

**231.42 Office of long-term care ombudsman — duties — penalties for violations.**

1. *Office established.* The office of long-term care ombudsman is established within the department, in accordance with the federal Act, and state law. The office shall consist of the state long-term care ombudsman, any local long-term care ombudsmen, and any certified volunteer long-term care ombudsmen.

2. *State long-term care ombudsman.* The director of the department shall appoint the state long-term care ombudsman who shall do all of the following:

a. Establish and implement a statewide confidential uniform reporting system for receiving, analyzing, referring, investigating, and resolving complaints about administrative actions and the health, safety, welfare, and rights of residents or tenants of long-term care facilities, assisted living programs, and elder group homes, excluding facilities licensed primarily to serve persons with an intellectual disability or mental illness.

b. Publicize the office of long-term care ombudsman and provide information and education to consumers, the public, and other agencies about issues related to long-term care in Iowa.

c. Monitor the development and implementation of federal, state, and local laws, regulations, and policies that relate to long-term care in Iowa.

d. Annually report to the governor and general assembly on the activities of the office and make recommendations for improving the health, safety, welfare, and rights of residents and tenants.

e. Cooperate with persons and public or private agencies with regard to, and participate in, inquiries, meetings, or studies that may lead to improvements in the health, safety, welfare, and rights of residents and tenants.

3. *Local long-term care ombudsmen.* The local long-term care ombudsmen established pursuant to this section shall do all of the following:

a. Accept, investigate, verify, and work to resolve complaints relating to any action or inaction that may adversely affect the health, safety, welfare, or rights of residents or tenants.

b. Provide information about long-term care, the rights of residents and tenants, payment sources for care, and selection of a long-term care facility, assisted living program, or elder group home to providers, consumers, family members, volunteers, and the public.

c. Make referrals to appropriate licensing, certifying, and enforcement agencies to assure appropriate investigation of abuse complaints and corrective actions.

d. Assist in the training and education of certified volunteers associated with the office of long-term care ombudsman.

e. Make noncomplaint-related visits to long-term care facilities, assisted living programs, and elder group homes to observe daily routines, meals, and activities, and work to resolve complaints if any are identified during these visits.

4. *Referrals of abuse, neglect, or exploitation.*

a. If abuse, neglect, or exploitation of a resident or tenant is suspected, the state or a local long-term care ombudsman shall, with the permission of the resident or tenant as applicable under federal law, make an immediate referral to the department of inspections and appeals, the department of human services, the department on aging, or the appropriate law enforcement agency, as applicable. The state or a local long-term care ombudsman shall cooperate, if requested, with the department of inspections and appeals, department of human services, department on aging, or any law enforcement agency pursuant to any investigation of such abuse, neglect, or exploitation.

b. If the department of inspections and appeals responds to a complaint referred by the state or a local long-term care ombudsman against a long-term care facility, assisted living program, elder group home, or an employee of such entity, copies of related inspection reports, plans of correction, and notice of any citations and sanctions levied against the facility, program, or home shall be forwarded to the office of long-term care ombudsman.

5. *Access to long-term care facility, assisted living program, or elder group home and residents and tenants.* The state or a local long-term care ombudsman or a certified volunteer may enter any long-term care facility, assisted living program, or elder group home at any time with or without prior notice or complaint and shall be granted access to

residents and tenants at all times for the purpose of carrying out the duties specified in this section. As used in this section, “access” means the right to do all of the following:

a. Enter any long-term care facility, assisted living program, or elder group home and provide identification.

b. Seek consent from the resident, tenant, or legal representative to communicate privately and without restriction with any resident, tenant, or legal representative.

c. Communicate privately and without restriction with any resident, tenant, or legal representative.

d. Review the medical, social, or other records of a resident or tenant.

e. Observe all resident or tenant areas of a long-term care facility, assisted living program, or elder group home except the living area of any resident or tenant who protests the observation.

6. *Access to medical and social records.*

a. The state or a local long-term care ombudsman shall have access to the medical and social records of a resident or tenant, if any of the following applies:

(1) The state or local long-term care ombudsman or certified volunteer long-term care ombudsman has the permission of the resident or tenant, or the legal representative of the resident or tenant.

(2) The resident or tenant is unable to consent to the access and has no legal representative.

(3) Access to the records is necessary to investigate a complaint if all of the following apply:

(a) A legal representative of the resident or tenant refuses to give the permission.

