

Senate Study Bill 248

Bill Text

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1 1 Section 1. Section [135C.37](#), Code 1997, is amended to read
1 2 as follows:
1 3 135C.37 COMPLAINTS ALLEGING VIOLATIONS CONFIDENTIALITY.
1 4 A person may request an inspection of a health care
1 5 facility by filing with the department, care review committee
1 6 of the facility, or the state long-term care

~~resident's~~

1 7

~~advocate~~

- ombudsman as defined in section 231.4, subsection 16,
1 8 a complaint of an alleged violation of applicable requirements
1 9 of this chapter or the rules adopted pursuant to this chapter.
1 10 A person alleging abuse or neglect of a resident with a
1 11 developmental disability or with mental illness may also file
1 12 a complaint with the protection and advocacy agency designated
1 13 pursuant to section 135B.9 or section 135C.2. A copy of a
1 14 complaint filed with the care review committee or the state
1 15 long-term care

~~resident's advocate shall~~

- ombudsman may be
1 16 forwarded to the department. The complaint shall state in a
1 17 reasonably specific manner the basis of the complaint, and a
1 18 statement of the nature of the complaint shall be delivered to
1 19 the facility involved at the time of the inspection. The name
1 20 or other identifying information of the person who files a
1 21 complaint with the department, care review committee, or the
1 22 state long-term care

~~resident's advocate~~

- ombudsman shall be
1 23 kept confidential and shall not be subject to discovery,
1 24 subpoena, or other means of legal compulsion for its release
1 25 to a person other than department or the office of the state
1 26 long-term care ombudsman employees involved in the
1 27 investigation of the complaint.
1 28 Sec. 2. Section [135C.38](#), subsection 2, paragraph d, Code
1 29 1997, is amended to read as follows:
1 30 d. A person who is dissatisfied with any aspect of the
1 31 department's handling of the complaint may contact the state
1 32 long-term care

~~resident's advocate~~

- ombudsman, established
1 33 pursuant to section 231.42, or may contact the protection and
1 34 advocacy agency designated pursuant to section 135C.2 if the
1 35 complaint relates to a resident with a developmental
2 1 disability or a mental illness.
2 2 Sec. 3. Section [231.4](#), subsection 16, Code 1997, is
2 3 amended by striking the subsection.
2 4 Sec. 4. Section [231.33](#), subsection 18, Code 1997, is
2 5 amended to read as follows:
2 6 18. Coordinate activities in support of the

~~statewide~~

2 7 state long-term care

~~resident's advocate~~

- ombudsman program.

2 8 Sec. 5. Section [231.41](#), Code 1997, is amended to read as
2 9 follows:

2 10 231.41 PURPOSE.

2 11 The purpose of this subchapter is to establish the long-
2 12 term care

~~resident's advocate~~

- ombudsman program operated by

2 13 the Iowa commission of elder affairs in accordance with the
2 14 requirements of the Older Americans Act of 1965,

~~and to adopt~~

2 15

~~the supporting federal regulations and guidelines for its~~

2 16

~~implementation~~

- as amended. In accordance with chapter 17A,

2 17 the commission of elder affairs shall adopt and enforce rules
2 18 for the implementation of this subchapter.

2 19 Sec. 6. Section [231.42](#), Code 1997, is amended by striking
2 20 the section and inserting in lieu thereof the following:

2 21 231.42 DEFINITIONS.

2 22 As used in this section, unless the context otherwise
2 23 requires:

2 24 1. "Facility" means a health care facility licensed under
2 25 chapter 135C or any similar adult care homes as identified by
2 26 the federal administration on aging.

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

2 31 3. "Office" means the office of the state long-term care
2 32 ombudsman established pursuant to section 231.42A.

2 33 4. "Ombudsman" means the individual designated as the
2 34 state long-term care ombudsman pursuant to section 231.42A.

2 35 5. "Program" means the state long-term care ombudsman
3 1 program established in section 231.42A.

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

3 5 7. "Resident" means an individual who resides in or is
3 6 seeking admission to a health care facility who is under the
3 7 jurisdiction of the office.

3 8 Sec. 7. NEW SECTION. 231.42A ESTABLISHMENT OF OFFICE
3 9 FUNCTIONS LOCAL OMBUDSMAN PENALTY.

