AN ACT REQUIRING THE STATE OMBUDSMAN TO INVESTIGATE COMPLAINTS CONCERNING RECIPIENTS OF HOME AND COMMUNITY-BASED SERVICES.

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

Section 1. Section 17a-405 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2019):

(a) As used in this chapter:

(1) "State agency" means the Department of Rehabilitation Services.

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

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

(4) "Assistant State Ombudsman" means the person appointed by the State Ombudsman to assist the State Ombudsman in carrying out
the duties of the State Ombudsman pursuant to section 17a-408, as amended by this act.

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

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

(7) "Recipient" means an individual receiving home and community-based services who is sixty years of age or older.

[(6)] (8) "Resident" means an individual who resides in a long-term care facility.

[(7)] (9) "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)] (10) "Commissioner" means the Commissioner of Rehabilitation Services.

[(9)] (11) "Applicant" means an individual who has applied for admission to a long-term care facility or for home and community-based services.

(12) "Home and community-based services" means long-term care provided in a home or community setting, or both, to a recipient.

[(10)] (13) "Resident representative" means (A) an individual chosen
by the resident or recipient to act on behalf of the resident or recipient in order to support the resident or recipient in decision making, accessing medical, social or other personal information of the resident or recipient, managing financial matters, or receiving notifications; (B) a person authorized by state or federal law to act on behalf of the resident or recipient in order to support the resident or recipient in decision making, accessing medical, social or other personal information of the resident or recipient, 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 or recipient.

(b) There is established an independent Office of the Long-Term Care Ombudsman within the Department of Rehabilitation Services. The 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 an Assistant State Ombudsman and regional ombudsmen. In the event the State Ombudsman or a regional ombudsman is unable to fulfill the duties of the office, the commissioner shall appoint an acting State Ombudsman. [and the State Ombudsman shall appoint] In the event the Assistant State Ombudsman or a regional ombudsman is unable to fulfill the duties of the office, the State Ombudsman shall appoint an acting Assistant State Ombudsman or an acting 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. Subsection (a) of section 17a-406 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2019):

(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 and recipients of home and community-based services 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 individuals who reside in long-term care facilities or who are recipients of home and community-based services. Residents' advocates shall serve without compensation but may be reimbursed for reasonable expenses incurred in the performance of their duties, within available appropriations.

Sec. 3. Section 17a-407 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2019):

No person may perform any functions as a residents' advocate until the person has successfully completed a course of training required by the State Ombudsman. Any residents' advocate who fails to complete such a course within a reasonable time after appointment may be removed by the State Ombudsman or the regional ombudsman for the region in which such residents' advocate serves. The 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 this section. Such regulations shall include, but need not be limited to, the course of training required by this section.

Sec. 4. Section 17a-408 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2019):

(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, to the extent permissible under federal law and within available appropriations, personally or through representatives of the office:

(1) Identify, investigate and resolve complaints that:

(A) Are made by, or on behalf of, residents and recipients or, as to complaints involving the application for (i) admission to a long-term care facility, or (ii) home and community-based services 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 and recipients, including the welfare and rights of the residents and recipients with respect to the appointment and activities of guardians and representative payees, of (i) providers or representatives of providers of long-term care services, including home and community-based 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 and recipients;

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

(4) Ensure that the residents, recipients 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, recipients, applicants and other complainants receive timely responses from representatives of the office to complaints;
(5) Represent the interests of the residents, recipients and applicants in relation to issues concerning applications to long-term care facilities, or for home and community-based services before governmental agencies and seek administrative, legal and other remedies to protect the health, safety, welfare and rights of the residents, recipients and applicants;

(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 and recipients with respect to the adequacy of long-term care facilities and home and community-based services in this state and to the rights of applicants in relation to applications to long-term care facilities and for home and community-based services;

(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 and recipients with respect to the adequacy of long-term care facilities and home and community-based 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 recipients and the general resident population and applicants in relation to issues concerning applications to long-term care facilities and for home and community-based services; and

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

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

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

Sec. 5. Section 17a-409 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2019):

The State Ombudsman is authorized to investigate and make reports and recommendations concerning any act or the failure to act by any agency, official or public employee, with respect to their responsibilities and duties in connection with long-term care facilities or home and community-based services, except the courts and their personnel, legislative bodies and their personnel and the chief executive of the state and the chief executive's personal staff and all elected officials.

