



# Senate

General Assembly

**File No. 107**

February Session, 2018

Substitute Senate Bill No. 309

*Senate, March 28, 2018*

The Committee on Aging reported through SEN. MCCRORY of the 2nd Dist. and SEN. KELLY of the 21st Dist., Chairpersons of the Committee on the part of the Senate, that the substitute bill ought to pass.

***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:

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2 statutes is repealed and the following is substituted in lieu thereof  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

4 (a) As used in this chapter:

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

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

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

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

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

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

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

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

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

34 (10) "Resident representative" means (A) an individual chosen by  
35 the resident to act on behalf of the resident in order to support the  
36 resident in decision making, accessing medical, social or other personal  
37 information of the resident, managing financial matters, or receiving  
38 notifications; (B) a person authorized by state or federal law to act on  
39 behalf of the resident in order to support the resident in decision  
40 making, accessing medical, social or other personal information of the  
41 resident, managing financial matters, or receiving notifications; (C) a  
42 legal representative, as used in Section 712 of the Older Americans Act;

43 or (D) the court-appointed guardian or conservator of a resident.

44 (b) There is established an independent Office of the Long-Term  
45 Care Ombudsman within the [Office of Policy and Management]  
46 Department of Rehabilitation Services. The [Secretary of the Office of  
47 Policy and Management] Commissioner of Rehabilitation Services  
48 shall appoint a State Ombudsman who shall be selected from among  
49 individuals with expertise and experience in the fields of long-term  
50 care and advocacy to head the office and the State Ombudsman shall  
51 appoint [assistant] regional ombudsmen. In the event the State  
52 Ombudsman or [an assistant] a regional ombudsman is unable to  
53 fulfill the duties of the office, the [secretary] commissioner shall  
54 appoint an acting State Ombudsman and the State Ombudsman shall  
55 appoint an acting [assistant] regional ombudsman.

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

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

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

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

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

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

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

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

91 (e) Until such time as residents' advocates are appointed in  
92 accordance with the provisions of sections 17a-405 to 17a-417,  
93 inclusive, as amended by this act, 19a-523, 19a-524, 19a-530, 19a-531,  
94 19a-532 and 19a-554, those residents' advocates previously appointed  
95 shall continue to perform their assigned duties and responsibilities.

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

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

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

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

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

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

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

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

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

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

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

133 (7) (A) Analyze, comment on and monitor the development and  
134 implementation of federal, state and local laws, regulations, and other  
135 governmental policies and actions that pertain to the health, safety,

136 welfare and rights of the residents with respect to the adequacy of  
137 long-term care facilities and services in this state and to the rights of  
138 applicants in relation to applications to long-term care facilities;

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

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

143 (8) Advocate for:

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

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

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

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

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

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

162 (10) Coordinate ombudsman services with the protection and  
163 advocacy systems for individuals with developmental disabilities and  
164 mental illnesses established under (A) Part A of the Development

165 Disabilities Assistance and Bill of Rights Act (42 USC 6001, et seq.), and  
166 (B) The Protection and Advocacy for Mentally Ill Individuals Act of  
167 1986 (42 USC 10801 et seq.);

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

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

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

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

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

189 [(15)] (14) Carry out such other activities and duties as may be  
190 required under federal law.

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

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

195 Ombudsman:

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

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

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

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

210 (5) (A) Review and, if necessary, comment on any existing and  
211 proposed laws, regulations and other government policies and actions  
212 that pertain to the rights and well-being of residents and applicants in  
213 relation to their applications to long-term care facilities, and (B)  
214 facilitate the ability of the public to comment on the laws, regulations,  
215 policies and actions;

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

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

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

222 (c) The Commissioner of [Social Services] Rehabilitation Services  
223 shall have authority to seek funding for the purposes contained in this



224 section from public and private sources, including but not limited to  
225 any federal or state funded programs.

