

FILED JAN 30 1997

SENATE FILE 97
BY BLACK of Jasper

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the establishment of a state long-term care
2 ombudsman and an area long-term care ombudsman in each of the
3 area agencies on aging planning and service areas in the
4 state, providing for an initial demonstration program,
5 providing for an appropriation, and providing an effective
6 date.

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

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S.F. 97

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~~ ombudsman shall 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 of the person who files a complaint with the department, care
21 review committee, or the state long-term care ~~resident's~~
22 advocate ombudsman shall be kept confidential and shall not be
23 subject to discovery, subpoena, or other means of legal
24 compulsion for its release to a person other than department
25 employees involved in the investigation of the complaint.

26 Sec. 2. Section 135C.38, subsection 2, paragraph d, Code
27 1997, is amended to read as follows:

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

35 Sec. 3. Section 231.4, subsection 16, Code 1997, is

1 amended to read as follows:

2 16. "~~Resident's-advocate~~ State long-term care ombudsman
3 program" means the state long-term care ~~resident's-advocate~~
4 ombudsman program operated by the commission of elder affairs
5 and administered by the state long-term care ~~resident's~~
6 ~~advocate~~ ombudsman.

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

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

11 Sec. 5. Section 231.41, Code 1997, is amended to read as
12 follows:

13 231.41 PURPOSE.

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

22 Sec. 6. Section 231.42, Code 1997, is amended to read as
23 follows:

24 231.42 STATE LONG-TERM CARE RESIDENT'S-ADVOCATE OMBUDSMAN
25 -- DUTIES.

26 The Iowa commission of elder affairs, in accordance with
27 section 3027(a)(12) of the federal Act, shall establish the
28 office of state long-term care ~~resident's-advocate~~ ombudsman
29 within the commission. The state long-term care ~~resident's~~
30 ~~advocate~~ ombudsman shall:

31 1. Investigate and resolve complaints about administrative
32 actions that may adversely affect the health, safety, welfare,
33 or rights of elderly in long-term care facilities.

34 2. Monitor the development and implementation of federal,
35 state, and local laws, regulations, and policies that relate

1 to long-term care facilities in Iowa.

2 3. Provide information to other agencies and to the public
3 about the problems of elderly in long-term care facilities.

4 4. Train volunteers and assist in the development of
5 citizens' organizations to participate in the state long-term
6 care resident's-advocate ombudsman program.

7 5. Carry out other activities consistent with the
8 resident's-advocate state long-term care ombudsman provisions
9 of the federal Act.

10 6. Administer the care review committee program.

11 7. Report annually to the general assembly on the
12 activities of the resident's-advocate state long-term care
13 ombudsman office.

14 8. a. Establish an area long-term care ombudsman program
15 in a designated entity in each of the area agencies on aging
16 planning and service areas throughout the state. The state
17 long-term care ombudsman, in consultation with the department,
18 shall establish a procedure for certification of each area
19 ombudsman. The certification procedure shall require, at a
20 minimum, that an area long-term care ombudsman has
21 demonstrated the ability to carry out the responsibilities of
22 the office, is free of conflicts of interest, and meets any
23 additional requirements as specified by the department.

24 b. The state long-term care ombudsman, the designated
25 entities in which area long-term care ombudsman programs are
26 established, and the area ombudsman are not liable for any
27 action undertaken by an area ombudsman in the performance of
28 duty, if the action is undertaken and carried out in good
29 faith.

30 c. The area ombudsman shall assist the state ombudsman by
31 doing all of the following:

32 (1) Providing services to protect health, safety, welfare,
33 and rights of residents in long-term care facilities.

34 (2) Ensuring that the residents of long-term care
35 facilities in the service area of the area long-term care

1 ombudsman program have regular, timely access to the area
2 ombudsman and are provided timely responses to complaints and
3 requests for assistance.

4 (3) Identifying, investigating, and resolving complaints
5 and grievances that may adversely affect the health, safety,
6 welfare, or rights of residents in long-term care facilities.

7 (4) Representing the interest of residents of long-term
8 care facilities before government agencies and seeking
9 administrative, legal, and other remedies to protect the
10 health, safety, welfare, and rights of the residents of long-
11 term care facilities.

