

1 **LONG-TERM CARE OMBUDSMAN AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brad M. Daw**

5 Senate Sponsor: Margaret Dayton

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to the Long-Term Care Ombudsman Program
10 within the Division of Aging and Adult Services, within the Department of Human
11 Services.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends definitions;
- 15 ▶ eliminates references to "elderly" in provisions governing the Long-Term Care
16 Ombudsman Program;
- 17 ▶ makes other amendments related to the Long-Term Care Ombudsman Program; and
- 18 ▶ makes technical changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

- 25 **62A-3-201**, as enacted by Laws of Utah 1988, Chapter 1
- 26 **62A-3-202**, as last amended by Laws of Utah 1998, Chapter 192
- 27 **62A-3-203**, as last amended by Laws of Utah 2006, Chapter 31
- 28 **62A-3-204**, as last amended by Laws of Utah 2009, Chapter 75
- 29 **62A-3-205**, as last amended by Laws of Utah 2008, Chapter 382

30 [62A-3-206](#), as last amended by Laws of Utah 2010, Chapter 324

31 [62A-3-207](#), as last amended by Laws of Utah 1993, Chapter 176

32 [62A-3-208](#), as enacted by Laws of Utah 1988, Chapter 1

33

34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **62A-3-201** is amended to read:

36 **62A-3-201. Legislative findings -- Purpose -- Ombudsman.**

37 (1) The Legislature finds and declares that the [aging] citizens of this state should be
38 assisted in asserting their civil and human rights as patients, residents, and clients of long-term
39 care facilities created to serve their specialized needs and problems; and that for the health,
40 safety, and welfare of these citizens, the state should take appropriate action through an
41 adequate legal framework to address their difficulties.

42 (2) The purpose of this part is to establish within the division the [~~long-term care~~
43 ~~ombudsman program~~] Long-Term Care Ombudsman Program for the [aging] citizens of this
44 state and identify duties and responsibilities of that program and of the ombudsman, in order to
45 address problems relating to long-term care [~~for aging citizens;~~] and to fulfill federal
46 requirements.

47 Section 2. Section **62A-3-202** is amended to read:

48 **62A-3-202. Definitions.**

49 As used in this part:

50 [~~(1) "Elderly resident" means an adult 60 years of age or older who because of~~
51 ~~physical, economic, social, or emotional problems cannot function normally on an independent~~
52 ~~basis, and who resides in a long-term care facility.]~~

53 (1) "Assisted living facility" means the same as that term is defined in Section [26-21-2](#).

54 (2) "Auxiliary aids and services" means items, equipment, or services that assist in
55 effective communication between an individual who has a mental, hearing, vision, or speech
56 disability and another individual.

57 [~~(2)~~] (3) "Government agency" means any department, division, office, bureau, board,

58 commission, authority, or any other agency or instrumentality created by the state, or to which
59 the state is a party, or created by any county or municipality, which is responsible for the
60 regulation, visitation, inspection, or supervision of facilities, or which provides services to
61 patients, residents, or clients of facilities.

62 ~~[(3) "Long-term care facility" means any skilled nursing facility, intermediate care~~
63 ~~facility, nursing home, assisted living facility, adult foster care home, or any living arrangement~~
64 ~~in the community through which room and personal care services are provided for elderly~~
65 ~~residents.]~~

66 (4) "Intermediate care facility" means the same as that term is defined in Section
67 [58-15-2](#).

68 (5) (a) "Long-term care facility" means:

69 (i) a skilled nursing facility;

70 (ii) except as provided in Subsection (5)(b), an intermediate care facility;

71 (iii) a nursing home;

72 (iv) a small health care facility;

73 (v) a small health care facility type N; or

74 (vi) an assisted living facility.

75 (b) "Long-term care facility" does not mean an intermediate care facility for people
76 with an intellectual disability, as defined in Section [58-15-2](#).

77 ~~[(4)]~~ (6) "Ombudsman" means the administrator of the long-term care ombudsman
78 program, created pursuant to Section [62A-3-203](#).

79 (7) "Ombudsman program" means the Long-Term Care Ombudsman Program.

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

81 (9) "Skilled nursing facility" means the same as that term is defined in Section [58-15-2](#).

82 (10) "Small health care facility" means the same as that term is defined in Section
83 [26-21-2](#).

84 (11) "Small health care facility type N" means a residence in which a licensed nurse
85 resides and provides protected living arrangements, nursing care, and other services on a daily

86 basis for two to three individuals who are also residing in the residence and are unrelated to the
 87 licensee.

88 Section 3. Section **62A-3-203** is amended to read:

89 **62A-3-203. Long-Term Care Ombudsman Program -- Responsibilities.**

90 (1) (a) There is created within the division the [~~Long-Term Care Ombudsman~~
 91 ~~Program~~] ombudsman program for the purpose of promoting, advocating, and ensuring the
 92 adequacy of care received[;] and the quality of life experienced by [~~elderly~~] residents of
 93 long-term care facilities within the state.

