

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 254
SENATE BILL 334

AN ACT TO MAKE CLARIFYING CHANGES TO THE LONG-TERM CARE OMBUDSMAN PROGRAM LAW, THE NURSING HOME COMMUNITY ADVISORY COMMITTEE LAW, AND THE DOMICILIARY HOME COMMUNITY ADVISORY COMMITTEE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-181.15 reads as rewritten:

"§ 143B-181.15. Long-Term Care Ombudsman Program/Office; policy.

The General Assembly finds that a significant number of older citizens of this State reside in long-term care facilities and are dependent on others to provide their care. It is the intent of the General Assembly to protect and improve the quality of care and life for residents through the establishment of a program to assist residents and providers in the resolution of complaints or common concerns, to promote community involvement and volunteerism in long-term care facilities, and to educate the public about the long-term care system. It is the further intent of the General Assembly that the Department of Human Resources, within available resources and pursuant to its duties under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001-3057g, 42 U.S.C. § 3001 et seq., ensure that the quality of care and life for these residents is maintained, that necessary reports are made, and that, when necessary, corrective action is taken at the Department level."

Sec. 2. G.S. 143B-181.16 reads as rewritten:

"§ 143B-181.16. Long-Term Care Ombudsman Program/Office; definition.

Unless the content clearly requires otherwise, as used in this Article:

- (1) 'Long-term care facility' means any skilled nursing facility and intermediate care facility as defined in ~~G.S. 131A-4~~ G.S. 131A-3(4) or any domiciliary home as defined in G.S. 131D-20(2).
- (2) 'Resident' means any person who is receiving treatment or care in any long-term care facility.
- (3) 'State Ombudsman' means the State Ombudsman as defined by the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., who carries out the duties and functions established by this Article.
- (4) 'Regional Ombudsman' means a person employed by an Area Agency on Aging to carry out the functions of the Regional Ombudsman Office established by this Article."

Sec. 3. G.S. 143B-181.18 reads as rewritten:

"§ 143B-181.18. Office of State Long-Term Care Ombudsman Program/State Ombudsman duties.

The State Ombudsman shall:

- (1) Promote community involvement with long-term care ~~provider~~ providers and residents of long-term care facilities and serve as liaison between residents, residents' families, facility personnel, and facility administration;
- (2) Supervise the Long-Term Care Program pursuant to rules adopted by the Secretary of the Department of Human Resources pursuant to G.S. 143B-10;
- (3) Certify regional ombudsmen. Certification requirements shall include an ~~internship~~ internship, training in the aging process, complaint resolution, long-term care issues, mediation techniques, recruitment and training of volunteers, and relevant federal, State, and local laws, policies, and standards;
- (4) Attempt to resolve complaints made by or on behalf of individuals who are residents of long-term care facilities, which complaints relate to administrative action that may adversely affect the health, safety, or welfare of residents;
- (5) Provide training and technical assistance to regional ombudsmen;
- (6) Establish procedures for appropriate access by regional ombudsmen to long-term care facilities and residents' records including procedures to protect the confidentiality of these records and to ensure that the identity of any complainant or resident will not be disclosed ~~without the written consent of the complainant or resident or upon court order;~~ except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.;
- (7) Analyze data relating to complaints and conditions in long-term care facilities to identify significant problems and recommend solutions;
- (8) Prepare an annual report containing data and findings regarding the types of problems experienced and complaints reported by residents as well as recommendations for resolutions of identified long-term care issues;
- (9) Prepare findings regarding public education and community involvement efforts and innovative programs being provided in long-term care facilities; and
- (10) Provide information to public agencies, and through the State Ombudsman, to legislators, and others regarding problems encountered by residents or providers as well as recommendations for resolution."

Sec. 4. G.S. 143B-181.20(a) reads as rewritten:

"(a) The State and Regional Ombudsman may enter any long-term care facility and may have reasonable access to any resident in the reasonable pursuit of his function. The Ombudsman may communicate privately and confidentially with residents of the

facility individually or in groups. The Ombudsman shall have access to the patient records of any resident, under procedures established by the State Ombudsman pursuant to ~~G.S. 143B-181.18(6)~~, provided that the medical and personal financial records pertaining to an individual resident may be inspected only with the permission of the resident or his legally appointed guardian, if any, as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., and under procedures established by the State Ombudsman pursuant to G.S. 143B-181.18(6). Entry shall be conducted in a manner that will not significantly disrupt the provision of nursing or other care to residents and if the long-term care facility requires registration of all visitors entering the facility, then the State or Regional Ombudsman must also register. Any State or Regional Ombudsman who discloses any information obtained from the patient's medical or personal financial records without a court order or without ~~authorization in writing from the resident, or his legal representative,~~ records except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., is guilty of a Class 1 misdemeanor."

Sec. 5. G.S. 143B-181.22 reads as rewritten:

"§ 143B-181.22. State/Regional Long-Term Care Ombudsman; confidentiality.

~~The identity of any complainant, resident on whose behalf a complaint is made, or individual providing information on behalf of the resident or complainant relevant to the attempted resolution of a complaint is confidential and may be disclosed only with the express permission of the person. The information produced by the process of complaint resolution may be disclosed by the State Ombudsman or Regional Ombudsman only if the identity of any such person is not disclosed by name or inference. If the identity of any such person is disclosed by name or inference in such information, the information may be disclosed only with his express permission. If the complaint becomes the subject of a judicial proceeding, the investigative information may be disclosed for the purpose of the proceeding.~~

The identity of any complainant, resident on whose behalf a complaint is made, or any individual providing information on behalf of the resident or complainant relevant to the attempted resolution of the complaint along with the information produced by the process of complaint resolution is confidential and shall be disclosed only as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq."

Sec. 6. G.S. 131D-32(e) reads as rewritten:

"(e) Each committee shall apprise itself of the general conditions under which the persons are residing in the homes, and shall work for the best interests of the persons in the homes. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level. ~~The names of all complaining persons and the names of residents involved in the complaint shall remain confidential unless written permission is given for disclosure. The identity of any complainant or resident involved in a complaint shall not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.~~ The committee shall notify the enforcement agency of all verified violations of the Domiciliary Home Residents' Bill of Rights."

Sec. 7. G.S. 131E-128(h) reads as rewritten:

- "(h) (1) Each committee shall apprise itself of the general conditions under which the persons are residing in the homes, and shall work for the best interests of the persons in the homes. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level.
- (2) Each committee shall quarterly visit the nursing home it serves. For each official quarterly visit, a majority of the committee members shall be present. In addition, each committee may visit the nursing home it serves whenever it deems it necessary to carry out its duties. In counties with four or more nursing homes, the subcommittee assigned to a home shall perform the duties of the committee under this subdivision, and a majority of the subcommittee members must be present for any visit.
- (3) Each member of a committee shall have the right between 10:00 A.M. and 8:00 P.M. to enter into the facility the committee serves in order to carry out the members' responsibilities. In a county where subcommittees have been established, this right of access shall be limited to homes served by those subcommittees to which the member has been appointed.
- (4) The committee or subcommittee may communicate through its chair with the Department or any other agency in relation to the interest of any patient. ~~The names of all complaining persons shall remain confidential unless written permission is given for disclosure.~~ identity of any complainant or resident involved in a complaint shall not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.
- (5) Each home shall cooperate with the committee as it carries out its duties.
- (6) Before entering into any nursing home, the committee, subcommittee, or member shall identify itself to the person present at the facility who is in charge of the facility at that time."

Sec. 8. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives