

4/3/97 Approp. Calendar

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SENATE FILE **535**

BY COMMITTEE ON APPROPRIATIONS

(SUCCESSOR TO SSB 248)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the state long-term care ombudsman and  
2 providing a penalty.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 535

1 Section 1. Section 135C.37, Code 1997, is amended to read  
2 as follows:

3 135C.37 COMPLAINTS ALLEGING VIOLATIONS -- CONFIDENTIALITY.

4 A person may request an inspection of a health care  
5 facility by filing with the department, care review committee  
6 of the facility, or the state long-term care ~~resident's~~  
7 ~~advocate~~ ombudsman as defined in section 231.4, subsection 16,  
8 a complaint of an alleged violation of applicable requirements  
9 of this chapter or the rules adopted pursuant to this chapter.  
10 A person alleging abuse or neglect of a resident with a  
11 developmental disability or with mental illness may also file  
12 a complaint with the protection and advocacy agency designated  
13 pursuant to section 135B.9 or section 135C.2. A copy of a  
14 complaint filed with the care review committee or the state  
15 long-term care ~~resident's-advocate-shall~~ ombudsman may be  
16 forwarded to the department. The complaint shall state in a  
17 reasonably specific manner the basis of the complaint, and a  
18 statement of the nature of the complaint shall be delivered to  
19 the facility involved at the time of the inspection. The name  
20 or other identifying information of the person who files a  
21 complaint with the department, care review committee, or the  
22 state long-term care ~~resident's-advocate~~ ombudsman shall be  
23 kept confidential and shall not be subject to discovery,  
24 subpoena, or other means of legal compulsion for its release  
25 to a person other than department or the office of the state  
26 long-term care ombudsman employees involved in the  
27 investigation of the complaint.

28 Sec. 2. Section 135C.38, subsection 2, paragraph d, Code  
29 1997, is amended to read as follows:

30 d. A person who is dissatisfied with any aspect of the  
31 department's handling of the complaint may contact the state  
32 long-term care ~~resident's-advocate~~ ombudsman, established  
33 pursuant to section 231.42, or may contact the protection and  
34 advocacy agency designated pursuant to section 135C.2 if the  
35 complaint relates to a resident with a developmental

1 disability or a mental illness.

2 Sec. 3. Section 231.4, subsection 16, Code 1997, is  
3 amended by striking the subsection.

4 Sec. 4. Section 231.33, subsection 18, Code 1997, is  
5 amended to read as follows:

6 18. Coordinate activities in support of the statewide  
7 state long-term care resident's-advocate ombudsman program.

8 Sec. 5. Section 231.41, Code 1997, is amended to read as  
9 follows:

10 231.41 PURPOSE.

11 The purpose of this subchapter is to establish the long-  
12 term care ~~resident's-advocate~~ ombudsman program operated by  
13 the Iowa commission of elder affairs in accordance with the  
14 requirements of the Older Americans Act of 1965, ~~and-to-adopt~~  
15 ~~the-supporting-federal-regulations-and-guidelines-for-its~~  
16 ~~implementation~~ as amended. In accordance with chapter 17A,  
17 the commission of elder affairs shall adopt and enforce rules  
18 for the implementation of this subchapter.

19 Sec. 6. Section 231.42, Code 1997, is amended by striking  
20 the section and inserting in lieu thereof the following:

21 231.42 DEFINITIONS.

22 As used in this section, unless the context otherwise  
23 requires:

24 1. "Facility" means a health care facility licensed under  
25 chapter 135C or any similar adult care homes as identified by  
26 the federal administration on aging.

27 2. "Local ombudsman entity" means an organization  
28 designated under section 231.42A to carry out the duties  
29 described in that section with respect to a planning and  
30 service area or other substate area.

31 3. "Office" means the office of the state long-term care  
32 ombudsman established pursuant to section 231.42A.

33 4. "Ombudsman" means the individual designated as the  
34 state long-term care ombudsman pursuant to section 231.42A.

35 5. "Program" means the state long-term care ombudsman

1 program established in section 231.42A.

2 6. "Representative" means an employee or volunteer who is  
3 individually designated by the ombudsman to represent the  
4 office or an entity designated under section 231.42A.

5 7. "Resident" means an individual who resides in or is  
6 seeking admission to a health care facility who is under the  
7 jurisdiction of the office.

8 Sec. 7. NEW SECTION. 231.42A ESTABLISHMENT OF OFFICE --  
9 FUNCTIONS -- LOCAL OMBUDSMAN -- PENALTY.

10 1. The department shall do all of the following:

11 a. Establish and operate an office of the state long-term  
12 care ombudsman.

13 b. Designate an ombudsman to carry out the duties of the  
14 state long-term care ombudsman program.

15 2. The office shall be headed by the state long-term care  
16 ombudsman, who shall be selected by the department from among  
17 individuals with expertise and experience in the fields of  
18 long-term care and advocacy.

19 3. The ombudsman shall serve on a full-time basis, and  
20 shall, personally or through representatives of the office, do  
21 all of the following:

22 a. Identify, investigate, and resolve complaints that:

23 (1) Are made by, or on behalf of, residents.

24 (2) Relate to action, inaction, or decisions that may  
25 adversely affect the health, safety, welfare, or rights of the  
26 residents, including the welfare and rights of the residents  
27 with respect to the appointment and activities of guardians,  
28 conservators, and representative payees of:

29 (a) Providers, or representatives of providers, of long-  
30 term care services.

