



General Assembly

Substitute Bill No. 309

February Session, 2018



**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2 statutes is repealed and the following is substituted in lieu thereof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.*

