

113TH CONGRESS
1ST SESSION

S. 998

To amend the Older Americans Act of 1965 to establish a Home Care Consumer Bill of Rights, to establish State Home Care Ombudsman Programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 21, 2013

Mr. FRANKEN (for himself and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Older Americans Act of 1965 to establish a Home Care Consumer Bill of Rights, to establish State Home Care Ombudsman Programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Home Care Consumer
5 Bill of Rights Act”.

1 **TITLE I—HOME CARE BILL OF**
2 **RIGHTS**

3 **SEC. 101. ADMINISTRATION ON AGING.**

4 Section 201(e)(2) of the Older Americans Act of
5 1965 (42 U.S.C. 3011(e)(2)) is amended—

6 (1) in subparagraph (A), by striking “and” at
7 the end;

8 (2) in subparagraph (B), by striking the period
9 and inserting “; and”; and

10 (3) by adding at the end the following:

11 “(C) to establish best practices for State-based
12 enforcement of a Home Care Consumer Bill of
13 Rights through a Plan for Enforcement, as such Bill
14 and Plan are outlined in section 705, not later than
15 6 months after the date of enactment of the Home
16 Care Consumer Bill of Rights Act, and to make
17 those best practices available to States, and to the
18 public through the National Center on Elder Abuse;

19 “(D) to assist States with the development of
20 Home Care Consumer Bills of Rights and Plans for
21 Enforcement, to support the shift from institutional
22 care to home and community-based long-term serv-
23 ices and supports and ensure that home care con-
24 sumers, as defined in section 736, have basic protec-

1 tions as outlined in subsections (b) and (c) of section
2 705;

3 “(E) to develop a process for review and ap-
4 proval of States’ Home Care Consumer Bills of
5 Rights and Plans for Enforcement, not later than 6
6 months after the date of enactment of the Home
7 Care Consumer Bill of Rights Act; and

8 “(F) to review and approve States’ Home Care
9 Consumer Bills of Rights and Plans for Enforce-
10 ment through that process.”.

11 **SEC. 102. ADDITIONAL STATE PLAN REQUIREMENTS.**

12 (a) IN GENERAL.—Section 705 of the Older Ameri-
13 cans Act of 1965 (42 U.S.C. 3058d) is amended—

14 (1) in subsection (a)—

15 (A) in paragraph (6), by striking “and” at
16 the end;

17 (B) in paragraph (7), by striking the pe-
18 riod and inserting “; and”; and

19 (C) by adding at the end the following:

20 “(8) subject to section 102(b) of the Home
21 Care Consumer Bill of Rights Act, an assurance—

22 “(A) that the State has a Home Care Con-
23 sumer Bill of Rights and a Plan for Enforce-
24 ment of such a Bill, developed in accordance
25 with the procedures described under paragraph

1 (2) and as approved by the Assistant Secretary,
 2 and include a copy of the Bill and Plan; or

3 “(B) at the discretion of the Assistant Sec-
 4 retary, in the event the State does not have an
 5 approved Home Care Consumer Bill of Rights
 6 and Plan for Enforcement, that the State has
 7 an alternative such as a proposal for developing
 8 and submitting for approval a Home Care Con-
 9 sumer Bill of Rights and Plan for Enforce-
 10 ment.”;

11 (2) by redesignating subsection (b) as sub-
 12 section (d);

13 (3) by inserting after subsection (a) the fol-
 14 lowing:

15 “(b) HOME CARE CONSUMER BILL OF RIGHTS.—
 16 The Home Care Consumer Bill of Rights referred to in
 17 subsection (a)(8) shall, at a minimum—

18 “(1) address a home care consumer’s right to
 19 basic safety by—

20 “(A) affirming that home care consumers
 21 are protected from physical, sexual, mental, and
 22 verbal abuse, neglect, and exploitation, includ-
 23 ing financial exploitation;

24 “(B) affirming that home care consumers
 25 are served by providers who are properly

1 trained and are providing home care services
2 within their scope of practice and the scope of
3 their certification or licensure (if such a certifi-
4 cation or licensure is required by the applicable
5 State);

6 “(C) affirming that such providers main-
7 tain the confidentiality of all personal, financial,
8 and medical information of home care con-
9 sumers; and

10 “(D) affirming that providers respect the
11 personal property of home care consumers, and
12 in the event of consumer reports of theft or
13 loss, investigate and report back to the con-
14 sumer the results of the investigation;

15 “(2) address a home care consumer’s right to
16 access information by—

17 “(A) affirming that home care consumers
18 are informed of their rights under this sub-
19 section and subsection (c) within 2 weeks after
20 the start of home care services, and about the
21 entities the consumers may contact if their
22 rights are violated, including the name and con-
23 tact information for State and local agencies re-
24 sponsible for enforcing the Home Care Con-
25 sumer Bill of Rights;

1 “(B) affirming that home care con-
2 sumers—

3 “(i) are informed of the cost of home
4 care services prior to receiving those serv-
5 ices, whether the cost of those services are
6 covered under health insurance, long-term
7 care insurance, or other private and public
8 programs, and any charges the consumer
9 will be expected to pay; and

10 “(ii) are given advance notice of any
11 changes to those costs or services; and

12 “(C) affirming that home care consumers
13 have access to information about the availability
14 of the home care services provided in the com-
15 munity involved and have the ability to choose
16 among home care services and providers of
17 home care services available in the community;

18 “(3) address a home care consumer’s right to
19 choice, participation, and self-determination by—

20 “(A) affirming that home care consumers
21 can participate in the planning of their home
22 care services, including making choices about
23 aspects of their care and services that are im-
24 portant to them, choosing providers and sched-
25 ules to the extent practicable, receiving reason-

1 able accommodation of their needs and pref-
2 erences, and involving anyone they chose to par-
3 ticipate with them in that planning;