31 (b) Public agencies or contractors of public agencies.

32 (c) Health and social service agencies.

33 b. Provide services to assist residents in protecting the  
34 health, safety, welfare, and rights of the residents.

35 c. Inform the residents of means of obtaining services

1 provided by providers or agencies to protect the health,  
2 safety, welfare, and rights of the residents.

3 d. Ensure that the residents have regular and timely  
4 access to the services provided through the office and that  
5 the residents and complainants receive timely responses from  
6 representatives of the office.

7 e. Represent the interests of the residents before  
8 governmental agencies and seek administrative, legal, and  
9 other remedies to protect the health, safety, welfare, and  
10 rights of the residents.

11 f. Provide administrative and technical assistance to  
12 entities designated under subsection 5 to assist the entities  
13 in participating in the program.

14 g. Analyze, comment on, and monitor the development and  
15 implementation of federal, state, and local laws, regulations,  
16 and other governmental policies and actions that pertain to  
17 the health, safety, welfare, and rights of the residents, with  
18 respect to the adequacy of long-term care facilities and  
19 services in the state including:

20 (1) Recommending any changes in laws, regulations,  
21 policies, and actions the office determines appropriate.

22 (2) Facilitating public comment on the laws, regulations,  
23 policies, and actions.

24 h. Provide training to representatives of the office.

25 i. Promote the development of citizen organizations to  
26 participate in the program.

27 j. Provide technical support for the development of  
28 resident and family councils to protect the well-being and  
29 rights of residents.

30 k. Determine and carry out unscheduled, unhindered, and  
31 unreported visits and calls to facilities, individuals,  
32 groups, or organizations as the ombudsman deems necessary to  
33 fulfill the functions of the office.

34 l. Determine the qualifications for care review committee  
35 membership, appoint care review committees, and administer the

1 care review committee program.

2 m. Carry out such other activities as the assistant  
3 secretary for aging of the federal administration on aging  
4 determines appropriate.

5 4. a. Except as provided in paragraph "b", the department  
6 may establish and operate the office and carry out the program  
7 directly, by contract, or by other arrangement with any public  
8 agency or nonprofit private organization.

9 b. The department shall not enter into a contract or other  
10 arrangement described in paragraph "a" with any of the  
11 following:

12 (1) An agency or organization that is responsible for  
13 licensing or certifying long-term care services in the state.

14 (2) An association or an affiliate of an association of  
15 long-term care facilities, or of any other residential  
16 facilities for elders.

17 c. The office, or representatives of the office, shall not  
18 be directed or controlled by a person affiliated with any of  
19 the entities identified in paragraph "b" or any elected  
20 official. However, the ombudsman may consult with  
21 representatives as the ombudsman deems appropriate.

22 5. a. In carrying out the duties of the office, the  
23 ombudsman may designate an entity as a local ombudsman entity,  
24 and may designate an employee or volunteer to represent the  
25 entity.

26 b. An individual designated as a local ombudsman shall, in  
27 accordance with the policies and procedures established by the  
28 office and the department, do all of the following:

29 (1) Provide services to protect the health, safety,  
30 welfare, and rights of residents.

31 (2) Ensure that residents in the service area of the  
32 entity have regular, timely access to representatives of the  
33 program and receive timely responses to complaints and  
34 requests for assistance.

35 (3) Identify, investigate, and resolve complaints made by

1 or on behalf of residents that relate to action, inaction, or  
2 decisions that may adversely affect the health, safety,  
3 welfare, or rights of the residents.

4 (4) Represent the interests of residents before government  
5 agencies and seek administrative, legal, and other remedies to  
6 protect the health, safety, welfare, and rights of the  
7 residents.

8 (5) Review and, if necessary, comment on any existing and  
9 proposed laws, regulations, and other government policies and  
10 actions that pertain to the rights and well-being of  
11 residents.

12 (6) Facilitate the ability of the public to comment on the  
13 laws, regulations, policies, and actions.

14 (7) Support the development of resident and family  
15 councils.

16 (8) Carry out other activities that the department and  
17 ombudsman determine appropriate.

18 c. An entity eligible for designation as a local ombudsman  
19 entity and an individual eligible for designation as a  
20 representative of such entity shall:

21 (1) Have demonstrated capability to carry out the  
22 responsibilities of the office.

23 (2) Be free of conflicts of interest.

24 (3) In the case of the entity, be a public or nonprofit  
25 private entity.

26 (4) Meet such additional requirements as the department  
27 and ombudsman specify.

28 d. (1) The department shall establish, in accordance with  
29 the office, policies and procedures for monitoring local  
30 ombudsman entities designated to carry out the duties of the  
31 office.

32 (2) If an entity is a grantee or a representative is an  
33 employee of an area agency on aging, the department shall  
34 develop the policies in consultation with the area agencies on  
35 aging. The policies shall provide for participation and

1 comment by the agencies and for resolution of concerns with  
2 respect to case activity.

3 (3) The department shall develop the policies and  
4 procedures in accordance with provisions of this section  
5 regarding confidentiality and conflict of interest.

6 6. a. The ombudsman and representatives of the office  
7 shall have all of the following:

8 (1) Access to long-term care facilities and residents.