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

228 (a) The state agency shall ensure that:

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

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

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

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

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

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

250 (2) Appropriate access to review the medical and social records of a  
251 resident, if (A) the representative of the office has the permission of the  
252 resident, or the legal representative of the resident, (B) the resident is

253 unable to consent to the review and has no legal representative, or (C)  
254 access to the records is necessary to investigate a complaint and a  
255 [legal guardian of the] resident representative refuses to give  
256 permission, a representative of the office has reasonable cause to  
257 believe that the [guardian] resident representative is not acting in the  
258 best interests of the resident, and the representative of the office  
259 obtains the approval of the ombudsman;

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

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

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

282 (c) In carrying out the duties enumerated in sections 17a-405 to 17a-  
283 417, inclusive, as amended by this act, 19a-531 and 19a-532, the State  
284 Ombudsman, the regional ombudsmen and the residents' advocates  
285 shall have access to all relevant public records, except that records

286 which are confidential to a resident shall only be divulged with the  
287 written consent of the resident.

288 (d) In the performance of the duties and responsibilities enumerated  
289 under sections 17a-405 to 17a-417, inclusive, as amended by this act,  
290 19a-531 and 19a-532, the State Ombudsman, the regional ombudsmen  
291 and the residents' advocates may utilize any other state department,  
292 agency or commission, or any other public or private agencies, groups  
293 or individuals who are appropriate and who may be available.

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

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

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

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

308 (1) Prepare an annual report:

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

311 (B) Containing and analyzing the data collected under section 17a-  
312 418;

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

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

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

322 (F) Providing policy, regulatory and legislative recommendations to  
323 solve identified problems, to resolve the complaints, to improve the  
324 quality of the care and life of residents, to protect the health, safety,  
325 welfare and rights of residents and to remove the barriers that prevent  
326 the optimal operation of the program.

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

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

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

344 In planning and operating the program, the state agency, in  
345 consultation with the [ombudsman] State Ombudsman, shall consider

346 the views of area agencies on aging, [older individuals] long-term care  
347 facility residents and providers of long-term care.

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

350 The state agency shall:

351 (1) Ensure that no individual, or member of the immediate family of  
352 an individual, involved in the designation of the State Ombudsman,  
353 whether by appointment or otherwise, or the designation of  
354 representatives of the office is subject to a conflict of interest;

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

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

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

377 members to take to remove such conflicts.

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

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	17a-405
Sec. 2	<i>from passage</i>	17a-406
Sec. 3	<i>from passage</i>	17a-408
Sec. 4	<i>from passage</i>	17a-410
Sec. 5	<i>from passage</i>	17a-411(c)
Sec. 6	<i>from passage</i>	17a-414
Sec. 7	<i>from passage</i>	17a-415
Sec. 8	<i>from passage</i>	17a-416
Sec. 9	<i>from passage</i>	17a-417
Sec. 10	<i>from passage</i>	17a-420
Sec. 11	<i>from passage</i>	17a-421
Sec. 12	<i>from passage</i>	17a-422(c)

**Statement of Legislative Commissioners:**

In Section 1(b), "acting assistant regional ombudsman" was changed to "acting [assistant] regional ombudsman" for accuracy and consistency.

**AGE** Joint Favorable Subst.

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.

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**OFA Fiscal Note****State Impact:** None**Municipal Impact:** None**Explanation**

The bill, which brings Connecticut's Long-Term Care Ombudsman program<sup>1</sup> into conformance with federal regulations and requirements of the Administration for Community Living under the Older Americans Act (OAA)<sup>2</sup>, has no fiscal impact as the program has the expertise to fulfill the federal requirements.

**The Out Years****State Impact:** None**Municipal Impact:** None

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<sup>1</sup> The Long-Term Care Ombudsman program is currently in the Department of Rehabilitation Services through a Memorandum of Agreement.

<sup>2</sup> It is anticipated that Connecticut will receive \$359,193 in federal funds through the OAA for the Ombudsman program in FFY 18.