Sec. 6. Section 17a-410 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2019):

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

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

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

(3) Identify, investigate and resolve complaints made by or on behalf of residents and recipients that relate to action, inaction or decisions that may adversely affect their health, safety, welfare or rights [of the residents] or by, or on behalf of, applicants in relation to issues concerning applications for admission to long-term care facilities or for home and community-based services;
(4) Represent the interests of residents, recipients and applicants, in relation to their applications [to long-term care facilities] for admission to long-term care facilities or for home and community-based services, before government agencies and seek administrative, legal and other remedies to protect the health, safety, welfare and rights of the residents, recipients and applicants;

(5) (A) Review and, if necessary, comment on any existing and proposed laws, regulations and other government policies and actions that pertain to the rights and well-being of residents, recipients 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. 7. Section 17a-411 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2019):

(a) Residents' advocates, under supervision of the regional ombudsmen, shall assist the regional ombudsmen in the performance of all duties and responsibilities of the regional ombudsmen as described in section 17a-410, as amended by this act.

(b) All long-term care facilities shall post or cause to be posted in a conspicuous place therein a list of the names of the appropriate residents' advocates and the names, addresses, and telephone numbers of the appropriate regional ombudsmen.

(c) All providers of home and community-based services shall provide their clients with a list of residents' advocates and the names, addresses and telephone numbers of the appropriate regional ombudsmen.

[(c)] (d) The Commissioner of 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. 8. Section 17a-414 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2019):

(a) The state agency shall, within available appropriations, 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, recipients and applicants in relation to their applications; [to long-term care facilities;] and (B) assist the State Ombudsman and representatives of the office in the performance of the official duties of the State Ombudsman and representatives of the office; and

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

(b) The Assistant State Ombudsman, 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. 9. Section 17a-415 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2019):

(a) The State Ombudsman, Assistant State Ombudsman, regional ombudsmen 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 or recipient, if (A) the representative of the office has the permission of the resident, recipient or the legal representative of the resident or recipient, (B) the resident or recipient 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 resident representative refuses to give permission, a representative of the office has reasonable cause to believe that the resident representative is not acting in the best interests of the resident or recipient, and the representative of the office obtains the approval of the [ombudsman] State 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 and providers of home and community-based services.

(b) Any person or entity who wilfully interferes with representatives of the office in the performance of the official duties of the representatives of the office, or any long-term care facility, home and community-based service provider or other entity which retaliates or exacts reprisals with respect to any resident, recipient, 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, Assistant State Ombudsman, any regional ombudsman or any residents' or recipients' advocate entry into such facility or refuses to cooperate with the State Ombudsman, or any regional ombudsman or any residents' or recipients' advocate in the carrying out of [their] his or her 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] any resident or recipient or staff to communicate freely with the State Ombudsman, Assistant State Ombudsman, any regional ombudsman or any residents' or
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recipients' 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 Assistant State Ombudsman, the regional ombudsmen and the residents' or recipients' advocates shall have access to all relevant public records, except that records which are confidential to a resident or recipient shall only be divulged with the written consent of the resident or recipient.

(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 Assistant State Ombudsman, the regional ombudsmen and the residents' or recipients' 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. 10. Section 17a-417 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2019):

The Commissioner of Rehabilitation Services shall require the State Ombudsman to, within available appropriations:

(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, as amended by this act;

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

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

(E) (i) Analyzing the success of the program including success in providing services to residents [of long-term care facilities] and recipients; 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 quality of the care and life of residents and recipients, to protect [the] their 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 home and community-based services, and to the health, safety, welfare and rights of residents and recipients 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] residents and recipients; 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. 11. Section 17a-418 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2019):

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

Sec. 12. Section 17a-419 of the general statutes is repealed and the
following is substituted in lieu thereof (Effective July 1, 2019):

The state agency shall:

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

(2) Prohibit the disclosure of the identity of any complainant, resident or recipient with respect to whom the office maintains such
files or records unless (A) the complainant, resident or recipient, or
the legal representative of the complainant, resident or recipient,
consents to the disclosure and the consent is given in writing; (B) (i) the
complainant, resident or recipient gives consent orally; and (ii) the
consent is documented contemporaneously in a writing made by a
representative of the office in accordance with such requirements as
the state agency shall establish; or (iii) the disclosure is required by
court order.

Sec. 13. Section 17a-420 of the general statutes is repealed and the
following is substituted in lieu thereof (Effective July 1, 2019):

In planning and operating the program, the state agency, in
consultation with the State Ombudsman, shall consider the views of
area agencies on aging, long-term care facility residents, recipients and
providers of long-term care, including home and community-based
services.
Sec. 14. Subdivision (3) of section 17a-421 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2019):

(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, including a home and community-based 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, including a home and community-based service; (C) is not employed by, or participating in the management of, a long-term care facility or a home and community-based service 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 or a home and community-based service; and

This act shall take effect as follows and shall amend the following sections:

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Statement of Purpose:
To expand the investigatory oversight of the State Ombudsman to include home and community-based services.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]