94 (b) Subject to the rules made under Section **62A-3-106.5**, the ombudsman is
 95 responsible for:

96 (i) receiving and resolving complaints relating to [~~elderly~~] residents of long-term care
 97 facilities;

98 (ii) conducting investigations of any act, practice, policy, or procedure of [~~any~~] a
 99 long-term care facility or government agency [~~which it~~] that the ombudsman has reason to
 100 believe affects or may affect the health, safety, welfare, or civil and human rights of [~~any~~
 101 ~~elderly~~] a resident of a long-term care facility;

102 (iii) coordinating the department's services for [~~elderly~~] residents of long-term care
 103 facilities to ensure that those services are made available to eligible [~~elderly~~] citizens of the
 104 state; and

105 (iv) providing training regarding the delivery and regulation of long-term care to public
 106 agencies, local ombudsman program volunteers, and operators and employees of long-term
 107 care facilities.

108 (2) (a) A long-term care facility shall display an ombudsman program information
 109 poster in a location that is readily visible to all residents, visitors, and staff members.

110 (b) The division is responsible for providing the posters, which shall include [~~the~~
 111 ~~names and~~] phone numbers for local ombudsman programs.

112 Section 4. Section **62A-3-204** is amended to read:

113 **62A-3-204. Powers and responsibilities of ombudsman.**

114 The long-term care ombudsman shall:

115 (1) comply with Title VII of the federal Older Americans Act, 42 U.S.C. 3058 et seq.;

116 (2) establish procedures for and engage in receiving complaints, conducting
117 investigations, reporting findings, issuing findings and recommendations, promoting
118 community contact and involvement with [~~elderly~~] residents of long-term care facilities
119 through the use of volunteers, and publicizing its functions and activities;

120 (3) investigate an administrative act or omission of [~~any~~] a long-term care facility or
121 governmental agency if the act or omission relates to the purposes of the ombudsman. The
122 ombudsman may exercise its authority under this subsection without regard to the finality of
123 the administrative act or omission, and it may make findings in order to resolve the subject
124 matter of its investigation;

125 (4) recommend to the division rules that it considers necessary to carry out the
126 purposes of the ombudsman;

127 (5) cooperate and coordinate with governmental entities and voluntary assistance
128 organizations in exercising its powers and responsibilities;

129 (6) request and receive cooperation, assistance, services, and data from any
130 governmental agency, to enable it to properly exercise its powers and responsibilities;

131 (7) establish local ombudsman programs to assist in carrying out the purposes of this
132 part, which shall meet the standards developed by the division, and possess all of the authority
133 and power granted to the [~~long-term care~~] ombudsman program under this part; and

134 (8) exercise other powers and responsibilities as reasonably required to carry out the
135 purposes of this part.

136 Section 5. Section **62A-3-205** is amended to read:

137 **62A-3-205. Procedures -- Adjudicative proceedings.**

138 The [~~long-term care~~] ombudsman shall comply with the procedures and requirements of
139 Title 63G, Chapter 4, Administrative Procedures Act, in [~~its~~] the ombudsman's adjudicative
140 proceedings.

141 Section 6. Section **62A-3-206** is amended to read:

142 **62A-3-206. Investigation of complaints -- Procedures.**

143 (1) ~~[(a)]~~ The ombudsman shall investigate each complaint ~~[he]~~ the ombudsman
144 receives. An investigation may consist of a referral to another public agency, the collecting of
145 facts and information over the telephone, or an inspection of the long-term care facility that is
146 named in the complaint.

147 ~~[(b) The ombudsman shall notify any complainant of its decision to not pursue~~
148 ~~investigation of a complaint after the initial investigation and the reasons for the decision.]~~

149 (2) In making ~~[any]~~ an investigation, the ombudsman may engage in actions ~~[it deems]~~
150 the ombudsman considers appropriate, including~~[-but not limited to]:~~

151 (a) making inquiries and obtaining information;

152 (b) holding investigatory hearings;

153 (c) entering ~~[upon]~~ and inspecting any premises, without notice to the facility, provided
154 the investigator ~~[identifies himself]~~ presents, upon entering the premises ~~[as a person]~~,
155 identification as an individual authorized by this part to inspect the premises; and

156 (d) inspecting or obtaining ~~[any]~~ a book, file, medical record, or other record required
157 by law to be retained by the long-term care facility or governmental agency, pertaining to
158 ~~[elderly]~~ residents, subject to Subsection (3).