3 10 1. The department shall do all of the following:

3 11 a. Establish and operate an office of the state long-term
3 12 care ombudsman.

3 13 b. Designate an ombudsman to carry out the duties of the
3 14 state long-term care ombudsman program.

3 15 2. The office shall be headed by the state long-term care
3 16 ombudsman, who shall be selected by the department from among
3 17 individuals with expertise and experience in the fields of
3 18 long-term care and advocacy.

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

3 21 all of the following:

3 22 a. Identify, investigate, and resolve complaints that:

3 23 (1) Are made by, or on behalf of, residents.

3 24 (2) Relate to action, inaction, or decisions that may
3 25 adversely affect the health, safety, welfare, or rights of the
3 26 residents, including the welfare and rights of the residents
3 27 with respect to the appointment and activities of guardians,
3 28 conservators, and representative payees of:

3 29 (a) Providers, or representatives of providers, of long-
3 30 term care services.

3 31 (b) Public agencies or contractors of public agencies.

3 32 (c) Health and social service agencies.

3 33 b. Provide services to assist residents in protecting the
3 34 health, safety, welfare, and rights of the residents.

3 35 c. Inform the residents of means of obtaining services
4 1 provided by providers or agencies to protect the health,
4 2 safety, welfare, and rights of the residents.

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

4 7 e. Represent the interests of the residents before
4 8 governmental agencies and seek administrative, legal, and
4 9 other remedies to protect the health, safety, welfare, and
4 10 rights of the residents.

4 11 f. Provide administrative and technical assistance to
4 12 entities designated under subsection 5 to assist the entities
4 13 in participating in the program.

4 14 g. Analyze, comment on, and monitor the development and
4 15 implementation of federal, state, and local laws, regulations,
4 16 and other governmental policies and actions that pertain to
4 17 the health, safety, welfare, and rights of the residents, with
4 18 respect to the adequacy of long-term care facilities and
4 19 services in the state including:

4 20 (1) Recommending any changes in laws, regulations,
4 21 policies, and actions the office determines appropriate.

4 22 (2) Facilitating public comment on the laws, regulations,
4 23 policies, and actions.

4 24 h. Provide training to representatives of the office.

4 25 i. Promote the development of citizen organizations to
4 26 participate in the program.

4 27 j. Provide technical support for the development of
4 28 resident and family councils to protect the well-being and
4 29 rights of residents.

4 30 k. Determine and carry out unscheduled, unhindered, and
4 31 unreported visits and calls to facilities, individuals,
4 32 groups, or organizations as the ombudsman deems necessary to
4 33 fulfill the functions of the office.

4 34 l. Determine the qualifications for care review committee
4 35 membership, appoint care review committees, and administer the
5 1 care review committee program.

5 2 m. Carry out such other activities as the assistant
5 3 secretary for aging of the federal administration on aging
5 4 determines appropriate.

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

5 9 b. The department shall not enter into a contract or other
5 10 arrangement described in paragraph "a" with any of the
5 11 following:

5 12 (1) An agency or organization that is responsible for
5 13 licensing or certifying long-term care services in the state.

5 14 (2) An association or an affiliate of an association of
5 15 long-term care facilities, or of any other residential
5 16 facilities for elders.

5 17 c. The office, or representatives of the office, shall not

5 18 be directed or controlled by a person affiliated with any of
5 19 the entities identified in paragraph "b" or any elected
5 20 official. However, the ombudsman may consult with
5 21 representatives as the ombudsman deems appropriate.

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

5 26 b. An individual designated as a local ombudsman shall, in
5 27 accordance with the policies and procedures established by the
5 28 office and the department, do all of the following:

5 29 (1) Provide services to protect the health, safety,
5 30 welfare, and rights of residents.

5 31 (2) Ensure that residents in the service area of the
5 32 entity have regular, timely access to representatives of the
5 33 program and receive timely responses to complaints and
5 34 requests for assistance.

5 35 (3) Identify, investigate, and resolve complaints made by
6 1 or on behalf of residents that relate to action, inaction, or
6 2 decisions that may adversely affect the health, safety,
6 3 welfare, or rights of the residents.

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

6 8 (5) Review and, if necessary, comment on any existing and
6 9 proposed laws, regulations, and other government policies and
6 10 actions that pertain to the rights and well-being of
6 11 residents.

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

6 14 (7) Support the development of resident and family
6 15 councils.

6 16 (8) Carry out other activities that the department and
6 17 ombudsman determine appropriate.

6 18 c. An entity eligible for designation as a local ombudsman
6 19 entity and an individual eligible for designation as a
6 20 representative of such entity shall:

6 21 (1) Have demonstrated capability to carry out the
6 22 responsibilities of the office.

6 23 (2) Be free of conflicts of interest.

6 24 (3) In the case of the entity, be a public or nonprofit
6 25 private entity.

6 26 (4) Meet such additional requirements as the department
6 27 and ombudsman specify.

6 28 d. (1) The department shall establish, in accordance with
6 29 the office, policies and procedures for monitoring local
6 30 ombudsman entities designated to carry out the duties of the
6 31 office.

6 32 (2) If an entity is a grantee or a representative is an
6 33 employee of an area agency on aging, the department shall
6 34 develop the policies in consultation with the area agencies on
6 35 aging. The policies shall provide for participation and
7 1 comment by the agencies and for resolution of concerns with
7 2 respect to case activity.

7 3 (3) The department shall develop the policies and
7 4 procedures in accordance with provisions of this section
7 5 regarding confidentiality and conflict of interest.

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

7 8 (1) Access to long-term care facilities and residents.

7 9 (2) Appropriate access to review the medical and social
7 10 records of a resident if any of the following apply:

7 11 (a) The ombudsman or the representative has the permission
7 12 of the resident or the legal representative of the resident.

7 13 (b) The resident is unable to consent to the review and
7 14 has no legal representative.

7 15 (c) Access to the records as is necessary to investigate a
7 16 complaint if all of the following apply:

7 17 (i) A legal representative of the resident refuses to give
7 18 permission.

7 19 (ii) The ombudsman or a representative of the office has
7 20 reasonable cause to believe that the resident's legal
7 21 representative is not acting in the best interests of the
7 22 resident.

7 23 (iii) The representative obtains the approval of the
7 24 ombudsman.

7 25 (3) Access to the administrative records, policies, and
7 26 documents to which the residents have access, or the general
7 27 public has access, of long-term care facilities.

7 28 (4) Access to and, on request, copies of all licensing and
7 29 certification records maintained by the state with respect to
7 30 long-term care facilities.

7 31 b. The department shall establish procedures to ensure the
7 32 access described in paragraph "a".

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

8 1 a. Report the results of complaints.

8 2 b. Collect and analyze existing data relating to
8 3 complaints and conditions in long-term care facilities and to
8 4 residents for the purpose of identifying and resolving
8 5 significant problems.

8 6 c. Submit the data, on a regular basis, to all of the
8 7 following:

8 8 (1) The department of inspections and appeals.

8 9 (2) State and federal entities as determined appropriate
8 10 by the ombudsman.

8 11 (3) The assistant secretary for aging of the federal
8 12 administration on aging.

8 13 (4) The national ombudsman resource center established
8 14 under the federal Older Americans Act.

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

8 18 b. The procedures established under paragraph "a" shall:

8 19 (1) Provide that, subject to subparagraph (2), the files
8 20 and records described in paragraph "a" may be disclosed only
8 21 at the discretion of the ombudsman or the person designated by
8 22 the ombudsman to disclose the files and records.

8 23 (2) Prohibit the disclosure of the identity of a
8 24 complainant or resident with respect to whom the office
8 25 maintains files or records unless all of the following apply:

8 26 (a) The complainant or resident, or the legal
8 27 representative of the complainant or resident, consents to the
8 28 disclosure and consent is given in writing.

8 29 (b) The complainant or resident provides consent orally.

8 30 (c) The consent is documented contemporaneously in a
8 31 writing made by a representative of the office in accordance
8 32 with requirements established by the department.

8 33 9. In planning and operating the program, the department
8 34 shall consider the views of area agencies on aging, elders,
8 35 and providers of long-term care.

9 1 10. The department shall ensure all of the following:

9 2 a. That an individual, or member of the immediate family
9 3 of an individual, involved in the designation of the ombudsman
9 4 or the designation of an entity designated under subsection 5,
9 5 is not subject to a conflict of interest.