9 (2) Appropriate access to review the medical and social  
10 records of a resident if any of the following apply:

11 (a) The ombudsman or the representative has the permission  
12 of the resident or the legal representative of the resident.

13 (b) The resident is unable to consent to the review and  
14 has no legal representative.

15 (c) Access to the records as is necessary to investigate a  
16 complaint if all of the following apply:

17 (i) A legal representative of the resident refuses to give  
18 permission.

19 (ii) The ombudsman or a representative of the office has  
20 reasonable cause to believe that the resident's legal  
21 representative is not acting in the best interests of the  
22 resident.

23 (iii) The representative obtains the approval of the  
24 ombudsman.

25 (3) Access to the administrative records, policies, and  
26 documents to which the residents have access, or the general  
27 public has access, of long-term care facilities.

28 (4) Access to and, on request, copies of all licensing and  
29 certification records maintained by the state with respect to  
30 long-term care facilities.

31 b. The department shall establish procedures to ensure the  
32 access described in paragraph "a".

33 7. The department shall establish a statewide uniform  
34 reporting system between the office of the ombudsman and local  
35 designees to do all of the following:

1 a. Report the results of complaints.

2 b. Collect and analyze existing data relating to  
3 complaints and conditions in long-term care facilities and to  
4 residents for the purpose of identifying and resolving  
5 significant problems.

6 c. Submit the data, on a regular basis, to all of the  
7 following:

8 (1) The department of inspections and appeals.

9 (2) State and federal entities as determined appropriate  
10 by the ombudsman.

11 (3) The assistant secretary for aging of the federal  
12 administration on aging.

13 (4) The national ombudsman resource center established  
14 under the federal Older Americans Act.

15 8. a. The department shall establish procedures for the  
16 disclosure by the ombudsman or local ombudsman entities of  
17 files maintained by the program.

18 b. The procedures established under paragraph "a" shall:

19 (1) Provide that, subject to subparagraph (2), the files  
20 and records described in paragraph "a" may be disclosed only  
21 at the discretion of the ombudsman or the person designated by  
22 the ombudsman to disclose the files and records.

23 (2) Prohibit the disclosure of the identity of a  
24 complainant or resident with respect to whom the office  
25 maintains files or records unless all of the following apply:

26 (a) The complainant or resident, or the legal  
27 representative of the complainant or resident, consents to the  
28 disclosure and consent is given in writing.

29 (b) The complainant or resident provides consent orally.

30 (c) The consent is documented contemporaneously in a  
31 writing made by a representative of the office in accordance  
32 with requirements established by the department.

33 9. In planning and operating the program, the department  
34 shall consider the views of area agencies on aging, elders,  
35 and providers of long-term care.

- 1 10. The department shall ensure all of the following:
- 2 a. That an individual, or member of the immediate family
- 3 of an individual, involved in the designation of the ombudsman
- 4 or the designation of an entity designated under subsection 5,
- 5 is not subject to a conflict of interest.
- 6 b. That an officer or employee of the office,
- 7 representative of a local ombudsman entity, or member of the
- 8 immediate family of the officer, employee, or representative,
- 9 is not subject to a conflict of interest.
- 10 c. The ombudsman shall not:
- 11 (1) Have direct involvement in the licensing or
- 12 certification of a long-term care facility or of a provider of
- 13 a long-term care service.
- 14 (2) Have an interest represented by equity, debt, or other
- 15 financial relationship in a long-term care facility or service
- 16 which, in the opinion of the department, presents a conflict
- 17 of interest. If a conflict is deemed to be or becomes
- 18 present, the local designee or designated candidate may
- 19 present a plan of action that, in the opinion of the
- 20 department, will eliminate the conflict of interest.
- 21 (3) Be employed by or participate in the management of a
- 22 long-term care facility.
- 23 (4) Receive, or have the right to receive, directly or
- 24 indirectly, remuneration, in cash or in kind, under a
- 25 compensation arrangement with an owner or operator of a long-
- 26 term care facility.
- 27 d. The department shall establish, and specify in writing,
- 28 mechanisms to identify and remove conflicts of interest and to
- 29 identify and eliminate the relationships which establish a
- 30 conflict of interest, including but not limited to:
- 31 (1) The methods by which the department will examine
- 32 individuals, and immediate family members, to identify the
- 33 conflicts.
- 34 (2) The actions that the department will require the
- 35 individuals and family members to take to remove the

1 conflicts.

2 11. The department shall ensure all of the following:

3 a. That adequate legal counsel is available, and is able,  
4 without conflict of interest, to do all of the following:

5 (1) Provide the advice and consultation needed to protect  
6 the health, safety, welfare, and rights of residents.

7 (2) Assist the ombudsman and representatives of the office  
8 in the performance of the official duties of the ombudsman and  
9 representatives.

10 b. That legal representation is provided to any  
11 representative of the office against whom suit or other legal  
12 action is brought or threatened to be brought in connection  
13 with the performance of the official duties of the ombudsman  
14 or a representative.

15 c. That the office pursues administrative, legal, and  
16 other appropriate remedies on behalf of residents.

17 12. In carrying out the duties of the office, the  
18 ombudsman shall do all of the following:

19 a. Prepare an annual report which includes all of the  
20 following:

21 (1) Describes the activities carried out by the office in  
22 the year for which the report is prepared.

