



Substitute Senate Bill No. 309

Public Act No. 18-6

AN ACT ALIGNING THE OFFICE OF THE LONG-TERM CARE OMBUDSMAN WITH THE OLDER AMERICANS ACT.

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

Section 1. Section 17a-405 of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) As used in this chapter:

(1) "State agency" means the [Office of Policy and Management] Department of Rehabilitation Services.

(2) "Office" or "Office of the Long-Term Care Ombudsman" means the [Office of the] organizational unit which is headed by the State Long-Term Care Ombudsman established in this section.

(3) "State Ombudsman" means the [State Ombudsman] individual who heads the office established in this section.

(4) "Program" means the long-term care ombudsman program established in this section.

(5) ["Representative"] "Representative of the office" includes a regional ombudsman, a residents' advocate or an employee of the

Substitute Senate Bill No. 309

Office of the Long-Term Care Ombudsman who is individually designated by the State Ombudsman.

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

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

(8) ["Secretary" means the Secretary of the Office of Policy and Management] "Commissioner" means the Commissioner of Rehabilitation Services.

(9) "Applicant" means an [older] individual who has applied for admission to a long-term care facility.

(10) "Resident representative" means (A) an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision making, accessing medical, social or other personal information of the resident, managing financial matters, or receiving notifications; (B) a person authorized by state or federal law to act on behalf of the resident in order to support the resident in decision making, accessing medical, social or other personal information of the resident, managing financial matters, or receiving notifications; (C) a legal representative, as used in Section 712 of the Older Americans Act; or (D) the court-appointed guardian or conservator of a resident.

(b) There is established an independent Office of the Long-Term

Substitute Senate Bill No. 309

Care Ombudsman within the [Office of Policy and Management] Department of Rehabilitation Services. The [Secretary of the Office of Policy and Management] Commissioner of Rehabilitation Services shall appoint a State Ombudsman who shall be selected from among individuals with expertise and experience in the fields of long-term care and advocacy to head the office and the State Ombudsman shall appoint [assistant] regional ombudsmen. In the event the State Ombudsman or [an assistant] a regional ombudsman is unable to fulfill the duties of the office, the [secretary] commissioner shall appoint an acting State Ombudsman and the State Ombudsman shall appoint an acting [assistant] regional ombudsman.

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

(d) The activities of the State Ombudsman or representatives of the office do not constitute lobbying under 45 CFR Part 93.

Sec. 2. Section 17a-406 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Residents' advocates shall be appointed by the State Ombudsman, in consultation with the regional ombudsmen, for each region in sufficient number to serve the long-term care facilities within such region. Such residents' advocates shall, if possible, be residents of the region in which they will serve, and shall have demonstrated an interest in the care of [the elderly] individuals who reside in long-term care facilities. Residents' advocates shall serve without compensation

Substitute Senate Bill No. 309

but may be reimbursed for reasonable expenses incurred in the performance of their duties, within available appropriations.

(b) The residents' advocates shall be appointed after submission of recommendations from at least two former employers or other nonrelated persons.

(c) The residents' advocates shall serve for a term of years specified by the State Ombudsman provided a residents' advocate may be removed by the State Ombudsman whenever the State Ombudsman finds such residents' advocate guilty of misconduct, material neglect of duty or incompetence in the conduct of the office or noncompliance with specified requirements of the position.

(d) Nothing in sections 17a-405 to 17a-417, inclusive, as amended by this act, 19a-523, 19a-524, 19a-530, 19a-531, 19a-532 and 19a-554 shall be construed to preclude the use of additional trained volunteers when it is deemed necessary to assist the State Ombudsman, regional ombudsmen or the residents' advocates.

(e) Until such time as residents' advocates are appointed in accordance with the provisions of sections 17a-405 to 17a-417, inclusive, as amended by this act, 19a-523, 19a-524, 19a-530, 19a-531, 19a-532 and 19a-554, those residents' advocates previously appointed shall continue to perform their assigned duties and responsibilities.

