

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 18-6—sSB 309
Aging Committee

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

SUMMARY: This act transfers the Office of the Long-Term Care Ombudsman (OLTCO) from the Office of Policy and Management (OPM) to the Department of Rehabilitation Services (DORS). It also makes various changes to OLTCO to comply with 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 act 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 act 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

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representative.

Under the act, 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

Prior law required OPM to make certain the state ombudsman did not have any conflicts of interest by, among other things, ensuring that the ombudsman was not employed by, or participating in, the management of a long-term care facility. The act 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 act 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 prior law, the state ombudsman and her representatives could access a resident’s medical and social records without the consent of the resident or resident’s legal representative if it was necessary to investigate a complaint and (1) the resident’s legal guardian refused to give permission, (2) an office representative had reasonable cause to believe the legal guardian was not acting in the resident’s best interest, and (3) the office representative obtained the ombudsman’s approval. The act 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

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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 that 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 & 1327).

Related Act

PA 18-169 also transfers the OLTCO from OPM to DORS.