23 (2) Contains and analyzes the data collected under  
24 subsection 6.

25 (3) Evaluates the problems experienced by, and the  
26 complaints made by or on behalf of, residents.

27 (4) Contains recommendations for all of the following:

28 (a) Improving quality of the care and life of the  
29 residents.

30 (b) Protecting the health, safety, welfare, and rights of  
31 the residents.

32 (5) Analyzes the success of the program including success  
33 in providing services to residents of board and care  
34 facilities and other similar adult care facilities.

35 (6) Identifies barriers that prevent the optimal operation

1 of the program.

2 (7) Provides policy, regulatory, and legislative  
3 recommendations to solve identified problems; resolve  
4 complaints; improve the qualify of care and life of residents;  
5 protect the health, safety, welfare, and rights of residents;  
6 and remove the barriers.

7 b. Analyze, comment on, and monitor the development and  
8 implementation of federal, state, and local laws, regulations,  
9 and other government policies and actions that pertain to  
10 long-term care facilities and services, and to the health,  
11 safety, welfare, and rights of residents in the state, and  
12 recommend any changes in laws, regulations, and policies as  
13 the office determines to be appropriate.

14 c. Provide information as the office determines necessary  
15 to public and private agencies, legislators, and other persons  
16 regarding all of the following:

17 (1) The problems and concerns of elders residing in long-  
18 term care facilities.

19 (2) Recommendations related to problems and concerns.

20 d. Provide and make available to the public, and submit to  
21 the commissioner, the governor, the general assembly, the  
22 department of inspections and appeals, and other appropriate  
23 governmental entities, each report prepared under this  
24 subsection.

25 e. Not later than July 1, 1998, establish procedures for  
26 the training of the representatives of the office, including  
27 unpaid volunteers, based on model standards established by the  
28 federal associate commissioner for ombudsman programs, in  
29 consultation with representatives of citizen groups, long-term  
30 care providers, and the office, that do all of the following:

31 (1) Specify a minimum number of hours of initial training.

32 (2) Specify the content of the training, including  
33 training relating to all of the following:

34 (a) Federal, state, and local laws, regulations, and  
35 policies, with respect to long-term care facilities in the

1 state.

2 (b) Investigative techniques.

3 (c) Such other matters as the department determines to be  
4 appropriate.

5 (3) Specify an annual number of hours of in-service  
6 training for all designated representatives.

7 (4) Require implementation of the procedures not later  
8 than May 1, 1999.

9 f. Prohibit any representative of the office, other than  
10 the ombudsman, from carrying out any activity described in  
11 this section, unless the representative:

12 (1) Has received required training.

13 (2) Has been approved by the ombudsman as qualified to  
14 carry out the activity on behalf of the office.

15 g. Coordinate ombudsman services with the protection and  
16 advocacy systems for individuals with developmental  
17 disabilities and mental illnesses established under any of the  
18 following:

19 (1) The federal Developmental Disabilities Assistance and  
20 Bill of Rights Act as codified in 42 U.S.C. § 6001 et seq.

21 (2) The federal Protection and Advocacy for Mentally Ill  
22 Individuals Act of 1986 as codified in 42 U.S.C. § 10801 et  
23 seq.

24 h. Coordinate, to the greatest extent possible, ombudsman  
25 services with legal assistance provided under section 231.54,  
26 through adoption of memoranda of understanding and other  
27 means.

28 i. Permit any local ombudsman entity to carry out the  
29 responsibilities described in paragraph "a", "b", "c", "g", or  
30 "h".

31 13. The state ombudsman, a representative of the office,  
32 or a local ombudsman entity, shall not be civilly liable as a  
33 result of the state ombudsman or representative's acts,  
34 omissions, or decisions in the good faith performance of  
35 official duties.

1 14. The department shall ensure that the office is an  
2 effective advocate for improved health of residents and long-  
3 term care services. The department shall do all of the  
4 following:

5 a. Ensure that there will be no willful interference with  
6 the ombudsman or representatives of the office in the  
7 performance of their official duties.

8 b. Prohibit retaliation and reprisals by a long-term care  
9 facility or other entity with respect to any resident,  
10 employee, or other person for filing a complaint with,  
11 providing information to, or otherwise cooperating with any  
12 representative of, the office.

13 c. Provide for appropriate sanctions with respect to the  
14 interference, retaliation, and reprisals.

15 d. Ensure that the ombudsman has the authority to provide  
16 reliable information to the media, elected officials, and  
17 others without fear of retaliation, harassment, or coercion.

18 15. Any individual who interferes with or attempts to  
19 impede the ombudsman or a representative of the office is  
20 guilty of a simple misdemeanor.

21 16. The office shall respond to complaints within twenty  
22 working days of receipt of the complaint.

23 Sec. 8. Section 231.43, subsection 3, Code 1997, is  
24 amended to read as follows:

25 3. Procedures to enable the state long-term care  
26 ~~resident's-advocate~~ ombudsman to elicit, receive, and process  
27 complaints regarding administrative actions which may  
28 adversely affect the health, safety, welfare, or rights of  
29 ~~elderly~~ residents in long-term care facilities.

30 Sec. 9. Section 231.44, subsection 1, Code 1997, is  
31 amended to read as follows:

32 1. The care review committee program is administered by  
33 the state long-term care ~~resident's-advocate~~ ombudsman  
34 program.