Sec. 3. Section 17a-408 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

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

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

Substitute Senate Bill No. 309

personally or through representatives of the office:

(1) Identify, investigate and resolve complaints that:

(A) Are made by, or on behalf of, residents or, as to complaints involving the application for admission to a long-term care facility, by or on behalf of applicants; and

(B) Relate to action, inaction or decisions that may adversely affect the health, safety, welfare or rights of the residents, including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees, of (i) providers or representatives of providers of long-term care services, (ii) public agencies, or (iii) health and social service agencies;

(2) Provide services to protect the health, safety, welfare and rights of the residents;

(3) Inform the residents about means of obtaining services provided by providers or agencies described in subparagraph (B) of subdivision (1) of this subsection or services described in subdivision (2) of this subsection;

(4) Ensure that the residents and, as to issues involving applications for admission to long-term care facilities, applicants have regular and timely access to the services provided through the office and that the residents and complainants receive timely responses from representatives of the office to complaints;

(5) Represent the interests of the residents, and of applicants in relation to issues concerning applications to long-term care facilities, before governmental agencies and seek administrative, legal and other remedies to protect the health, safety, welfare and rights of the residents;

Substitute Senate Bill No. 309

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

(7) (A) Analyze, comment on and monitor the development and implementation of federal, state and local laws, regulations, and other governmental policies and actions that pertain to the health, safety, welfare and rights of the residents with respect to the adequacy of long-term care facilities and services in this state and to the rights of applicants in relation to applications to long-term care facilities;

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

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

(8) Advocate for:

(A) Any changes in federal, state and local laws, regulations and other governmental policies and actions that pertain to the health, safety, welfare and rights of residents with respect to the adequacy of long-term care facilities and services in this state and to the health, safety, welfare and rights of applicants which the State Ombudsman determines to be appropriate;

(B) Appropriate action by groups or agencies with jurisdictional authority to deal with problems affecting individual residents and the general resident population and applicants in relation to issues concerning applications to long-term care facilities; and

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

Substitute Senate Bill No. 309

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

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

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

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

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

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

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

(14) Implement and administer, within available appropriations, a pilot program that serves home and community-based care recipients in Hartford County; and]

Substitute Senate Bill No. 309

(13) Develop policies and procedures regarding the communication and documentation of informed consent in the case of resident complaints, including, but not limited to, the use of auxiliary aids and services or the use of a resident representative; and

[(15)] (14) Carry out such other activities and duties as may be required under federal law.

Sec. 4. Section 17a-410 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

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

(1) Provide services to protect the health, safety, welfare and rights of residents;

(2) Ensure that residents in service areas have regular timely access to representatives of the [program] office and timely responses to complaints and requests for assistance;

(3) Identify, investigate and resolve complaints made by or on behalf of residents that relate to action, inaction or decisions that may adversely affect the health, safety, welfare or rights of the residents or by, or on behalf of, applicants in relation to issues concerning applications to long-term care facilities;

(4) Represent the interests of residents and applicants, in relation to their applications to long-term care facilities, before government agencies and seek administrative, legal and other remedies to protect the health, safety, welfare and rights of the residents;

(5) (A) Review and, if necessary, comment on any existing and proposed laws, regulations and other government policies and actions

Substitute Senate Bill No. 309

that pertain to the rights and well-being of residents and applicants in relation to their applications to long-term care facilities, and (B) facilitate the ability of the public to comment on the laws, regulations, policies and actions;

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

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

Sec. 5. Subsection (c) of section 17a-411 of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(c) The Commissioner of [Social Services] Rehabilitation Services shall have authority to seek funding for the purposes contained in this section from public and private sources, including but not limited to any federal or state funded programs.

Sec. 6. Section 17a-414 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The state agency shall ensure that:

(1) Adequate legal counsel is available and is able, without conflict of interest, to: (A) Provide advice and consultation needed to protect the health, safety, welfare and rights of residents and applicants in relation to their applications to long-term care facilities; and (B) assist the [ombudsman] State Ombudsman and representatives of the office in the performance of the official duties of the [ombudsman] State Ombudsman and representatives of the office; and

(2) Administrative, legal and other appropriate remedies are pursued on behalf of residents and applicants in relation to their applications to long-term care facilities.

Substitute Senate Bill No. 309

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

Sec. 7. Section 17a-415 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

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

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

(2) Appropriate access to review the medical and social records of a resident, if (A) the representative of the office has the permission of the resident, or the legal representative of the resident, (B) the resident is unable to consent to the review and has no legal representative, or (C) access to the records is necessary to investigate a complaint and a [legal guardian of the] resident representative refuses to give permission, a representative of the office has reasonable cause to believe that the [guardian] resident representative is not acting in the best interests of the resident, and the representative of the office obtains the approval of the ombudsman;

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

(4) Access to and, on request, copies of all licensing and certification records maintained by the state with respect to long-term care facilities.

