of home and community-based services recipients and applicants and
2. administrative, legal, and other appropriate remedies are pursued on behalf of home and community-based service recipients and applicants.

Existing law requires DoA to do so with respect to long-term care residents and applicants.

**COMMITTEE ACTION**

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Aging Committee

Joint Favorable

Yea 13 Nay 0 (03/05/2015)