12 (5) Providing information to other agencies and to the
13 public about the problems of residents in long-term care
14 facilities and facilitating the ability of the public to
15 comment on laws, regulations, and policies which affect
16 residents in long-term care facilities.

17 (6) Reviewing, and, if necessary, commenting on any
18 existing and proposed laws, rules, and other government
19 policies and actions that pertain to the rights and well-being
20 of residents in long-term care facilities.

21 (7) Developing and assisting care review committees in the
22 performance of their duties through recruitment, training, and
23 publicity.

24 (8) Supporting the development of resident and family
25 councils.

26 (9) Assisting in the development of organizations to
27 participate in the area long-term care ombudsman program.

28 (10) Carrying out other activities that the state
29 ombudsman determines appropriate.

30 d. The department shall establish, in consultation with
31 the state ombudsman, policies and procedures for monitoring
32 area long-term care ombudsman programs, the entities in which
33 the programs are established, and the area ombudsman.

34 The resident's-advocate state long-term care ombudsman
35 shall have access to long-term care facilities, private access

1 to residents, and access to residents' personal, social, and
2 medical records,--and for the purpose of reviewing and, upon
3 request, copying the records. The state long-term care
4 ombudsman shall have access to other records maintained by the
5 facilities or governmental agencies only as necessary and
6 pertaining only to the person on whose behalf a complaint is
7 being investigated. An area ombudsman shall have comparable
8 access to facilities, residents, and records as provided in
9 this paragraph if the area ombudsman obtains consent from the
10 resident or from the resident's legal representative. If the
11 resident is unable to provide consent and the resident's legal
12 representative refuses to consent to the access, access shall
13 be granted if the area ombudsman has reasonable cause to
14 believe that the legal representative is not acting in the
15 resident's best interest and if the area ombudsman obtains
16 approval from the state long-term care ombudsman.

17 Sec. 7. Section 231.43, subsection 3, Code 1997, is
18 amended to read as follows:

19 3. Procedures to enable the state long-term care
20 resident's-advocate ombudsman and area long-term care
21 ombudsman to elicit, receive, and process complaints regarding
22 administrative actions which may adversely affect the health,
23 safety, welfare, or rights of elderly residents in long-term
24 care facilities.

25 Sec. 8. Section 231.44, subsection 1, Code 1997, is
26 amended to read as follows:

27 1. The care review committee program is administered by
28 the state long-term care resident's-advocate ombudsman
29 program.

30 Sec. 9. AREA LONG-TERM CARE OMBUDSMAN PROGRAM --
31 DEMONSTRATION PROJECT -- APPROPRIATION. There is appropriated
32 from the general fund of the state to the department of elder
33 affairs for the fiscal year beginning July 1, 1997, and ending
34 June 30, 1998, the following amount, or so much thereof as is
35 necessary, to be used for the purpose designated:

1 For the establishment of a demonstration program beginning
2 July 1, 1997, and ending June 30, 1999, to create the position
3 of area long-term care ombudsman in each of three area
4 agencies on aging planning and service areas in the state to
5 determine the efficacy of establishing an ombudsman in all
6 area agencies on aging planning and service area locations:
7 \$ 240,000

8 Notwithstanding section 8.33, the moneys appropriated in
9 this section that remain unencumbered and unobligated at the
10 end of any fiscal year shall not revert to the general fund of
11 the state but shall remain available for expenditure during
12 subsequent fiscal years for the purposes for which originally
13 appropriated.

14 Sec. 10. EFFECTIVE DATE. Sections 1 through 8 of this Act
15 take effect July 1, 1999.

16 EXPLANATION

17 This bill changes the title of the long-term care
18 resident's advocate to the state long-term care ombudsman. It
19 provides for the establishment of an area long-term care
20 ombudsman in each of the area agencies on aging planning and
21 service areas through the office of the state long-term care
22 ombudsman, establishes the duties of the local ombudsman,
23 provides for immunity from liability for actions of the
24 ombudsman undertaken in good faith performance of their
25 duties, makes conforming changes, and establishes a
26 demonstration program to determine the efficacy of
27 establishing an ombudsman in all area agencies on aging
28 planning and service areas in the state. The bill provides
29 for an appropriation of \$240,000 for the demonstration project
30 and also provides that the statutory provisions which
31 establish the local ombudsman are effective July 1, 1999,
32 after completion of the demonstration program.

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