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**OLR Bill Analysis****sSB 309*****AN ACT ALIGNING THE OFFICE OF THE LONG-TERM CARE OMBUDSMAN WITH THE OLDER AMERICANS ACT.*****SUMMARY**

This bill transfers the Office of the Long-Term Care Ombudsman (OLTCO) from the Office of Policy and Management (OPM) to the Department of Rehabilitative Services (DORS). It also makes various changes to the OLTCO to comply with recent federal Older Americans Act regulations (see BACKGROUND), including:

1. specifying that the office serves all long-term care facility residents, regardless of age, by removing statutory references to older adults;
2. expanding the state ombudsman's duties to include developing policies and procedures for documenting and communicating informed consent in resident complaint cases;
3. expanding conflict of interest provisions by requiring DORS to ensure that the state ombudsman was not an employee or participant in the management of a long-term care facility in the 12 months before becoming the ombudsman;
4. specifying that the office's activities do not constitute lobbying under federal law;
5. adding to the conditions under which the state ombudsman may remove a resident advocate from his or her position; and
6. making minor changes to provisions granting the office access to residents' medical and social records when investigating a complaint.



The bill also (1) repeals an OLTCO home and community-based pilot program in Hartford County and (2) makes minor, technical, and conforming changes.

EFFECTIVE DATE: Upon passage

### **§§ 1 & 3 — OBTAINING INFORMED CONSENT FOR RESIDENT COMPLAINT CASES**

The bill expands the state ombudsman's duties to include developing policies and procedures for communicating and documenting informed consent in resident complaint cases (presumably, the resident's consent). These policies and procedures must include the use of (1) auxiliary aids and services or (2) a resident representative.

Under the bill, a "resident representative" is a person who is:

1. authorized by law to act on the resident's behalf to support the resident in making decisions; accessing his or her medical, social, or other personal information; managing financial matters; or receiving notifications;
2. chosen by the resident to perform these functions on his or her behalf; or
3. the resident's legal representative, court-appointed guardian, or conservator.

### **§ 11 — CONFLICT OF INTEREST**

Current law requires OPM to make certain the state ombudsman does not have any conflicts of interest by, among other things, ensuring that the ombudsman is not employed by, or participating in, the management of a long-term care facility. The bill transfers this responsibility from OPM to DORS and also requires the department to ensure that the state ombudsman has not engaged in such employment or management in the 12 months before becoming the ombudsman.

### **§ 2 — RESIDENT ADVOCATES**

The bill authorizes the state ombudsman to remove a resident advocate for failing to comply with specified requirements of the position. Existing law already allows the state ombudsman to take such action if she finds a resident advocate is guilty of misconduct, material neglect of duty, or incompetence in the conduct of the office.

By law, the state ombudsman appoints, in consultation with regional ombudsmen, residents' advocates in sufficient number to serve each region's long-term care facilities. Residents' advocates are volunteers with demonstrated interest in elderly care.

## **§ 7 — ACCESS TO RECORDS**

Under current law, the state ombudsman and her representatives may access a resident's medical and social records without the consent of the resident or resident's legal representative if it is necessary to investigate a complaint and (1) the resident's legal guardian refuses to give permission, (2) an office representative has reasonable cause to believe the legal guardian is not acting in the resident's best interest, and (3) the office representative obtains the ombudsman's approval. The bill replaces references to "legal guardian" with "resident representative" to conform to federal regulations.

## **BACKGROUND**

### ***Recent Federal Regulations***

The federal Older Americans Act requires each state to have a long-term care ombudsman program (LTCOP) led by a full-time state ombudsman who directs the program statewide. In 2015, the federal Administration for Community Services issued a final rule which took effect in 2016. The rule addresses, among other things, the (1) responsibilities of state ombudsmen and their representatives; (2) responsibilities of the state agencies that house long-term care ombudsman offices; (3) criteria for establishing consistent, person-centered approaches to resolving resident complaints; and (4) processes for identifying and remedying conflicts of interest within LTCOPs (45 C.F.R. 1321 and 1327).

**Related Bill**

SB 257, favorably reported by the Aging Committee, also transfers the Office of the Long-Term Care Ombudsman from OPM to DORS.

**COMMITTEE ACTION**

Aging Committee

Joint Favorable Substitute

Yea 12 Nay 0 (03/15/2018)