35 Sec. 10. Section 669.14, Code 1997, is amended by adding

1 the following new subsection:

2 NEW SUBSECTION. 14. A claim based upon an act or omission  
3 of the state long-term care ombudsman as defined in section  
4 231.4, or the ombudsman's designee in the performance of duty  
5 if the act or omission is undertaken and carried out in good  
6 faith.

7 EXPLANATION

8 This bill establishes specific duties for the office of the  
9 state long-term care ombudsman and changes references  
10 throughout the Code to replace the "resident's advocate  
11 program" with references to the "state long-term care  
12 ombudsman program". The bill establishes the program and  
13 office of the ombudsman, provides for designation of local  
14 ombudsman entities and representatives, provides for  
15 regulation of conflicts of interest, provides for  
16 administration of the program and office, provides for  
17 exemption from liability for acts and omissions made in good  
18 faith, and provides a penalty for interference with or  
19 impeding of the ombudsman of a simple misdemeanor.

20 This bill also exempts from application of the state tort  
21 claims Act, an act or omission of the long-term care ombudsman  
22 or the ombudsman's designee in the performance of duty if the  
23 act or omission is undertaken and carried out in good faith.

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Lundby, Chair

McLaren

McCoy

SSB. 248

Appropriations  
Submitted By  
SF/HF 535

SENATE/HOUSE FILE  
BY (PROPOSED COMMITTEE ON APPROPRIATIONS  
BILL BY JOINT APPROPRIATIONS SUBCOM-  
MITTEE ON ADMINISTRATION AND REGULATION)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

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14 requirements of the Older Americans Act of 1965, ~~and-to-adopt~~  
15 ~~the-supporting-federal-regulations-and-guidelines-for-its~~  
16 ~~implementation~~ as amended. In accordance with chapter 17A,  
17 the commission of elder affairs shall adopt and enforce rules  
18 for the implementation of this subchapter.

19 Sec. 6. Section 231.42, Code 1997, is amended by striking  
20 the section and inserting in lieu thereof the following:

21 231.42 DEFINITIONS.

22 As used in this section, unless the context otherwise  
23 requires:

24 1. "Facility" means a health care facility licensed under  
25 chapter 135C or any similar adult care homes as identified by  
26 the federal administration on aging.

27 2. "Local ombudsman entity" means an organization  
28 designated under section 231.42A to carry out the duties  
29 described in that section with respect to a planning and  
30 service area or other substate area.

31 3. "Office" means the office of the state long-term care  
32 ombudsman established pursuant to section 231.42A.

33 4. "Ombudsman" means the individual designated as the  
34 state long-term care ombudsman pursuant to section 231.42A.

35 5. "Program" means the state long-term care ombudsman

1 program established in section 231.42A.

2 6. "Representative" means an employee or volunteer who is  
3 individually designated by the ombudsman to represent the  
4 office or an entity designated under section 231.42A.

5 7. "Resident" means an individual who resides in or is  
6 seeking admission to a health care facility who is under the  
7 jurisdiction of the office.

8 Sec. 7. NEW SECTION. 231.42A ESTABLISHMENT OF OFFICE --  
9 FUNCTIONS -- LOCAL OMBUDSMAN -- PENALTY.

10 1. The department shall do all of the following:

11 a. Establish and operate an office of the state long-term  
12 care ombudsman.

13 b. Designate an ombudsman to carry out the duties of the  
14 state long-term care ombudsman program.

15 2. The office shall be headed by the state long-term care  
16 ombudsman, who shall be selected by the department from among  
17 individuals with expertise and experience in the fields of  
18 long-term care and advocacy.

19 3. The ombudsman shall serve on a full-time basis, and  
20 shall, personally or through representatives of the office, do  
21 all of the following:

22 a. Identify, investigate, and resolve complaints that:

23 (1) Are made by, or on behalf of, residents.

24 (2) Relate to action, inaction, or decisions that may  
25 adversely affect the health, safety, welfare, or rights of the  
26 residents, including the welfare and rights of the residents  
27 with respect to the appointment and activities of guardians,  
28 conservators, and representative payees of:

29 (a) Providers, or representatives of providers, of long-  
30 term care services.

31 (b) Public agencies or contractors of public agencies.

32 (c) Health and social service agencies.

33 b. Provide services to assist residents in protecting the  
34 health, safety, welfare, and rights of the residents.

35 c. Inform the residents of means of obtaining services

1 provided by providers or agencies to protect the health,  
2 safety, welfare, and rights of the residents.

3 d. Ensure that the residents have regular and timely  
4 access to the services provided through the office and that  
5 the residents and complainants receive timely responses from  
6 representatives of the office.

7 e. Represent the interests of the residents before  
8 governmental agencies and seek administrative, legal, and  
9 other remedies to protect the health, safety, welfare, and  
10 rights of the residents.

11 f. Provide administrative and technical assistance to  
12 entities designated under subsection 5 to assist the entities  
13 in participating in the program.

14 g. Analyze, comment on, and monitor the development and  
15 implementation of federal, state, and local laws, regulations,  
16 and other governmental policies and actions that pertain to  
17 the health, safety, welfare, and rights of the residents, with  
18 respect to the adequacy of long-term care facilities and  
19 services in the state including:

20 (1) Recommending any changes in laws, regulations,  
21 policies, and actions the office determines appropriate.

