



General Assembly

Substitute Bill No. 5285

February Session, 2016



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 Section 17a-405 of the general statutes is repealed and the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, 2016*):

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 1395i-
24 3(a)) any nursing facility, as defined in Section 1919(a) of the Social
25 Security Act, (42 USC 1396r(a)) a board and care facility as defined in
26 Section 102(19) of the federal Older Americans Act, (42 USC 3002(19))
27 and for purposes of ombudsman program coverage, an institution
28 regulated by the state pursuant to Section 1616(e) of the Social Security
29 Act, (42 USC 1382e(e)) and any other adult care home similar to a
30 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 an Assistant State Ombudsman and
44 assistant regional ombudsmen. In the event the State Ombudsman [or
45 an assistant regional ombudsman] is unable to fulfill the duties of the
46 office, the commissioner shall appoint an acting State Ombudsman,
47 [and] In the event the Assistant State Ombudsman or a regional

48 ombudsman is unable to fulfill the duties of the office, the State
49 Ombudsman shall appoint an acting Assistant State Ombudsman or an
50 acting assistant 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 and
53 regional ombudsmen shall be classified service positions. The State
54 Ombudsman and regional ombudsmen holding said positions on said
55 date shall continue to serve in their positions as if selected through
56 classified service procedures. As vacancies occur in such positions
57 thereafter, such vacancies shall be filled in accordance with classified
58 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, 2016*):

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 2016 supplement to the general statutes
73 is repealed and the following is substituted in lieu thereof (*Effective July*
74 *1, 2016*):

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

78 (b) The State Ombudsman shall serve on a full-time basis, and shall

79 personally or through representatives of the office:

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

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

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

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

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

102 (4) Ensure that the residents of long-term care facilities, recipients of
103 home and community-based services and [, as to issues involving
104 applications for admission to long-term care facilities,] applicants have
105 regular and timely access to the services provided through the office
106 and that the residents of long-term care facilities, recipients of home
107 and community-based services, applicants and other complainants
108 receive timely responses from representatives of the office to
109 complaints;

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

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 and 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 home and community-based
138 services in this state and to the health, safety, welfare and rights of
139 applicants [which] to long-term care facilities and recipients of home
140 and community-based services that the State Ombudsman determines

141 to be appropriate;

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

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

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

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

154 (C) Provide technical support for the development of resident and
155 family councils to protect the well-being and rights of residents;

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

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

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

170 said section;

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

176 (14) [Implement and administer, within available appropriations, a
177 pilot program that serves home and community-based care recipients
178 in Hartford County] Provide services described in this subsection to
179 residents of long-term care facilities and recipients of home and
180 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, 2016*):

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
188 responsibilities and duties in connection with long-term care facilities
189 or home and community-based services, except the courts and their
190 personnel, legislative bodies and their personnel and the chief
191 executive of the state and the chief executive's personal staff and all
192 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, 2016*):

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 or recipients of home and
200 community-based services;

201 (2) Ensure that residents of long-term care facilities or 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 or recipients of home and
207 community-based services that relate to action, inaction or decisions
208 that may adversely affect the health, safety, welfare or rights of [the]
209 residents or recipients or by, or on behalf of, applicants in relation to
210 issues concerning applications; [to long-term care facilities;]

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

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

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

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

227 Sec. 6. Section 17a-414 of the general statutes is repealed and the
228 following is substituted in lieu thereof (*Effective July 1, 2016*):

229 (a) The state agency shall ensure that:

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

238 (2) Administrative, legal and other appropriate remedies are
239 pursued on behalf of residents of long-term care facilities, recipients of
240 home and community-based services and applicants in relation to their
241 applications. [to long-term care facilities.]

242 (b) The Assistant State Ombudsman, regional ombudsmen and
243 residents' advocates shall be considered state employees under section
244 4-141 for the purposes of any civil action for damages on account of
245 any act or omission that is not wanton, wilful or malicious and that is
246 within the scope of employment or duties under sections 17a-405 to
247 17a-417, inclusive, as amended by this act, 19a-531 and 19a-532.

