

Part 2

Long-Term Care Ombudsman Program

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

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

The purpose of this part is to establish within the division the long-term care ombudsman program for the aging citizens of this state and identify duties and responsibilities of that program and of the ombudsman, in order to address problems relating to long-term care for aging citizens, and to fulfill federal requirements.

Enacted by Chapter 1, 1988 General Session

62A-3-202 Definitions.

As used in this part:

- (1) "Elderly resident" means an adult 60 years of age or older who because of physical, economic, social, or emotional problems cannot function normally on an independent basis, and who resides in a long-term care facility.
- (2) "Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the state, or to which the state is a party, or created by any county or municipality, which is responsible for the regulation, visitation, inspection, or supervision of facilities, or which provides services to patients, residents, or clients of facilities.
- (3) "Long-term care facility" means any skilled nursing facility, intermediate care facility, nursing home, assisted living facility, adult foster care home, or any living arrangement in the community through which room and personal care services are provided for elderly residents.
- (4) "Ombudsman" means the administrator of the long-term care ombudsman program, created pursuant to Section 62A-3-203.

Amended by Chapter 192, 1998 General Session

62A-3-203 Creation of Long-Term Care Ombudsman Program -- Responsibilities.

- (1)
 - (a) There is created within the division the Long-Term Care Ombudsman Program for the purpose of promoting, advocating, and ensuring the adequacy of care received, and the quality of life experienced by elderly residents of long-term care facilities within the state.
 - (b) Subject to the rules made under Section 62A-3-106.5, the ombudsman is responsible for:
 - (i) receiving and resolving complaints relating to elderly residents of long-term care facilities;
 - (ii) conducting investigations of any act, practice, policy, or procedure of any long-term care facility or government agency which it has reason to believe affects or may affect the health, safety, welfare, or civil and human rights of any elderly resident of a long-term care facility;
 - (iii) coordinating the department's services for elderly residents of long-term care facilities to ensure that those services are made available to eligible elderly citizens of the state; and

- (iv) providing training regarding the delivery and regulation of long-term care to public agencies, local ombudsman program volunteers, and operators and employees of long-term care facilities.
- (2)
 - (a) A long-term care facility shall display an ombudsman program information poster.
 - (b) The division is responsible for providing the posters, which shall include the names and phone numbers for local ombudsman programs.

Amended by Chapter 31, 2006 General Session

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

The long-term care ombudsman shall:

- (1) comply with Title VII of the federal Older Americans Act, 42 U.S.C. 3058 et seq.;
- (2) establish procedures for and engage in receiving complaints, conducting investigations, reporting findings, issuing findings and recommendations, promoting community contact and involvement with elderly residents of long-term care facilities through the use of volunteers, and publicizing its functions and activities;
- (3) investigate an administrative act or omission of any long-term care facility or governmental agency if the act or omission relates to the purposes of the ombudsman. The ombudsman may exercise its authority under this subsection without regard to the finality of the administrative act or omission, and it may make findings in order to resolve the subject matter of its investigation;
- (4) recommend to the division rules that it considers necessary to carry out the purposes of the ombudsman;
- (5) cooperate and coordinate with governmental entities and voluntary assistance organizations in exercising its powers and responsibilities;
- (6) request and receive cooperation, assistance, services, and data from any governmental agency, to enable it to properly exercise its powers and responsibilities;
- (7) establish local ombudsman programs to assist in carrying out the purposes of this part, which shall meet the standards developed by the division, and possess all of the authority and power granted to the long-term care ombudsman program under this part; and
- (8) exercise other powers and responsibilities as reasonably required to carry out the purposes of this part.

Amended by Chapter 75, 2009 General Session

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

The long-term care ombudsman shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

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

- (1)
 - (a) The ombudsman shall investigate each complaint he receives. An investigation may consist of a referral to another public agency, the collecting of facts and information over the telephone, or an inspection of the long-term care facility that is named in the complaint.
 - (b) The ombudsman shall notify any complainant of its decision to not pursue investigation of a complaint after the initial investigation and the reasons for the decision.

- (2) In making any investigation, the ombudsman may engage in actions it deems appropriate including, but not limited to:
 - (a) making inquiries and obtaining information;
 - (b) holding investigatory hearings;
 - (c) entering upon and inspecting any premises, without notice to the facility, provided the investigator identifies himself upon entering the premises as a person authorized by this part to inspect the premises; and
 - (d) inspecting or obtaining any book, file, medical record, or other record required by law to be retained by the long-term care facility or governmental agency, pertaining to elderly residents, subject to Subsection (3).
- (3)
 - (a) Before reviewing a resident's records, the ombudsman shall seek to obtain written permission to review the records from the institutionalized elderly person or his legal representative.
 - (b) The effort to obtain permission under Subsection (3)(a) shall include personal contact with the elderly resident or his legal representative. If the resident or legal representative refuses to sign a release allowing access to records, the ombudsman shall record and abide by this decision. If the attempt to obtain a signed release fails for any other reason, the ombudsman may review the records.
- (4) Following any investigation, the ombudsman shall report its findings and recommendations to the complainant, elderly residents of long-term care facilities affected by the complaint, and to the long-term care facility or governmental agency involved.

Amended by Chapter 324, 2010 General Session

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

- (1) The ombudsman shall establish procedures to assure that all files maintained by the long-term care ombudsman program are disclosed only at the discretion of and under the authority of the ombudsman. The identity of a complainant or elderly resident of a long-term care facility may not be disclosed by the ombudsman unless:
 - (a) the complainant or elderly resident, or the legal representative of either, consents in writing to the disclosure;
 - (b) disclosure is ordered by the court; or
 - (c) the disclosure is made to a local area agency on aging, the state adult protective services agency, the Department of Health, the Department of Public Safety, the local law enforcement agency, or the county attorney as part of the investigation of a complaint.
- (2) Neither the ombudsman nor its agents or designees may be required to testify in court with respect to confidential matters, except as the court finds necessary to enforce the provisions of this part.
- (3) Any person who makes a complaint to the ombudsman pursuant to this part is immune from any civil or criminal liability unless the complaint was made maliciously or without good faith.
- (4)
 - (a) Discriminatory, disciplinary, or retaliatory action may not be taken against any volunteer or employee of a long-term care facility or governmental agency, or against any elderly resident of a long-term care facility, for any communication made or information given or disclosed to aid the ombudsman or other appropriate public agency in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith.

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

Amended by Chapter 176, 1993 General Session

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

(1) No person may:

- (a) give or cause to be given advance notice to a long-term care facility or agency that an investigation or inspection under the direction of the ombudsman is pending or under consideration, except as provided by law;
- (b) disclose confidential information submitted to the ombudsman pursuant to this part, except as provided by law;
- (c) willfully interfere with the lawful actions of the ombudsman;
- (d) willfully refuse to comply with lawful demands of the ombudsman, including the demand for immediate entry into or inspection of the premises of any long-term care facility or agency or for immediate access to any elderly resident of a long-term care facility; or
- (e) offer or accept any compensation, gratuity, or promise thereof in an effort to affect the outcome of a matter being investigated or of a matter which is before the ombudsman for determination of whether an investigation should be conducted.

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

Enacted by Chapter 1, 1988 General Session