22 (2) Facilitating public comment on the laws, regulations,  
23 policies, and actions.

24 h. Provide training to representatives of the office.

25 i. Promote the development of citizen organizations to  
26 participate in the program.

27 j. Provide technical support for the development of  
28 resident and family councils to protect the well-being and  
29 rights of residents.

30 k. Determine and carry out unscheduled, unhindered, and  
31 unreported visits and calls to facilities, individuals,  
32 groups, or organizations as the ombudsman deems necessary to  
33 fulfill the functions of the office.

34 l. Determine the qualifications for care review committee  
35 membership, appoint care review committees, and administer the

1 care review committee program.

2 m. Carry out such other activities as the assistant  
3 secretary for aging of the federal administration on aging  
4 determines appropriate.

5 4. a. Except as provided in paragraph "b", the department  
6 may establish and operate the office and carry out the program  
7 directly, by contract, or by other arrangement with any public  
8 agency or nonprofit private organization.

9 b. The department shall not enter into a contract or other  
10 arrangement described in paragraph "a" with any of the  
11 following:

12 (1) An agency or organization that is responsible for  
13 licensing or certifying long-term care services in the state.

14 (2) An association or an affiliate of an association of  
15 long-term care facilities, or of any other residential  
16 facilities for elders.

17 c. The office, or representatives of the office, shall not  
18 be directed or controlled by a person affiliated with any of  
19 the entities identified in paragraph "b" or any elected  
20 official. However, the ombudsman may consult with  
21 representatives as the ombudsman deems appropriate.

22 5. a. In carrying out the duties of the office, the  
23 ombudsman may designate an entity as a local ombudsman entity,  
24 and may designate an employee or volunteer to represent the  
25 entity.

26 b. An individual designated as a local ombudsman shall, in  
27 accordance with the policies and procedures established by the  
28 office and the department, do all of the following:

29 (1) Provide services to protect the health, safety,  
30 welfare, and rights of residents.

31 (2) Ensure that residents in the service area of the  
32 entity have regular, timely access to representatives of the  
33 program and receive timely responses to complaints and  
34 requests for assistance.

35 (3) Identify, investigate, and resolve complaints made by

1 or on behalf of residents that relate to action, inaction, or  
2 decisions that may adversely affect the health, safety,  
3 welfare, or rights of the residents.

4 (4) Represent the interests of residents before government  
5 agencies and seek administrative, legal, and other remedies to  
6 protect the health, safety, welfare, and rights of the  
7 residents.

8 (5) Review and, if necessary, comment on any existing and  
9 proposed laws, regulations, and other government policies and  
10 actions that pertain to the rights and well-being of  
11 residents.

12 (6) Facilitate the ability of the public to comment on the  
13 laws, regulations, policies, and actions.

14 (7) Support the development of resident and family  
15 councils.

16 (8) Carry out other activities that the department and  
17 ombudsman determine appropriate.

18 c. An entity eligible for designation as a local ombudsman  
19 entity and an individual eligible for designation as a  
20 representative of such entity shall:

21 (1) Have demonstrated capability to carry out the  
22 responsibilities of the office.

23 (2) Be free of conflicts of interest.

24 (3) In the case of the entity, be a public or nonprofit  
25 private entity.

26 (4) Meet such additional requirements as the department  
27 and ombudsman specify.

28 d. (1) The department shall establish, in accordance with  
29 the office, policies and procedures for monitoring local  
30 ombudsman entities designated to carry out the duties of the  
31 office.

32 (2) If an entity is a grantee or a representative is an  
33 employee of an area agency on aging, the department shall  
34 develop the policies in consultation with the area agencies on  
35 aging. The policies shall provide for participation and

1 comment by the agencies and for resolution of concerns with  
2 respect to case activity.

3 (3) The department shall develop the policies and  
4 procedures in accordance with provisions of this section  
5 regarding confidentiality and conflict of interest.

6 6. a. The ombudsman and representatives of the office  
7 shall have all of the following:

8 (1) Access to long-term care facilities and residents.

9 (2) Appropriate access to review the medical and social  
10 records of a resident if any of the following apply:

11 (a) The ombudsman or the representative has the permission  
12 of the resident or the legal representative of the resident.

13 (b) The resident is unable to consent to the review and  
14 has no legal representative.

15 (c) Access to the records as is necessary to investigate a  
16 complaint if all of the following apply:

17 (i) A legal representative of the resident refuses to give  
18 permission.

19 (ii) The ombudsman or a representative of the office has  
20 reasonable cause to believe that the resident's legal  
21 representative is not acting in the best interests of the  
22 resident.

23 (iii) The representative obtains the approval of the  
24 ombudsman.

25 (3) Access to the administrative records, policies, and  
26 documents to which the residents have access, or the general  
27 public has access, of long-term care facilities.

28 (4) Access to and, on request, copies of all licensing and  
29 certification records maintained by the state with respect to  
30 long-term care facilities.

31 b. The department shall establish procedures to ensure the  
32 access described in paragraph "a".

33 7. The department shall establish a statewide uniform  
34 reporting system between the office of the ombudsman and local  
35 designees to do all of the following:

1 a. Report the results of complaints.  
 2 b. Collect and analyze existing data relating to  
 3 complaints and conditions in long-term care facilities and to  
 4 residents for the purpose of identifying and resolving  
 5 significant problems.