4 “(B) affirming that home care consumers
5 are provided with sufficient information to
6 make informed decisions, are fully informed in
7 advance about any proposed changes in care
8 and services, and are involved in the decision-
9 making process regarding those changes; and

10 “(C) affirming that home care consumers
11 can refuse services and receive an explanation
12 of the consequences of doing so;

13 “(4) address a home care consumer’s right to
14 receive care and services provided in a way that pro-
15 motes each consumer’s dignity and individuality;

16 “(5) address a home care consumer’s right to
17 redress grievances by—

18 “(A) affirming that home care consumers
19 are able to voice grievances about the quality of
20 their home care services, the number of hours
21 of service, and violations of their rights, receive
22 prompt responses to those concerns, and are in-
23 formed about the entities the consumers may
24 contact to state those grievances in order to

1 have the grievances addressed in an appropriate
2 and timely manner, and without retaliation; and

3 “(B) affirming that home care consumers
4 are able to assert their rights under this sub-
5 section and subsection (c) without retaliation;

6 “(6) address the role and responsibilities that
7 fiduciaries may have in securing the rights of home
8 care consumers affirmed under the Home Care Con-
9 sumer Bill of Rights; and

10 “(7) meet any other guidelines determined to be
11 appropriate by the Assistant Secretary.

12 “(c) PLAN FOR ENFORCEMENT.—In developing the
13 Plan for Enforcement referred to in subsection (a)(8), the
14 State shall take into account the best practices established
15 under section 201(e)(2)(C). The Plan shall include a de-
16 scription of how State entities with a role in protecting
17 older individuals, such as home care services licensing
18 agencies, adult protective services agencies, the Office of
19 the State Long-Term Care Ombudsman (if the office has
20 jurisdiction over home and community-based long-term
21 care), local law enforcement agencies, and other entities
22 determined to be appropriate by the Assistant Secretary,
23 will coordinate activities to enforce the Home Care Con-
24 sumer Bill of Rights.”; and

25 (4) by adding at the end the following:

1 “(e) DEFINITION.—In this section, the term ‘home
2 care consumer’ and ‘home care services’ have the mean-
3 ings given the terms in section 736.”.

4 (b) APPLICATION OF REQUIREMENT TO SUBMIT
5 STATE HOME CARE CONSUMER BILL OF RIGHTS AND
6 PLAN FOR ENFORCEMENT.—

7 (1) IN GENERAL.—The requirement for a State
8 to provide an assurance, and either a Home Care
9 Consumer Bill of Rights and a Plan for Enforce-
10 ment of such Bill or an alternative, under paragraph
11 (8) of section 705(a) of the Older Americans Act of
12 1965 (as added by subsection (a)) shall apply to
13 States beginning on the date (referred to in this sub-
14 section as the “application date”) that is 1 year
15 after the date of the establishment of best practices
16 under section 201(e)(2)(C) of such Act (as added by
17 section 101).

18 (2) FIRST SUBMISSION AFTER APPLICATION
19 DATE.—A State shall comply with paragraph (8) of
20 section 705(a) of the Older Americans Act of 1965
21 (as added by subsection (a)) in whichever of the fol-
22 lowing 2 submissions occurs first with respect to
23 such State after the application date described under
24 paragraph (1):

1 (A) The submission of a new State plan
2 under section 307 of the Older Americans Act
3 of 1965 (42 U.S.C. 3027).

4 (B) The submission of an annual revision
5 to a State plan submitted under such section
6 307.

7 (3) ONGOING SUBMISSIONS.—After complying
8 with paragraph (8) of section 705(a) of the Older
9 Americans Act of 1965 (as added by subsection (a))
10 in a submission in accordance with paragraph (2) of
11 this subsection, a State shall comply with such para-
12 graph (8) in each new State plan submitted under
13 section 307 of the Older Americans Act of 1965 (42
14 U.S.C. 3027).

15 **SEC. 103. PREVENTION OF ELDER ABUSE, NEGLECT, AND**
16 **EXPLOITATION.**

17 Section 721(b) of the Older Americans Act of 1965
18 (42 U.S.C. 3058i(b)) is amended—

19 (1) in paragraph (11), by striking “and” at the
20 end;

21 (2) in paragraph (12), by striking the period
22 and inserting “; and”; and

23 (3) by adding at the end the following:

24 “(13) developing a State Home Care Consumer
25 Bill of Rights and Plan for Enforcement (as de-

1 scribed in section 705) to protect home care con-
2 sumers (as defined in section 736) from abuse, ne-
3 glect, and exploitation.”.

4 **SEC. 104. NATIONAL ADULT PROTECTIVE SERVICES RE-**
5 **SOURCE CENTER.**

6 Section 201 of the Older Americans Act of 1965 (42
7 U.S.C. 3011) is amended by adding at the end the fol-
8 lowing:

9 “(g)(1) The Assistant Secretary shall, by grant or
10 contract with a national nonprofit entity, establish a Na-
11 tional Adult Protective Services Resource Center (referred
12 to in this subsection as the ‘Center’). The purposes of the
13 Center are to improve the capacity of State and local adult
14 protective services programs to respond effectively to
15 abuse, neglect, and exploitation of vulnerable adults, in-
16 cluding home care consumers and residents of long-term
17 care facilities, and to coordinate with the Home Care Om-
18 budsman Program and Long-Term Care Ombudsman
19 Program to protect home care consumers and residents
20 most effectively.

21 “(2) The nonprofit entity awarded a grant or con-
22 tract under this subsection shall have expertise in, and
23 representation by, State and local adult protective services
24 programs.