(b) The state or local long-term care ombudsman or a certified volunteer long-term care ombudsman has reasonable cause to believe that the legal representative is not acting in the best interest of the resident or tenant.

(c) The local long-term care ombudsman or a certified volunteer long-term care ombudsman obtains the approval of the state long-term care ombudsman.

b. Records may be reproduced by the state or a local long-term care ombudsman.

c. Upon request of the state or a local long-term care ombudsman, a long-term care facility, assisted living program, or elder group home shall provide the name, address, and telephone number of the legal representative or next of kin of any resident or tenant.

d. A long-term care facility, assisted living program, or elder group home or personnel of such a facility, program, or home who discloses records in compliance with this section and the procedures adopted pursuant to this section shall not be liable for such disclosure.

7. *Access to administrative records.*

a. Pursuant to the federal Act, the state or a local long-term care ombudsman or a certified volunteer shall have access to the administrative records, policies, and documents of the long-term care facility, assisted living program, or elder group home, which are accessible to residents, tenants, or the general public.

b. Pursuant to the federal Act, the state or a local long-term care ombudsman or a certified volunteer shall have access to, and upon request, copies of, all licensing and certification records maintained by the state with respect to a long-term care facility, assisted living program, or elder group home.

8. *Interference prohibited — penalties.*

a. An officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who intentionally prevents, interferes with, or attempts to impede the work of the state or a local long-term care ombudsman or a certified volunteer is subject to a penalty imposed by the director of not more than one thousand five hundred dollars for each violation. If the director imposes a penalty for a violation under this paragraph, no other state agency shall impose a penalty for the same interference violation. Any moneys collected pursuant to this subsection shall be deposited in the general fund of the state.

b. The office of long-term care ombudsman shall adopt rules specifying procedures for notice and appeal of penalties imposed pursuant to this subsection.

c. The director, in consultation with the office of long-term care ombudsman, shall notify

the county attorney of the county in which the long-term care facility, assisted living program, or elder group home is located, or the attorney general, of any violation of this subsection.

9. *Retaliation prohibited — penalties.* An officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home shall not retaliate against any person for having filed a complaint with, or provided information to, the state or a local long-term care ombudsman or a certified volunteer. A person who retaliates or discriminates in violation of this subsection is guilty of a simple misdemeanor.

10. *Change in operations.* A long-term care facility, assisted living program, or elder group home shall inform the office of long-term care ombudsman in writing at least thirty days prior to any change in operations, programs, services, licensure, or certification that affects residents or tenants, including but not limited to the intention to close, decertify, or change ownership. In an emergency situation, or when a long-term care facility, assisted living program, or elder group home is evacuated, the department of inspections and appeals shall notify the office of long-term care ombudsman.

11. *Immunity.* The state or a local long-term care ombudsman, certified volunteer, or any representative of the office participating in the good faith performance of their official duties shall have immunity from any civil or criminal liability that otherwise might result by reason of taking, investigating, or pursuing a complaint under this section.

12. *Confidentiality.*

a. Information relating to any complaint made to or investigation by the state or a local long-term care ombudsman or certified volunteer that discloses the identity of a complainant, resident, or tenant; information related to a resident's or tenant's social or medical records; or files maintained by the state long-term care ombudsman program that disclose the identity of a complainant, resident, or tenant, shall remain confidential and shall not be disclosed unless any of the following applies:

(1) The complainant, resident, tenant, or a legal representative consents to the disclosure and the consent is given in writing.

(2) The complainant, resident, or tenant gives consent orally and the consent is documented contemporaneously in a writing made by the state long-term care ombudsman or a local long-term care ombudsman.

(3) The disclosure is required by a court order.

b. The department shall adopt rules pursuant to chapter 17A to administer this subsection.

13. *Posting of state long-term care ombudsman information.* Every long-term care facility, assisted living program, and elder group home shall post information in a prominent location that includes the name, address, and telephone number, and a brief description of the services provided by the office of long-term care ombudsman. The information posted shall be approved or provided by the office of long-term care ombudsman.

86 Acts, ch 1245, §1016

C87, §249D.42

C93, §231.42

99 Acts, ch 129, §13; 2003 Acts, ch 141, §11; 2005 Acts, ch 45, §10; 2009 Acts, ch 23, §27 – 29; 2009 Acts, ch 41, §93; 2010 Acts, ch 1062, §7; 2012 Acts, ch 1019, §84; 2013 Acts, ch 18, §24

Referred to in §22.7, 135C.1, 231.45, 231B.1, 231C.2

[T] Section amended