6 c. Submit the data, on a regular basis, to all of the  
 7 following:

- 8 (1) The department of inspections and appeals.
- 9 (2) State and federal entities as determined appropriate  
 10 by the ombudsman.
- 11 (3) The assistant secretary for aging of the federal  
 12 administration on aging.
- 13 (4) The national ombudsman resource center established  
 14 under the federal Older Americans Act.

15 8. a. The department shall establish procedures for the  
 16 disclosure by the ombudsman or local ombudsman entities of  
 17 files maintained by the program.

18 b. The procedures established under paragraph "a" shall:

19 (1) Provide that, subject to subparagraph (2), the files  
 20 and records described in paragraph "a" may be disclosed only  
 21 at the discretion of the ombudsman or the person designated by  
 22 the ombudsman to disclose the files and records.

23 (2) Prohibit the disclosure of the identity of a  
 24 complainant or resident with respect to whom the office  
 25 maintains files or records unless all of the following apply:

26 (a) The complainant or resident, or the legal  
 27 representative of the complainant or resident, consents to the  
 28 disclosure and consent is given in writing.

29 (b) The complainant or resident provides consent orally.

30 (c) The consent is documented contemporaneously in a  
 31 writing made by a representative of the office in accordance  
 32 with requirements established by the department.

33 9. In planning and operating the program, the department  
 34 shall consider the views of area agencies on aging, elders,  
 35 and providers of long-term care.

1 10. The department shall ensure all of the following:

2 a. That an individual, or member of the immediate family  
3 of an individual, involved in the designation of the ombudsman  
4 or the designation of an entity designated under subsection 5,  
5 is not subject to a conflict of interest.

6 b. That an officer or employee of the office,  
7 representative of a local ombudsman entity, or member of the  
8 immediate family of the officer, employee, or representative,  
9 is not subject to a conflict of interest.

10 c. The ombudsman shall not:

11 (1) Have direct involvement in the licensing or  
12 certification of a long-term care facility or of a provider of  
13 a long-term care service.

14 (2) Have an interest represented by equity, debt, or other  
15 financial relationship in a long-term care facility or service  
16 which, in the opinion of the department, presents a conflict  
17 of interest. If a conflict is deemed to be or becomes  
18 present, the local designee or designated candidate may  
19 present a plan of action that, in the opinion of the  
20 department, will eliminate the conflict of interest.

21 (3) Be employed by or participate in the management of a  
22 long-term care facility.

23 (4) Receive, or have the right to receive, directly or  
24 indirectly, remuneration, in cash or in kind, under a  
25 compensation arrangement with an owner or operator of a long-  
26 term care facility.

27 d. The department shall establish, and specify in writing,  
28 mechanisms to identify and remove conflicts of interest and to  
29 identify and eliminate the relationships which establish a  
30 conflict of interest, including but not limited to:

31 (1) The methods by which the department will examine  
32 individuals, and immediate family members, to identify the  
33 conflicts.

34 (2) The actions that the department will require the  
35 individuals and family members to take to remove the

1 conflicts.

2 11. The department shall ensure all of the following:

3 a. That adequate legal counsel is available, and is able,  
4 without conflict of interest, to do all of the following:

5 (1) Provide the advice and consultation needed to protect  
6 the health, safety, welfare, and rights of residents.

7 (2) Assist the ombudsman and representatives of the office  
8 in the performance of the official duties of the ombudsman and  
9 representatives.

10 b. That legal representation is provided to any  
11 representative of the office against whom suit or other legal  
12 action is brought or threatened to be brought in connection  
13 with the performance of the official duties of the ombudsman  
14 or a representative.

15 c. That the office pursues administrative, legal, and  
16 other appropriate remedies on behalf of residents.

17 12. In carrying out the duties of the office, the  
18 ombudsman shall do all of the following:

19 a. Prepare an annual report which includes all of the  
20 following:

21 (1) Describes the activities carried out by the office in  
22 the year for which the report is prepared.

23 (2) Contains and analyzes the data collected under  
24 subsection 6.

25 (3) Evaluates the problems experienced by, and the  
26 complaints made by or on behalf of, residents.

27 (4) Contains recommendations for all of the following:

28 (a) Improving quality of the care and life of the  
29 residents.

30 (b) Protecting the health, safety, welfare, and rights of  
31 the residents.

32 (5) Analyzes the success of the program including success  
33 in providing services to residents of board and care  
34 facilities and other similar adult care facilities.

35 (6) Identifies barriers that prevent the optimal operation

1 of the program.

2 (7) Provides policy, regulatory, and legislative  
3 recommendations to solve identified problems; resolve  
4 complaints; improve the quality of care and life of residents;  
5 protect the health, safety, welfare, and rights of residents;  
6 and remove the barriers.

7 b. Analyze, comment on, and monitor the development and  
8 implementation of federal, state, and local laws, regulations,  
9 and other government policies and actions that pertain to  
10 long-term care facilities and services, and to the health,  
11 safety, welfare, and rights of residents in the state, and  
12 recommend any changes in laws, regulations, and policies as  
13 the office determines to be appropriate.