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

9 10 c. The ombudsman shall not:

9 11 (1) Have direct involvement in the licensing or

9 12 certification of a long-term care facility or of a provider of
9 13 a long-term care service.

9 14 (2) Have an interest represented by equity, debt, or other
9 15 financial relationship in a long-term care facility or service
9 16 which, in the opinion of the department, presents a conflict
9 17 of interest. If a conflict is deemed to be or becomes
9 18 present, the local designee or designated candidate may
9 19 present a plan of action that, in the opinion of the
9 20 department, will eliminate the conflict of interest.

9 21 (3) Be employed by or participate in the management of a
9 22 long-term care facility.

9 23 (4) Receive, or have the right to receive, directly or
9 24 indirectly, remuneration, in cash or in kind, under a
9 25 compensation arrangement with an owner or operator of a long-
9 26 term care facility.

9 27 d. The department shall establish, and specify in writing,
9 28 mechanisms to identify and remove conflicts of interest and to
9 29 identify and eliminate the relationships which establish a
9 30 conflict of interest, including but not limited to:

9 31 (1) The methods by which the department will examine
9 32 individuals, and immediate family members, to identify the
9 33 conflicts.

9 34 (2) The actions that the department will require the
9 35 individuals and family members to take to remove the
10 1 conflicts.

10 2 11. The department shall ensure all of the following:

10 3 a. That adequate legal counsel is available, and is able,
10 4 without conflict of interest, to do all of the following:

10 5 (1) Provide the advice and consultation needed to protect
10 6 the health, safety, welfare, and rights of residents.

10 7 (2) Assist the ombudsman and representatives of the office
10 8 in the performance of the official duties of the ombudsman and
10 9 representatives.

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

10 15 c. That the office pursues administrative, legal, and
10 16 other appropriate remedies on behalf of residents.

10 17 12. In carrying out the duties of the office, the
10 18 ombudsman shall do all of the following:

10 19 a. Prepare an annual report which includes all of the
10 20 following:

10 21 (1) Describes the activities carried out by the office in
10 22 the year for which the report is prepared.

10 23 (2) Contains and analyzes the data collected under
10 24 subsection 6.

10 25 (3) Evaluates the problems experienced by, and the
10 26 complaints made by or on behalf of, residents.

10 27 (4) Contains recommendations for all of the following:

10 28 (a) Improving quality of the care and life of the
10 29 residents.

10 30 (b) Protecting the health, safety, welfare, and rights of
10 31 the residents.

10 32 (5) Analyzes the success of the program including success
10 33 in providing services to residents of board and care
10 34 facilities and other similar adult care facilities.

10 35 (6) Identifies barriers that prevent the optimal operation
11 1 of the program.

11 2 (7) Provides policy, regulatory, and legislative
11 3 recommendations to solve identified problems; resolve
11 4 complaints; improve the quality of care and life of residents;
11 5 protect the health, safety, welfare, and rights of residents;
11 6 and remove the barriers.

11 7 b. Analyze, comment on, and monitor the development and
11 8 implementation of federal, state, and local laws, regulations,

11 9 and other government policies and actions that pertain to
11 10 long-term care facilities and services, and to the health,
11 11 safety, welfare, and rights of residents in the state, and
11 12 recommend any changes in laws, regulations, and policies as
11 13 the office determines to be appropriate.

11 14 c. Provide information as the office determines necessary
11 15 to public and private agencies, legislators, and other persons
11 16 regarding all of the following:

11 17 (1) The problems and concerns of elders residing in long-
11 18 term care facilities.

11 19 (2) Recommendations related to problems and concerns.

11 20 d. Provide and make available to the public, and submit to
11 21 the commissioner, the governor, the general assembly, the
11 22 department of inspections and appeals, and other appropriate
11 23 governmental entities, each report prepared under this
11 24 subsection.

11 25 e. Not later than July 1, 1998, establish procedures for
11 26 the training of the representatives of the office, including
11 27 unpaid volunteers, based on model standards established by the
11 28 federal associate commissioner for ombudsman programs, in
11 29 consultation with representatives of citizen groups, long-term
11 30 care providers, and the office, that do all of the following:

11 31 (1) Specify a minimum number of hours of initial training.
11 32 (2) Specify the content of the training, including
11 33 training relating to all of the following:

11 34 (a) Federal, state, and local laws, regulations, and
11 35 policies, with respect to long-term care facilities in the
12 1 state.