25 “(3) The Center shall—

1 “(A) collect and disseminate information re-
2 garding, and increase public awareness of, the role
3 of adult protective services programs in investigating
4 the abuse, neglect (including self-neglect), and ex-
5 ploitation of vulnerable adults, including home care
6 consumers and residents of long-term care facilities,
7 and in intervening to protect the consumers and
8 residents from abuse;

9 “(B) develop, distribute, and provide training
10 and technical assistance for adult protective services
11 program investigators and supervisors investigating
12 the abuse, neglect (including self-neglect), and ex-
13 ploitation of vulnerable adults, including home care
14 consumers and residents of long-term care facilities,
15 and intervening to protect the consumers and resi-
16 dents from further abuse;

17 “(C) develop, distribute, and provide training to
18 home care and long-term care professionals and oth-
19 ers on recognizing, reporting (including regarding
20 mandatory reporting requirements), and responding
21 to the abuse, neglect (including self-neglect), and fi-
22 nancial exploitation of vulnerable adults, including
23 home care consumers and residents of long-term
24 care facilities;

1 “(D) compile and disseminate reports on re-
2 search and best practices for adult protective serv-
3 ices programs and other programs on effective re-
4 sponses to the abuse, neglect (including self-neglect),
5 and exploitation of vulnerable adults, including home
6 care consumers and residents of long-term care fa-
7 cilities;

8 “(E) work with the National Ombudsman Re-
9 source Center and State and local home care om-
10 budsman programs and long-term care ombudsman
11 programs to develop and disseminate training, prac-
12 tice standards, and policies regarding—

13 “(i) the roles and responsibilities of adult
14 protective services and ombudsman programs;

15 “(ii) confidentiality and abuse reporting
16 issues and protocols; and

17 “(iii) effective ways to maximize the re-
18 sources of adult protective services programs
19 for the benefit of home care consumers and
20 residents of long-term care facilities; and

21 “(F) establish a data system to collect informa-
22 tion on the abuse, neglect (including self-neglect),
23 and exploitation of home care consumers and resi-
24 dents of long-term care facilities and to measure the

1 effectiveness of the activities carried out by the Cen-
2 ter.

3 “(4) In this subsection, the terms ‘home care con-
4 sumer’ and ‘home care ombudsman program’ have the
5 meanings given the terms in section 736.”.

6 **TITLE II—STATE HOME CARE** 7 **OMBUDSMAN PROGRAMS**

8 **SEC. 201. PROGRAM.**

9 Section 701 of the Older Americans Act of 1965 (42
10 U.S.C. 3058) is amended by inserting “and grants” after
11 “allotments”.

12 **SEC. 202. AUTHORIZATION OF APPROPRIATIONS.**

13 Chapter 1 of subtitle A of title VII of the Older Amer-
14 icans Act of 1965 is amended by inserting after section
15 702 (42 U.S.C. 3058a) the following:

16 **“SEC. 702A. AUTHORIZATION OF APPROPRIATIONS FOR** 17 **STATE HOME CARE OMBUDSMAN PROGRAM.**

18 “There are authorized to be appropriated to carry out
19 chapter 5 such sums as may be necessary for fiscal year
20 2014 and each subsequent fiscal year.”.

21 **SEC. 203. GRANTS.**

22 Section 703 of the Older Americans Act of 1965 (42
23 U.S.C. 3058b) is amended by adding at the end the fol-
24 lowing:

1 “(d) GRANTS FOR STATE HOME CARE OMBUDSMAN
2 PROGRAMS.—

3 “(1) IN GENERAL.—The Assistant Secretary
4 shall use funds made available under section 702A
5 to award grants, on a competitive basis, to States
6 for State Home Care Ombudsman Programs.

7 “(2) CONSIDERATIONS.—In selecting States to
8 receive the grants, the Assistant Secretary shall con-
9 sider—

10 “(A) a State’s current financial support
11 (as of the date of consideration) for home care
12 ombudsman services;

13 “(B) a State’s commitment to preventing
14 conflict of interest between providers of home
15 care services and providers of home care om-
16 budsman services; and

17 “(C) other criteria determined by the As-
18 sistant Secretary.

19 “(3) PRIORITIES.—In selecting States to receive
20 the grants, the Assistant Secretary may give first
21 priority to States that are providing home care om-
22 budsman services to home care consumers on the
23 date of enactment of section 737, and seek to en-
24 hance the home care ombudsman programs through
25 which the States provide the services.”.

1 **SEC. 204. ELIGIBILITY.**

2 (a) ORGANIZATION.—Section 704 of the Older Amer-
3 icans Act of 1965 (42 U.S.C. 3058c) is amended, in the
4 matter preceding paragraph (1), by inserting “or grants”
5 after “allotments”.

6 (b) ADDITIONAL REQUIREMENTS.—Section 705(a) of
7 the Older Americans Act of 1965 (42 U.S.C. 3058d(a))
8 is amended—

9 (1) in the matter preceding paragraph (1), by
10 inserting “or grant” after “allotment”; and

11 (2) in paragraph (4), by striking “enactment of
12 this subtitle” and inserting “enactment of the chap-
13 ter”.

14 **SEC. 205. STATE HOME CARE OMBUDSMAN PROGRAMS.**

15 Subtitle A of title VII of the Older Americans Act
16 of 1965 (42 U.S.C. 3058 et seq.) is amended by adding
17 at the end the following:

18 **“CHAPTER 5—STATE HOME CARE**
19 **OMBUDSMAN PROGRAMS**

20 **“SEC. 736. DEFINITIONS.**

21 “In this chapter:

22 “(1) HOME CARE CONSUMER.—The term ‘home
23 care consumer’ means a person who receives services
24 in the person’s home or community to promote inde-
25 pendence and reduce the necessity for residence in
26 a long-term care facility, which may include—

1 “(A) home care services provided through
2 this Act, the Medicare program under title
3 XVIII of the Social Security Act (42 U.S.C.
4 1395 et seq.), the Medicaid program under title
5 XIX of the Social Security Act (42 U.S.C. 1396
6 et seq.), or another public or private funding
7 source; or

8 “(B) home care services determined to be
9 appropriate by a State operating a State Home
10 Care Ombudsman Program.