14 c. Provide information as the office determines necessary  
15 to public and private agencies, legislators, and other persons  
16 regarding all of the following:

17 (1) The problems and concerns of elders residing in long-  
18 term care facilities.

19 (2) Recommendations related to problems and concerns.

20 d. Provide and make available to the public, and submit to  
21 the commissioner, the governor, the general assembly, the  
22 department of inspections and appeals, and other appropriate  
23 governmental entities, each report prepared under this  
24 subsection.

25 e. Not later than July 1, 1998, establish procedures for  
26 the training of the representatives of the office, including  
27 unpaid volunteers, based on model standards established by the  
28 federal associate commissioner for ombudsman programs, in  
29 consultation with representatives of citizen groups, long-term  
30 care providers, and the office, that do all of the following:

31 (1) Specify a minimum number of hours of initial training.

32 (2) Specify the content of the training, including  
33 training relating to all of the following:

34 (a) Federal, state, and local laws, regulations, and  
35 policies, with respect to long-term care facilities in the

1 state.

2 (b) Investigative techniques.

3 (c) Such other matters as the department determines to be  
4 appropriate.

5 (3) Specify an annual number of hours of in-service  
6 training for all designated representatives.

7 (4) Require implementation of the procedures not later  
8 than May 1, 1999.

9 f. Prohibit any representative of the office, other than  
10 the ombudsman, from carrying out any activity described in  
11 this section, unless the representative:

12 (1) Has received required training.

13 (2) Has been approved by the ombudsman as qualified to  
14 carry out the activity on behalf of the office.

15 g. Coordinate ombudsman services with the protection and  
16 advocacy systems for individuals with developmental  
17 disabilities and mental illnesses established under any of the  
18 following:

19 (1) The federal Developmental Disabilities Assistance and  
20 Bill of Rights Act as codified in 42 U.S.C. § 6001 et seq.

21 (2) The federal Protection and Advocacy for Mentally Ill  
22 Individuals Act of 1986 as codified in 42 U.S.C. § 10801 et  
23 seq.

24 h. Coordinate, to the greatest extent possible, ombudsman  
25 services with legal assistance provided under section 231.54,  
26 through adoption of memoranda of understanding and other  
27 means.

28 i. Permit any local ombudsman entity to carry out the  
29 responsibilities described in paragraph "a", "b", "c", "g", or  
30 "h".

31 13. The state ombudsman, a representative of the office,  
32 or a local ombudsman entity, shall not be civilly liable as a  
33 result of the state ombudsman or representative's acts,  
34 omissions, or decisions in the good faith performance of  
35 official duties.

1 14. The department shall ensure that the office is an  
2 effective advocate for improved health of residents and long-  
3 term care services. The department shall do all of the  
4 following:

5 a. Ensure that there will be no willful interference with  
6 the ombudsman or representatives of the office in the  
7 performance of their official duties.

8 b. Prohibit retaliation and reprisals by a long-term care  
9 facility or other entity with respect to any resident,  
10 employee, or other person for filing a complaint with,  
11 providing information to, or otherwise cooperating with any  
12 representative of, the office.

13 c. Provide for appropriate sanctions with respect to the  
14 interference, retaliation, and reprisals.

15 d. Ensure that the ombudsman has the authority to provide  
16 reliable information to the media, elected officials, and  
17 others without fear of retaliation, harassment, or coercion.

18 15. Any individual who interferes with or attempts to  
19 impede the ombudsman or a representative of the office is  
20 guilty of a simple misdemeanor.

21 16. The office shall respond to complaints within twenty  
22 working days of receipt of the complaint.

23 Sec. 8. Section 231.43, subsection 3, Code 1997, is  
24 amended to read as follows:

25 3. Procedures to enable the state long-term care  
26 ~~resident's-advocate~~ ombudsman to elicit, receive, and process  
27 complaints regarding administrative actions which may  
28 adversely affect the health, safety, welfare, or rights of  
29 ~~elderly~~ residents in long-term care facilities.

30 Sec. 9. Section 231.44, subsection 1, Code 1997, is  
31 amended to read as follows:

32 1. The care review committee program is administered by  
33 the state long-term care ~~resident's-advocate~~ ombudsman  
34 program.

35 Sec. 10. Section 669.14, Code 1997, is amended by adding

1 the following new subsection:

2 NEW SUBSECTION. 14. A claim based upon an act or omission  
3 of the state long-term care ombudsman as defined in section  
4 231.4, or the ombudsman's designee in the performance of duty  
5 if the act or omission is undertaken and carried out in good  
6 faith.

7 EXPLANATION

8 This bill establishes specific duties for the office of the  
9 state long-term care ombudsman and changes references  
10 throughout the Code to replace the "resident's advocate  
11 program" with references to the "state long-term care  
12 ombudsman program". The bill establishes the program and  
13 office of the ombudsman, provides for designation of local  
14 ombudsman entities and representatives, provides for  
15 regulation of conflicts of interest, provides for  
16 administration of the program and office, provides for  
17 exemption from liability for acts and omissions made in good  
18 faith, and provides a penalty for interference with or  
19 impeding of the ombudsman of a simple misdemeanor.

20 This bill also exempts from application of the state tort  
21 claims Act, an act or omission of the long-term care ombudsman  
22 or the ombudsman's designee in the performance of duty if the  
23 act or omission is undertaken and carried out in good faith.

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