(b) Any person or entity who wilfully interferes with

Substitute Senate Bill No. 309

representatives of the office in the performance of the official duties of the representatives of the office, or any long-term care facility or other entity which retaliates or exacts reprisals with respect to any resident, employee or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the office, or long-term care facility which refuses to permit the State Ombudsman or any regional ombudsman or any residents' advocate entry into such facility or refuses to cooperate with the State Ombudsman, or any regional ombudsman or any residents' advocate in the carrying out of their mandated duties and responsibilities enumerated under sections 17a-405 to 17a-417, inclusive, as amended by this act, 19a-531 and 19a-532 or refuses to permit residents or staff to communicate freely with the State Ombudsman or any regional ombudsman or any residents' advocate shall be subject to the penalty prescribed for a class B violation under section 19a-527.

(c) In carrying out the duties enumerated in sections 17a-405 to 17a-417, inclusive, as amended by this act, 19a-531 and 19a-532, the State Ombudsman, the regional ombudsmen and the residents' advocates shall have access to all relevant public records, except that records which are confidential to a resident shall only be divulged with the written consent of the resident.

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

Sec. 8. Section 17a-416 of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

Substitute Senate Bill No. 309

The [Secretary of the Office of Policy and Management] Commissioner of Rehabilitation Services, after consultation with the State Ombudsman, shall adopt regulations in accordance with the provisions of chapter 54, to carry out the provisions of sections 17a-405 to 17a-417, inclusive, as amended by this act, 19a-531 and 19a-532.

Sec. 9. Section 17a-417 of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The [Secretary of the Office of Policy and Management] Commissioner of Rehabilitation Services shall require the State Ombudsman to:

(1) Prepare an annual report:

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

(B) Containing and analyzing the data collected under section 17a-418;

(C) Evaluating the problems experienced by and the complaints made by or on behalf of residents;

(D) Containing recommendations for (i) improving the quality of the care and life of the residents, and (ii) protecting the health, safety, welfare and rights of the residents;

(E) (i) Analyzing the success of the program including success in providing services to residents of long-term care facilities; and (ii) identifying barriers that prevent the optimal operation of the program; and

(F) Providing policy, regulatory and legislative recommendations to solve identified problems, to resolve the complaints, to improve the

Substitute Senate Bill No. 309

quality of the care and life of residents, to protect the health, safety, welfare and rights of residents and to remove the barriers that prevent the optimal operation of the program.

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

(3) (A) Provide such information as the office determines to be necessary to public and private agencies, legislators and other persons, regarding (i) the problems and concerns of older individuals residing in long-term care facilities; and (ii) recommendations related to the problems and concerns; and (B) make available to the public and submit to the federal assistant secretary for aging, the Governor, the General Assembly, the Department of Public Health and other appropriate governmental entities, each report prepared under subdivision (1) of this section.

Sec. 10. Section 17a-420 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

In planning and operating the program, the state agency, in consultation with the [ombudsman] State Ombudsman, shall consider the views of area agencies on aging, [older individuals] long-term care facility residents and providers of long-term care.

Sec. 11. Section 17a-421 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The state agency shall:

(1) Ensure that no individual, or member of the immediate family of

Substitute Senate Bill No. 309

an individual, involved in the designation of the State Ombudsman, whether by appointment or otherwise, or the designation of representatives of the office is subject to a conflict of interest;

(2) Ensure that no officer or employee of the office, representative of the office, or member of the immediate family of the officer, employee or representative of the office, is subject to a conflict of interest;

(3) Ensure that the State Ombudsman: (A) Does not have a direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service; (B) does not have an ownership or investment interest, represented by equity, debt or other financial relationship, in a long-term care facility or a long-term care service; (C) is not employed by, or participating in the management of, a long-term care facility and has not been employed by or participated in such management in the twelve months prior to being State Ombudsman; and (D) does not receive, or have the right to receive, directly or indirectly, remuneration, in cash or in kind, under a compensation arrangement with an owner or operator of a long-term care facility; and

(4) Establish and specify, in writing, mechanisms to identify and remove conflicts of interest described in subdivisions (1) and (2) of this section, and to identify and eliminate the relationships described in subdivision (3) of this section, including such mechanisms as: (A) The methods by which the state agency will examine individuals and immediate family members to identify the conflicts; and (B) the actions that the state agency will require the individuals and such family members to take to remove such conflicts.

Sec. 12. Subsection (c) of section 17a-422 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

Substitute Senate Bill No. 309

(c) Not later than June 30, 2005, the Long-Term Care Ombudsman shall submit a report on the pilot program to the Commissioners of [Social Services] Rehabilitation Services and Public Health, to the joint standing committees of the General Assembly having cognizance of matters relating to human services, public health and appropriations, and to the select committee of the General Assembly having cognizance of matters relating to aging. The report shall be submitted in accordance with section 11-4a.

Approved May 14, 2018