11 “(2) HOME CARE OMBUDSMAN PROGRAM.—The
12 term ‘home care ombudsman program’ means a
13 State Home Care Ombudsman Program described in
14 section 737(a)(1).

15 “(3) HOME CARE OMBUDSMAN REPRESENTA-
16 TIVE.—The term ‘home care ombudsman represent-
17 ative’ includes an employee or volunteer who rep-
18 resents an entity designated under section
19 737(a)(5)(A) and who is individually designated by
20 the Ombudsman.

21 “(4) HOME CARE SERVICES.—The term ‘home
22 care services’ means home and community-based
23 services to promote independence and reduce the ne-
24 cessity for residence in a long-term care facility, in-
25 cluding personal care services designed to assist an

1 individual in the activities of daily living such as
 2 bathing, exercising, personal grooming, and getting
 3 in and out of bed.

4 “(5) LOCAL HOME CARE OMBUDSMAN ENTI-
 5 TY.—The term ‘local home care Ombudsman entity’
 6 means an entity designated under section
 7 737(a)(5)(A) to carry out the duties described in
 8 section 737(a)(5)(B) with respect to a planning and
 9 service area or other substate area.

10 “(6) OFFICE; OMBUDSMAN.—The terms ‘Office’
 11 and ‘Ombudsman’, used without further modifica-
 12 tion, have the meanings given the terms in section
 13 711.

14 **“SEC. 737. PROGRAM.**

15 “(a) ESTABLISHMENT.—

16 “(1) IN GENERAL.—In order to be eligible to
 17 receive a grant under section 703(d) from funds ap-
 18 propriated under section 702A and made available to
 19 carry out this chapter, a State agency shall, in ac-
 20 cordance with this section, agree to carry out a
 21 State Home Care Ombudsman Program within the
 22 Office of the State Long-Term Care Ombudsman.

23 “(2) HOME CARE OMBUDSMAN PROGRAM.—The
 24 home care ombudsman program shall be carried out
 25 by the Ombudsman.

1 “(3) FUNCTIONS.—In carrying out the home
2 care ombudsman program, the Ombudsman, person-
3 ally or through representatives of the home care om-
4 budsman program—

5 “(A) shall identify, investigate, and resolve
6 complaints that—

7 “(i) are made by, or on behalf of,
8 home care consumers;

9 “(ii) relate to action, inaction, or deci-
10 sions, that may adversely affect the health,
11 safety, welfare, or rights of home care con-
12 sumers (including the welfare and rights of
13 home care consumers with respect to the
14 appointment and activities of guardians
15 and representative payees), of—

16 “(I) entities responsible for de-
17 termining eligibility for home care
18 services, such as State and local gov-
19 ernments; and

20 “(II) entities responsible for de-
21 termining availability of home care
22 services, such as managed care orga-
23 nizations; or

24 “(iii) relate to action, inaction, or de-
25 cisions, regarding informing home care

1 consumers about their eligibility for, or the
2 availability of, home care services, of—

3 “(I) providers, or representatives
4 of providers, of home care services;

5 “(II) public agencies;

6 “(III) health and social service
7 agencies; and

8 “(IV) entities providing con-
9 sumer-directed services under a con-
10 sumer-directed program;

11 “(B) shall provide services to protect the
12 health, safety, welfare, and rights of home care
13 consumers;

14 “(C) shall inform home care consumers
15 about means of obtaining services provided by
16 providers or agencies described in subparagraph
17 (A)(ii) or services described in subparagraph
18 (B);

19 “(D) shall, in conjunction with other enti-
20 ties, such as area agencies on aging, conduct
21 public education about the home care ombuds-
22 man program and its services, including the
23 rights of home care workers to report concerns
24 to the ombudsman in order to protect the

1 health, safety, welfare, and rights of home care
2 consumers;

3 “(E) shall ensure that home care con-
4 sumers and complainants receive timely re-
5 sponses from representatives of the home care
6 ombudsman program to complaints;

7 “(F) shall represent the interests of home
8 care consumers before governmental agencies
9 and seek administrative, legal, and other rem-
10 edies to protect the health, safety, welfare, and
11 rights of the home care consumers, including
12 issues related to the sufficiency of the home
13 care workforce and its availability to meet the
14 needs of home care consumers;

15 “(G) shall provide administrative and tech-
16 nical assistance to entities designated under
17 paragraph (5) to assist the entities in partici-
18 pating in the home care ombudsman program;

19 “(H) shall provide for training representa-
20 tives of the home care ombudsman program;

21 “(I) shall—

22 “(i) promote the development of cit-
23 izen organizations, to participate in the
24 home care ombudsman program;

1 “(ii) analyze, comment on, and mon-
2 itor the development and implementation
3 of Federal, State, and local laws, regula-
4 tions, and other governmental policies and
5 actions, that pertain to the health, safety,
6 welfare, and rights of home care con-
7 sumers, with respect to the adequacy of
8 home care services in the State, including
9 issues related to the sufficiency of the
10 home care workforce and its availability to
11 meet the needs of home care consumers;

12 “(iii) recommend any changes in such
13 laws, regulations, policies, and actions as
14 the Ombudsman determines to be appro-
15 priate; and

16 “(iv) facilitate public comment on the
17 laws, regulations, policies, and actions; and

18 “(J) shall carry out other activities as the
19 Assistant Secretary determines to be appro-
20 priate.

21 “(4) CONTRACTS AND ARRANGEMENTS.—

22 “(A) IN GENERAL.—

23 “(i) AGENCIES AND ORGANIZA-
24 TIONS.—Except as provided in subpara-
25 graph (B), the State agency shall carry out

1 the home care ombudsman program, di-
2 rectly, or by contract or other arrangement
3 with any public agency or nonprofit private
4 organization.

