LONG-TERM CARE OMBUDSMAN AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw
Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill amends provisions related to the long-term care ombudsman program within the Division of Aging and Adult Services, within the Department of Human Services.

Highlighted Provisions:

This bill:

- amends definitions;
- eliminates references to "elderly" in provisions governing the long-term care ombudsman program;
- requires the use of "substitute judgment" by the ombudsman in certain cases;
- makes other amendments related to the long-term care ombudsman program; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-3-201, as enacted by Laws of Utah 1988, Chapter 1
62A-3-202, as last amended by Laws of Utah 1998, Chapter 192
62A-3-203, as last amended by Laws of Utah 2006, Chapter 31
Be it enacted by the Legislature of the state of Utah:

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

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.

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


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;]

(1) "Assisted living facility" has the same meaning as provided in Section 26-21-2.

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

[2] (3) "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.

(4) "Intermediate care facility" means a facility that provides, on a regular basis, health
care and services to an individual who does not require the degree of care and treatment that a
hospital or skilled nursing facility provides but who does require health care and services in
addition to room and board.

[(3)] (5) "Long-term care facility" means [any] a skilled nursing facility, intermediate
care facility, nursing home, small health care facility, Type N facility, or 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)] (6) "Ombudsman" means the administrator of the long-term care ombudsman
program, created pursuant to Section 62A-3-203.

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

(8) "Skilled nursing facility" means an institution primarily providing:

(a) inpatient skilled nursing care and related services on a continuing basis for an
individual who requires mental, medical, or nursing care; or

(b) rehabilitation services for an injured individual, a sick individual, or an individual
with a disability.

(9) "Small health care facility" means the same as that term is defined in Section
26-21-2.

(10) "Substituted judgment" means judgment by a surrogate decision maker to attempt
to determine, with as much accuracy as possible, the decision an incompetent patient would
make if the patient were competent to make the decision.

(11) "Type N facility" means a residence in which a licensed nurse resides and
provides protected living arrangements, nursing care, and other services on a daily basis for
two to three individuals who are also residing in the residence and are unrelated to the licensee.

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

62A-3-203. 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 that the ombudsman has reason to believe affects or may affect the health, safety, welfare, or civil and human rights of any elderly a 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.

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

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 a 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.

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

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 long-term care ombudsman's adjudicative proceedings.

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

(1) (a) The ombudsman shall investigate each complaint he the ombudsman 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 the ombudsman's decision to not pursue investigation of a complaint after the initial investigation and the reasons for the decision.
(2) In making any an investigation, the ombudsman may engage in actions it deems the ombudsman considers 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 presents, upon entering the premises as a person.
(d) inspecting or obtaining any a 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] from the institutionalized resident, or the institutionalized resident's legal representative, permission in writing, orally, or through the use of auxiliary aids and services 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] the resident's legal representative. If the resident or the resident's legal representative refuses to [sign a release allowing access to records] give permission, the ombudsman shall record and abide by this decision.

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

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

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

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] ensure 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:
183  (a) the complainant or [elderly] resident, or the legal representative of either, consents
184  in writing, orally, or through the use of auxiliary aids and services to the disclosure;
185  (b) disclosure is ordered by the court; or
186  (c) the disclosure is approved by the ombudsman and is made, as part of an
187  investigation involving the resident, to a local area agency on aging, the state adult protective
188  services agency, the Department of Health, the Department of Public Safety, [the] a local law
189  enforcement agency, or [the] a county attorney [as part of the investigation of a complaint].
190  (2) Neither the ombudsman nor [its agents or designees] the ombudsman's agent or
191  designee may be required to testify in court with respect to confidential matters, except as the
192  court finds necessary to enforce [the provisions of] this part.
193  (3) Any person who makes a complaint to the ombudsman pursuant to this part is
194  immune from any civil or criminal liability unless the complaint was made maliciously or
195  without good faith.
196  (4) (a) Discriminatory, disciplinary, or retaliatory action may not be taken against
197  [any] a volunteer or employee of a long-term care facility or governmental agency, or against
198  [any elderly] a resident of a long-term care facility, for any communication made or
199  information given or disclosed to aid the ombudsman or other appropriate public agency in
200  carrying out its duties and responsibilities, unless the same was done maliciously or without
201  good faith.
202  (b) This subsection does not infringe on the rights of an employer to supervise,
203  discipline, or terminate an employee for any other reason.
204  Section 8. Section 62A-3-208 is amended to read:
206  (1) No person may:
207  (a) give or cause to be given advance notice to a long-term care facility or agency that
208  an investigation or inspection under the direction of the ombudsman is pending or under
209  consideration, except as provided by law;
210  (b) disclose confidential information submitted to the ombudsman pursuant to this part,
211  except as provided by law;
212  (c) willfully interfere with the lawful actions of the ombudsman;
213  (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.