159 (3) (a) Before reviewing a resident's records, the ombudsman shall seek to obtain
160 ~~[written]~~ from the resident, or the resident's legal representative, permission in writing, orally,
161 or through the use of auxiliary aids and services to review the records ~~[from the~~
162 ~~institutionalized elderly person or his legal representative].~~

163 (b) The effort to obtain permission under Subsection (3)(a) shall include personal
164 contact with the ~~[elderly]~~ resident or ~~[his]~~ the resident's legal representative. If the resident or
165 the resident's legal representative refuses to ~~[sign a release allowing access to records]~~ give
166 permission, the ombudsman shall record and abide by this decision.

167 (c) If the ombudsman's attempt to obtain ~~[a signed release]~~ permission fails for ~~[any~~
168 ~~other]~~ a reason other than the refusal of the resident or the resident's legal representative to give
169 permission, the ombudsman may review the records.

170 ~~[(4) Following any investigation, the ombudsman shall report its findings and~~
 171 ~~recommendations to the complainant, elderly residents of long-term care facilities affected by~~
 172 ~~the complaint, and to the long-term care facility or governmental agency involved.]~~

173 (d) If the ombudsman has reasonable cause to believe that the resident is incompetent
 174 to give permission and that the resident's legal representative is not acting in the best interest of
 175 the resident, the ombudsman shall determine whether review of the resident's records is in the
 176 best interest of the resident. If the ombudsman determines that review of the resident's records
 177 is in the best interest of the resident, the ombudsman shall review the records.

178 Section 7. Section **62A-3-207** is amended to read:

179 **62A-3-207. Confidentiality of materials relating to complaints or investigations --**
 180 **Immunity from liability -- Discriminatory, disciplinary, or retaliatory actions prohibited.**

181 (1) The ombudsman shall establish procedures to ~~[assure]~~ ensure that all files
 182 maintained by the ~~[long-term care]~~ ombudsman program are disclosed only at the discretion of
 183 and under the authority of the ombudsman. The identity of a complainant or ~~[elderly]~~ resident
 184 of a long-term care facility may not be disclosed by the ombudsman unless:

185 (a) the complainant or ~~[elderly]~~ resident, or the legal representative of either, consents
 186 in writing, orally, or through the use of auxiliary aids and services to the disclosure;

187 (b) disclosure is ordered by the court; or

188 ~~[(c) the disclosure is made to a local area agency on aging, the state adult protective~~
 189 ~~services agency, the Department of Health, the Department of Public Safety, the local law~~
 190 ~~enforcement agency, or the county attorney as part of the investigation of a complaint.]~~

191 (c) the disclosure is approved by the ombudsman and is made, as part of an
 192 investigation involving the resident, to an agency that:

193 (i) has statutory responsibility for the resident;

194 (ii) has statutory responsibility over the action alleged in the complaint;

195 (iii) is able to assist the ombudsman to achieve resolution of the complaint; or

196 (iv) is able to provide expertise that would benefit the resident.

197 (2) Neither the ombudsman nor ~~[its agents or designees]~~ the ombudsman's agent or

198 designee may be required to testify in court with respect to confidential matters, except as the
199 court finds necessary to enforce ~~[the provisions of]~~ this part.

200 (3) Any person who makes a complaint to the ombudsman pursuant to this part is
201 immune from any civil or criminal liability unless the complaint was made maliciously or
202 without good faith.

203 (4) (a) Discriminatory, disciplinary, or retaliatory action may not be taken against
204 ~~[any]~~ a volunteer or employee of a long-term care facility or governmental agency, or against
205 ~~[any elderly]~~ a resident of a long-term care facility, for any communication made or
206 information given or disclosed to aid the ombudsman or other appropriate public agency in
207 carrying out its duties and responsibilities, unless the same was done maliciously or without
208 good faith.

209 (b) This subsection does not infringe on the rights of an employer to supervise,
210 discipline, or terminate an employee for any other reason.

211 Section 8. Section **62A-3-208** is amended to read:

212 **62A-3-208. Prohibited acts -- Penalty.**

213 (1) No person may:

214 (a) give or cause to be given advance notice to a long-term care facility or agency that
215 an investigation or inspection under the direction of the ombudsman is pending or under
216 consideration, except as provided by law;

217 (b) disclose confidential information submitted to the ombudsman pursuant to this part,
218 except as provided by law;

219 (c) willfully interfere with the lawful actions of the ombudsman;

220 (d) willfully refuse to comply with lawful demands of the ombudsman, including the
221 demand for immediate entry into or inspection of the premises of any long-term care facility or
222 agency or for immediate access to ~~[any elderly]~~ a resident of a long-term care facility; or

223 (e) offer or accept any compensation, gratuity, or promise thereof in an effort to affect
224 the outcome of a matter being investigated or of a matter ~~[which]~~ that is before the ombudsman
225 for determination of whether an investigation should be conducted.

226

(2) Violation of any provision of this part constitutes a class B misdemeanor.