5 “(ii) AREA AGENCIES ON AGING.—The
6 State agency shall determine whether to
7 enter into contracts or arrangements with
8 area agencies on aging to carry out the
9 home care ombudsman program, based on
10 the structure of the State’s existing (as of
11 the date of the determination) long-term
12 care ombudsman program and the poten-
13 tial for conflicts of interest in the home
14 and community-based services system in
15 the State. A State agency may carry out a
16 home care ombudsman program through
17 area agencies on aging in the State, if the
18 area agencies on aging—

19 “(I) have existing (as of the date
20 of the determination) consumer pro-
21 tection systems in place to prevent
22 such conflicts of interest; or

23 “(II) establish adequate proce-
24 dures to prevent conflicts of interest
25 under the program.

1 “(B) LICENSING AND CERTIFICATION OR-
 2 GANIZATIONS; ASSOCIATIONS.—The State agen-
 3 cy may not enter into the contract or other ar-
 4 rangement described in subparagraph (A)
 5 with—

6 “(i) an agency or organization that is
 7 responsible for licensing or certifying home
 8 care services in the State; or

9 “(ii) an association (or an affiliate of
 10 such an association) of providers of home
 11 care services.

12 “(5) DESIGNATION OF LOCAL HOME CARE OM-
 13 BUDSMAN ENTITIES AND HOME CARE OMBUDSMAN
 14 REPRESENTATIVES.—

15 “(A) DESIGNATION.—In carrying out the
 16 duties of the Office, the Ombudsman may des-
 17 ignate an entity as a local home care Ombuds-
 18 man entity (and, in doing so, the Ombudsman
 19 shall, if a local Ombudsman entity has already
 20 been designated, designate such local Ombuds-
 21 man entity as the local home care Ombudsman
 22 entity), and may designate an employee or vol-
 23 unteer to represent the entity.

24 “(B) DUTIES.—An individual so des-
 25 gnated, in accordance with the policies and

1 procedures established by the Ombudsman and
2 the State agency—

3 “(i) shall provide services to protect
4 the health, safety, welfare, and rights of
5 home care consumers;

6 “(ii) shall ensure that home care con-
7 sumers in the service area of the entity
8 have timely responses to complaints and
9 requests for assistance;

10 “(iii) shall identify, investigate, and
11 resolve complaints made by or on behalf of
12 home care consumers that relate to action,
13 inaction, or decisions, that may adversely
14 affect the health, safety, welfare, or rights
15 of home care consumers;

16 “(iv) shall represent the interests of
17 home care consumers before government
18 agencies and seek administrative, legal,
19 and other remedies to protect the health,
20 safety, welfare, and rights of home care
21 consumers;

22 “(v) shall—

23 “(I) review, and if necessary,
24 comment on any existing and pro-
25 posed laws, regulations, and other

1 government policies and actions, that
2 pertain to the rights and well-being of
3 home care consumers; and

4 “(II) facilitate the ability of the
5 public to comment on the laws, regu-
6 lations, policies, and actions;

7 “(vi) shall make referrals for services
8 to protect and provide for the health, safe-
9 ty, educational needs, welfare, and rights
10 of family or household members (including
11 children) of home care consumers; and

12 “(vii) shall carry out other activities
13 that the Ombudsman determines to be ap-
14 propriate.

15 “(C) ELIGIBILITY FOR DESIGNATION.—
16 Entities eligible to be designated as local home
17 care Ombudsman entities, and individuals eligi-
18 ble to be designated as home care ombudsman
19 representatives of such entities, shall—

20 “(i) have demonstrated capability to
21 carry out the duties established in section
22 712(a)(5)(B);

23 “(ii) be free of conflicts of interest
24 and not stand to gain financially through
25 an action or potential action brought on

1 behalf of individuals the Ombudsman
2 serves; and

3 “(iii) meet such additional require-
4 ments as the Ombudsman may specify.

5 “(D) POLICIES AND PROCEDURES.—

6 “(i) IN GENERAL.—The State agency
7 shall establish, in accordance with the Om-
8 budsman, policies and procedures for moni-
9 toring local home care Ombudsman entities
10 designated to carry out the duties estab-
11 lished in section 712(a)(5)(B).

12 “(ii) POLICIES.—In a case in which
13 the entities are grantees or the home care
14 ombudsman representatives are employees,
15 of area agencies on aging, the State agency
16 shall develop the policies in consultation
17 with the area agencies on aging. The poli-
18 cies shall provide for participation and
19 comment by the agencies and for resolu-
20 tion of concerns with respect to case activ-
21 ity.

22 “(iii) CONFIDENTIALITY AND DISCLO-
23 SURE.—The State agency shall develop the
24 policies and procedures in accordance with
25 all provisions of this subtitle regarding

1 confidentiality and conflict of interest for
2 providers of home care services.

3 “(b) PROCEDURES FOR ACCESS.—

4 “(1) IN GENERAL.—The State shall ensure that
5 representatives of the home care ombudsman pro-
6 gram shall have—

7 “(A) access to home care consumers and
8 their homes with permission of the home care
9 consumer involved or a legal representative;

10 “(B)(i) appropriate access to review all
11 records of a home care consumer, if—

12 “(I) the representative of the home
13 care ombudsman program has the permis-
14 sion of the home care consumer, or the
15 legal representative of the home care con-
16 sumer; or

17 “(II) the home care consumer is un-
18 able to consent to the review and has no
19 legal representative; or

20 “(ii) such access to the records as is nec-
21 essary to investigate a complaint if—

22 “(I) a legal guardian of the home care
23 consumer refuses to give the permission;

24 “(II) a representative of the home
25 care ombudsman program has reasonable

1 cause to believe that the guardian is not
2 acting in the best interests of the home
3 care consumer; and

4 “(III) the representative obtains the
5 approval of the Ombudsman;

6 “(C) access to the administrative records,
7 policies, and documents, to which home care
8 consumers have, or the general public has ac-
9 cess, of the provider of home care services; and

10 “(D) access to and, on request, copies of
11 all licensing and certification records main-
12 tained by the State with respect to the provider
13 of home care services.