248 Sec. 7. Section 17a-415 of the general statutes is repealed and the
249 following is substituted in lieu thereof (*Effective July 1, 2016*):

250 (a) The [ombudsman] State Ombudsman, Assistant State
251 Ombudsman, regional ombudsmen and representatives of the office
252 shall have:

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

254 (2) Appropriate access to review the medical and social records of a
255 resident of a long-term care facility or recipient of home and
256 community-based services, if (A) the representative has the permission
257 of the resident, recipient or the legal representative of the resident or
258 recipient, (B) the resident or recipient is unable to consent to the review

259 and has no legal representative, or (C) access to the records is
260 necessary to investigate a complaint and a legal guardian of the
261 resident or recipient refuses to give permission, a representative of the
262 office has reasonable cause to believe that the guardian is not acting in
263 the best interests of the resident or recipient, and the representative
264 obtains the approval of the [ombudsman] State Ombudsman;

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

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

271 (b) Any person or entity who wilfully interferes with
272 representatives of the office in the performance of the official duties of
273 the representatives, or any long-term care facility or other entity which
274 retaliates or exacts reprisals with respect to any resident of a long-term
275 care facility, recipient of home and community-based services,
276 employee or other person for filing a complaint with, providing
277 information to, or otherwise cooperating with any representative of the
278 office, or long-term care facility which refuses to permit the State
279 Ombudsman, [or] Assistant State Ombudsman, any regional
280 ombudsman or any residents' advocate entry into such facility or
281 refuses to cooperate with the State Ombudsman, [or] Assistant State
282 Ombudsman, any regional ombudsman or any residents' advocate in
283 the carrying out of [their] his or her mandated duties and
284 responsibilities enumerated under sections 17a-405 to 17a-417,
285 inclusive, as amended by this act, 19a-531 and 19a-532 or refuses to
286 permit [residents] any resident of a long-term care facility or recipient
287 of home and community-based services or staff to communicate freely
288 with the State Ombudsman, [or] Assistant State Ombudsman, any
289 regional ombudsman or any residents' advocate shall be subject to the
290 penalty prescribed for a class B violation under section 19a-527.

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

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

306 Sec. 8. Section 17a-417 of the general statutes is repealed and the
307 following is substituted in lieu thereof (*Effective July 1, 2016*):

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

309 (1) Prepare an annual report:

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

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

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

317 (D) Containing recommendations for (i) improving the quality of
318 the care and life of [the] residents of long-term care facilities and
319 recipients of home and community-based services, and (ii) protecting

320 the health, safety, welfare and rights of the residents of long-term care
321 facilities and recipients of home and community-based services;

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 of long-term care
331 facilities and recipients of home and community-based services and to
332 remove the barriers that prevent the optimal operation of the program.

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

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

351 Sec. 9. Section 17a-418 of the general statutes is repealed and the
352 following is substituted in lieu thereof (*Effective July 1, 2016*):

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

363 Sec. 10. Section 17a-419 of the general statutes is repealed and the
364 following is substituted in lieu thereof (*Effective July 1, 2016*):

365 The state agency shall:

366 (1) Provide that the files and records maintained by the program
367 may be disclosed only at the discretion of the State Ombudsman or the
368 person designated by the ombudsman to disclose the files and records;
369 and

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

382 Sec. 11. Subdivision (3) of section 17a-421 of the general statutes is
 383 repealed and the following is substituted in lieu thereof (*Effective July*
 384 *1, 2016*):

385 (3) Ensure that the State Ombudsman: (A) Does not have a direct
 386 involvement in the licensing or certification of a long-term care facility
 387 or of a provider of a long-term care or a home and community-based
 388 service; (B) does not have an ownership or investment interest,
 389 represented by equity, debt or other financial relationship, in a long-
 390 term care facility or a long-term care or a home and community-based
 391 service; (C) is not employed by, or participating in the management of,
 392 a long-term care facility or a home and community-based service; and
 393 (D) does not receive, or have the right to receive, directly or indirectly,
 394 remuneration, in cash or in kind, under a compensation arrangement
 395 with an owner or operator of a long-term care facility or a home and
 396 community-based service; and

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2016</i>	17a-405
Sec. 2	<i>July 1, 2016</i>	17a-406(a)
Sec. 3	<i>July 1, 2016</i>	17a-408
Sec. 4	<i>July 1, 2016</i>	17a-409
Sec. 5	<i>July 1, 2016</i>	17a-410
Sec. 6	<i>July 1, 2016</i>	17a-414
Sec. 7	<i>July 1, 2016</i>	17a-415
Sec. 8	<i>July 1, 2016</i>	17a-417
Sec. 9	<i>July 1, 2016</i>	17a-418
Sec. 10	<i>July 1, 2016</i>	17a-419
Sec. 11	<i>July 1, 2016</i>	17a-421(3)

Statement of Legislative Commissioners:

In Section 7(b), "any resident or recipient" was changed to "any resident of a long-term care facility or recipient"; in Section 8(1)(C), (D) and (F), "residents and recipients" was changed to "residents of long-term care facilities and recipients"; and in Section 10(2), "resident or

recipient of home" was changed to "resident of a long-term care facility or recipient of home" for clarity and internal consistency.

AGE *Joint Favorable Subst. -LCO*