12 2 (b) Investigative techniques.

12 3 (c) Such other matters as the department determines to be
12 4 appropriate.

12 5 (3) Specify an annual number of hours of in-service
12 6 training for all designated representatives.

12 7 (4) Require implementation of the procedures not later
12 8 than May 1, 1999.

12 9 f. Prohibit any representative of the office, other than
12 10 the ombudsman, from carrying out any activity described in
12 11 this section, unless the representative:

12 12 (1) Has received required training.
12 13 (2) Has been approved by the ombudsman as qualified to
12 14 carry out the activity on behalf of the office.

12 15 g. Coordinate ombudsman services with the protection and
12 16 advocacy systems for individuals with developmental
12 17 disabilities and mental illnesses established under any of the
12 18 following:

12 19 (1) The federal Developmental Disabilities Assistance and
12 20 Bill of Rights Act as codified in 42 U.S.C. } 6001 et seq.
12 21 (2) The federal Protection and Advocacy for Mentally Ill
12 22 Individuals Act of 1986 as codified in 42 U.S.C. } 10801 et
12 23 seq.

12 24 h. Coordinate, to the greatest extent possible, ombudsman
12 25 services with legal assistance provided under section 231.54,
12 26 through adoption of memoranda of understanding and other
12 27 means.

12 28 i. Permit any local ombudsman entity to carry out the
12 29 responsibilities described in paragraph "a", "b", "c", "g", or
12 30 "h".

12 31 13. The state ombudsman, a representative of the office,
12 32 or a local ombudsman entity, shall not be civilly liable as a
12 33 result of the state ombudsman or representative's acts,
12 34 omissions, or decisions in the good faith performance of
12 35 official duties.

13 1 14. The department shall ensure that the office is an
13 2 effective advocate for improved health of residents and long-
13 3 term care services. The department shall do all of the
13 4 following:

13 5 a. Ensure that there will be no willful interference with

13 6 the ombudsman or representatives of the office in the
13 7 performance of their official duties.
13 8 b. Prohibit retaliation and reprisals by a long-term care
13 9 facility or other entity with respect to any resident,
13 10 employee, or other person for filing a complaint with,
13 11 providing information to, or otherwise cooperating with any
13 12 representative of, the office.
13 13 c. Provide for appropriate sanctions with respect to the
13 14 interference, retaliation, and reprisals.
13 15 d. Ensure that the ombudsman has the authority to provide
13 16 reliable information to the media, elected officials, and
13 17 others without fear of retaliation, harassment, or coercion.
13 18 15. Any individual who interferes with or attempts to
13 19 impede the ombudsman or a representative of the office is
13 20 guilty of a simple misdemeanor.
13 21 16. The office shall respond to complaints within twenty
13 22 working days of receipt of the complaint.
13 23 Sec. 8. Section [231.43](#), subsection 3, Code 1997, is
13 24 amended to read as follows:
13 25 3. Procedures to enable the state long-term care
13 26

~~resident's advocate~~

- ombudsman to elicit, receive, and process
13 27 complaints regarding administrative actions which may
13 28 adversely affect the health, safety, welfare, or rights of
13 29

~~elderly~~

- residents in long-term care facilities.

13 30 Sec. 9. Section [231.44](#), subsection 1, Code 1997, is
13 31 amended to read as follows:
13 32 1. The care review committee program is administered by
13 33 the state long-term care

~~resident's advocate~~

- ombudsman

13 34 program.
13 35 Sec. 10. Section [669.14](#), Code 1997, is amended by adding
14 1 the following new subsection:
14 2 NEW SUBSECTION. 14. A claim based upon an act or omission
14 3 of the state long-term care ombudsman as defined in section
14 4 231.4, or the ombudsman's designee in the performance of duty
14 5 if the act or omission is undertaken and carried out in good
14 6 faith.

14 7 EXPLANATION

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

14 20 This bill also exempts from application of the state tort
14 21 claims Act, an act or omission of the long-term care ombudsman
14 22 or the ombudsman's designee in the performance of duty if the
14 23 act or omission is undertaken and carried out in good faith.

14 24 LSB 2027JA 77

14 25 pf/jw/5.1