14 “(2) PROCEDURES.—The State agency shall es-
15 tablish procedures to ensure the access described in
16 paragraph (1).

17 “(c) REPORTING SYSTEM.—The State agency shall
18 ensure that the reporting system established in section
19 712(c) is equipped to—

20 “(1) collect and analyze data relating to com-
21 plaints and conditions concerning home care services
22 and to home care consumers for the purpose of iden-
23 tifying and resolving significant problems, including
24 complaints concerning—

25 “(A) quality of services;

1 “(B) quantity of services;

2 “(C) availability of services; and

3 “(D) denial, reduction, and termination of
4 services; and

5 “(2) submit the data, on a regular basis, to—

6 “(A) the agency of the State responsible
7 for licensing or certifying providers of home
8 care services in the State;

9 “(B) other State and Federal entities that
10 the Ombudsman determines to be appropriate;

11 “(C) the Assistant Secretary; and

12 “(D) the National Ombudsman Resource
13 Center established in section 202(a)(18)(A).

14 “(d) DISCLOSURE.—

15 “(1) IN GENERAL.—The State agency shall es-
16 tablish procedures for the disclosure by the Ombuds-
17 man or local home care Ombudsman entities of files
18 maintained by the home care ombudsman program,
19 including records described in subsection (b)(1) or
20 (c).

21 “(2) IDENTITY OF COMPLAINANT OR HOME
22 CARE CONSUMER.—The procedures described in
23 paragraph (1) shall—

24 “(A) provide that, subject to subparagraph
25 (B), the files and records described in para-

1 graph (1) may be disclosed only at the discre-
2 tion of the Ombudsman (or the person des-
3 igned by the Ombudsman to disclose the files
4 and records); and

5 “(B) prohibit the disclosure of the identity
6 of any complainant or home care consumer with
7 respect to whom the Office maintains such files
8 or records unless—

9 “(i) the complainant or home care
10 consumer, or the legal representative of the
11 complainant or home care consumer, con-
12 sents to the disclosure and the consent is
13 given in writing;

14 “(ii)(I) the complainant or home care
15 consumer gives consent orally; and

16 “(II) the consent is documented con-
17 temporaneously in a writing made by a
18 representative of the home care ombuds-
19 man program in accordance with such re-
20 quirements as the State agency shall estab-
21 lish; or

22 “(iii) the disclosure is required by
23 court order.

24 “(e) CONSULTATION.—In planning and carrying out
25 the home care ombudsman program, the State agency

1 shall consider the views of area agencies on aging, older
2 individuals, and providers of home care services and dem-
3 onstrate how the State agency has taken their views into
4 consideration.

5 “(f) CONFLICT OF INTEREST.—The State agency
6 shall—

7 “(1) ensure that no individual, or member of
8 the immediate family of an individual, involved in
9 the designation of the Ombudsman (whether by ap-
10 pointment or otherwise) or the designation of an en-
11 tity designated under subsection (a)(5), is subject to
12 a conflict of interest;

13 “(2) ensure that no officer or employee of the
14 Office, home care ombudsman representative of a
15 local home care Ombudsman entity, or member of
16 the immediate family of the officer, employee, or
17 home care ombudsman representative, is subject to
18 a conflict of interest;

19 “(3) ensure that the Ombudsman—

20 “(A) does not have a direct involvement in
21 the licensing or certification of a provider of
22 home care services;

23 “(B) does not have an ownership or invest-
24 ment interest (represented by equity, debt, con-

1 tract, or other financial relationship) in a pro-
2 vider of home care services;

3 “(C) is not employed by, or participating
4 in the management of, a provider of home care
5 services; and

6 “(D) does not receive, or have the right to
7 receive, directly or indirectly, remuneration (in
8 cash or in-kind) under a compensation arrange-
9 ment with an owner or operator of a provider
10 of home care services; and

11 “(4) establish, and specify in writing, mecha-
12 nisms to identify and remove conflicts of interest re-
13 ferred to in paragraphs (1) and (2), and to identify
14 and eliminate the relationships described in subpara-
15 graphs (A) through (D) of paragraph (3), including
16 such mechanisms as—

17 “(A) the methods by which the State agen-
18 cy will examine individuals, and immediate fam-
19 ily members, to identify the conflicts; and

20 “(B) the actions that the State agency will
21 require the individuals and such family mem-
22 bers to take to remove such conflicts.

23 “(g) LEGAL COUNSEL.—The State agency shall en-
24 sure that—

1 “(1)(A) adequate legal counsel is available, and
2 is able, without conflict of interest, to—

3 “(i) provide advice and consultation needed
4 to protect the health, safety, welfare, and rights
5 of home care consumers; and

6 “(ii) assist the Ombudsman and represent-
7 atives of the home care ombudsman program in
8 the performance of the official duties of the
9 Ombudsman and representatives; and

10 “(B) legal representation is provided to any
11 representative of the home care ombudsman pro-
12 gram against whom suit or other legal action is
13 brought or threatened to be brought in connection
14 with the performance of the official duties of the
15 Ombudsman or such a representative; and

16 “(2) the Ombudsman pursues administrative,
17 legal, and other appropriate remedies on behalf of
18 home care consumers.

19 “(h) ADMINISTRATION.—

20 “(1) REQUIREMENTS.—The State agency shall
21 require the Office to—

22 “(A) include in its annual report required
23 in section 712(h)(1)—

24 “(i) a description of the activities car-
25 ried out by the Office as they related to

1 the home care ombudsman program in the
2 year for which the report is prepared;

3 “(ii) the data and an analysis of the
4 data collected under subsection (c);

5 “(iii) an evaluation of the problems
6 experienced by, and the complaints made
7 by or on behalf of, home care consumers;

8 “(iv) recommendations for—

9 “(I) improving quality of the care
10 and life of the home care consumers;
11 and

12 “(II) protecting the health, safe-
13 ty, welfare, and rights of the home
14 care consumers;

15 “(v)(I) an analysis of the success of
16 the home care ombudsman program includ-
17 ing success in providing services to home
18 care consumers in communities with high
19 percentages of racial or ethnic minorities;
20 and

21 “(II) identification of barriers that
22 prevent the optimal operation of the home
23 care ombudsman program; and

24 “(vi) policy, regulatory, and legislative
25 recommendations to solve identified prob-

1 lems, to resolve the complaints, to improve
2 the quality of care and life of home care
3 consumers, to protect the health, safety,
4 welfare, and rights of home care con-
5 sumers, and to remove the barriers;

6 “(B) not later than 2 years after the date
7 of the enactment of this chapter, establish pro-
8 cedures for the training of the representatives
9 of the home care ombudsman program, includ-
10 ing unpaid volunteers, based on best practices
11 outlined by the Assistant Secretary in the most
12 recent report submitted under subsection
13 (m)(1), in consultation with representatives of
14 citizen groups, providers of home care services,
15 and the home care ombudsman program, that—

16 “(i) specify a minimum number of
17 hours of initial training;

18 “(ii) specify the content of the train-
19 ing, including training relating to—

20 “(I) Federal, State, and local
21 laws, regulations, and policies, with
22 respect to providers of home care
23 services in the State;

24 “(II) investigative techniques;
25 and

1 “(III) such other matters as the
2 State determines to be appropriate;
3 and

4 “(iii) specify an annual number of
5 hours of in-service training for all des-
6 ignated representatives;

7 “(C) prohibit any representative of the
8 home care ombudsman program (other than the
9 Ombudsman) from carrying out any activity de-
10 scribed in subparagraphs (A) through (H) of
11 subsection (a)(3) unless the representative—

12 “(i) has received the training required
13 under subparagraph (B); and

14 “(ii) has been approved by the Om-
15 budsman as qualified to carry out the ac-
16 tivity on behalf of the Office;

17 “(D) coordinate home care ombudsman
18 services with the protection and advocacy sys-
19 tems for individuals with developmental disabil-
20 ities and mental illnesses established under—

21 “(i) subtitle C of the Developmental
22 Disabilities Assistance and Bill of Rights
23 Act of 2000 (42 U.S.C. 15041 et seq.);
24 and

1 “(ii) the Protection and Advocacy for
2 Individuals with Mental Illness Act (42
3 U.S.C. 10801 et seq.);

4 “(E) coordinate, to the greatest extent pos-
5 sible, home care ombudsman services with legal
6 assistance provided under section 306(a)(2)(C),
7 through adoption of memoranda of under-
8 standing and other means;

9 “(F) coordinate services with State and
10 local law enforcement agencies and courts of
11 competent jurisdiction; and

12 “(G) permit any local home care Ombuds-
13 man entity to carry out the responsibilities de-
14 scribed in subparagraph (A), (D), or (E).

15 “(2) AUTHORITIES.—The State agency shall re-
16 quire the Office to—

17 “(A) analyze, comment on, and monitor
18 the development and implementation of Fed-
19 eral, State, and local laws, regulations, and
20 other government policies and actions that per-
21 tain to providers of home care services and
22 those services, and to the health, safety, wel-
23 fare, and rights of home care consumers, in the
24 State, and recommend any changes in such

1 laws, regulations, and policies as the Ombuds-
2 man determines to be appropriate;

3 “(B)(i) provide such information as the
4 Ombudsman determines to be necessary to pub-
5 lic and private agencies, legislators, and other
6 persons, regarding—

7 “(I) the problems and concerns of
8 older individuals receiving home care serv-
9 ices; and

10 “(II) recommendations related to the
11 problems and concerns; and

12 “(ii) make available to the public, and sub-
13 mit to the Assistant Secretary, the chief execu-
14 tive officer of the State, the State legislature,
15 the State agency responsible for licensing or
16 certifying providers of home care services, and
17 other appropriate governmental entities, each
18 report prepared under paragraph (1)(A); and

19 “(C) permit any local home care Ombuds-
20 man entity to carry out the responsibilities de-
21 scribed in subparagraph (A) or (B).

22 “(i) LIABILITY.—The State shall ensure that no rep-
23 resentative of the home care ombudsman program will be
24 liable under State law for the good faith performance of
25 official duties.

1 “(j) NONINTERFERENCE.—The State shall—

2 “(1) ensure that willful interference with rep-
3 resentatives of the home care ombudsman program
4 in the performance of the official duties of the rep-
5 resentatives (as defined by the Assistant Secretary)
6 shall be unlawful;

7 “(2) prohibit retaliation and reprisals by a pro-
8 vider of home care services or other entity with re-
9 spect to any recipient of home and community-based
10 services, employee, exclusive representative of an em-
11 ployee, or other person for filing a complaint with,
12 providing information to, or otherwise cooperating
13 with any representative of, the home care ombuds-
14 man program; and

15 “(3) provide for appropriate sanctions with re-
16 spect to the interference, retaliation, and reprisals.

17 “(k) COORDINATION WITH ADULT PROTECTIVE
18 SERVICES.—

19 “(1) IN GENERAL.—The Ombudsman, in car-
20 rying out the State Home Care Ombudsman Pro-
21 gram, shall coordinate activities with the National
22 Adult Protective Services Resource Center and the
23 head of the State’s adult protective services program
24 in a manner that is consistent with the State’s exist-
25 ing (as of the date of the coordination) protocols for

1 coordination of activities between the Ombudsman,
2 in carrying out the State Long-Term Care Ombuds-
3 man Program.

4 “(2) ESTABLISHMENT OF PROTOCOLS.—If the
5 protocols described in paragraph (1) do not exist in
6 the State, the Ombudsman, in conjunction with the
7 head of the State’s adult protective services pro-
8 gram, shall establish protocols to coordinate activi-
9 ties with the intent of better serving vulnerable
10 adults, which protocols shall—

11 “(A) clarify the roles of each program;

12 “(B) establish procedures for maintaining
13 a working relationship;

14 “(C) outline mutual expectations; and

15 “(D) establish procedures for coordinating
16 activities with law enforcement.

17 “(1) MAINTENANCE OF EFFORT.—A State, in using
18 the funds made available for a fiscal year through a grant
19 received under section 703(d), shall maintain the expendi-
20 tures of the State for home care ombudsman services at
21 a level that is not less than the level of such expenditures
22 maintained by the State for the preceding fiscal year.

23 “(m) EVALUATION.—The Assistant Secretary shall—

24 “(1) in conjunction with the Director of the Of-
25 fice of Long-Term Care Ombudsman Programs and

1 the heads of other entities determined to be nec-
2 essary by the Assistant Secretary, collect and ana-
3 lyze the data required to be submitted under sub-
4 section (c) by the States and within 1 year after re-
5 ceipt of the data, submit a report to Congress out-
6 lining best practices for carrying out a home care
7 ombudsman program; and

8 “(2) make the report available to States.”.

9 **TITLE III—QUALITY MEASURES**
10 **FOR HOME AND COMMUNITY-**
11 **BASED SERVICES**

12 **SEC. 301. FUNCTIONS OF ASSISTANT SECRETARY.**

13 Section 202(b) of the Older Americans Act of 1965
14 (42 U.S.C. 3012(b)) is amended—

15 (1) in paragraph (8)—

16 (A) in subparagraph (D), by striking
17 “and” at the end;

18 (B) in subparagraph (E) by adding “and”
19 at the end; and

20 (C) by adding at the end the following:

21 “(F) to provide information, relating to the
22 quality measures identified under paragraph
23 (11)(A), using the methods described in para-
24 graph (11)(B), about home and community-
25 based long-term care programs, service pro-

1 providers, and resources, when referring consumers
2 to those programs, providers, or resources;”;

3 (2) in paragraph (9)—

4 (A) in the matter preceding subparagraph
5 (A), by striking “and community-based service
6 providers” and inserting “community-based
7 service providers, and, for purposes of subpara-
8 graph (C), Aging and Disability Resource Cen-
9 ters,”;

10 (B) in subparagraph (A), by striking
11 “and” at the end;

12 (C) subparagraph (B), by adding “and” at
13 the end; and

14 (D) by adding at the end the following:

15 “(C) methods, consistent with the methods
16 described in paragraph (11)(B), to commu-
17 nicate to consumers quality information, relat-
18 ing to the measures identified under paragraph
19 (11)(A), about home and community-based
20 long-term care programs, service providers, and
21 resources;”;

22 (3) in paragraph (10), by striking “and” at the
23 end;

24 (4) by redesignating paragraph (11) as para-
25 graph (12); and

1 (5) by inserting after paragraph (10) the fol-
2 lowing:

3 “(11)(A) identify, in consultation with States
4 (either directly or by entering into a contract under
5 this subparagraph and considering the recommenda-
6 tion of the contract recipient) measures of quality
7 for home and community-based long-term care pro-
8 grams, service providers, and resources that—

9 “(i) shall be designed to ensure the health,
10 safety, and welfare of consumers who are re-
11 ferred to such programs, service providers, and
12 resources by area agencies on aging, Aging and
13 Disability Resource Centers, and such other en-
14 tities as the Assistant Secretary determines to
15 be appropriate; and

16 “(ii) shall be identified after the Assistant
17 Secretary takes into account, at a minimum, in-
18 formation regarding—

19 “(I) background checks of service pro-
20 viders;

21 “(II) licensure of agencies and certifi-
22 cation and training of service providers;

23 “(III) consumer satisfaction regarding
24 programs, service providers, and resources,

1 in cases in which consumer satisfaction in-
2 formation is available; and

3 “(IV) such additional matters as the
4 Assistant Secretary determines to be ap-
5 propriate; and

6 “(B) taking into account the variation in com-
7 munication infrastructure development among Aging
8 and Disability Resource Centers, establish consumer-
9 friendly methods for communicating to consumers,
10 consistently throughout a State—

11 “(i) quality information relating to the
12 measures identified under subparagraph (A)
13 about home and community-based long-term
14 care programs, service providers, and resources
15 to which such consumers are referred to by area
16 agencies on aging, Aging and Disability Re-
17 source Centers, and such other entities as the
18 Assistant Secretary determines to be appro-
19 priate; and

20 “(ii)(I) the content of the State certifi-
21 cation or licensure requirements applicable to
22 such home and community-based long-term care
23 programs, service providers, or resources; or

24 “(II) an explanation that the State does
25 not have certification or licensure requirements

1 applicable to such home and community-based
2 long-term care programs, service providers, or
3 resources; and”.

4 **SEC. 302. ORGANIZATION.**

5 Section 305(a)(3)(E) of the Older Americans Act of
6 1965 (42 U.S.C. 3025(a)(3)(E)) is amended—

7 (1) in the matter before clause (i), by striking
8 “information relating to”;

9 (2) in clause (i)—

10 (A) by inserting “information relating to”
11 after “(i)”; and

12 (B) by striking “and” at the end;

13 (3) in clause (ii)—

14 (A) by inserting “information relating to”
15 after “(ii)”; and

16 (B) by striking the period and inserting “;
17 and”; and

18 (4) by adding at the end the following:

19 “(iii) quality information, relating to
20 the measures identified under section
21 202(b)(11)(A), about home and commu-
22 nity-based long-term care programs, serv-
23 ice providers, and resources, provided
24 through methods described in section
25 202(b)(11)(B), when the Aging and Dis-

1 ability Resource Centers, area agencies on
2 aging, and such other entities as the As-
3 sistant Secretary determines to be appro-
4 priate, refer consumers to those programs,
5 providers, and resources in the State.”.

○