

MAR 15 1999

HUMAN RESOURCES

HOUSE FILE  
BY JOCHUM

692

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

A BILL FOR

1 An Act relating to the state long-term care ombudsperson,  
2 establishing local area long-term care ombudspersons, making  
3 an appropriation, and providing an effective date.

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

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HF 692

1 Section 1. Section 135C.20A, subsection 2, Code 1999, is  
2 amended to read as follows:

3 2. The report card form shall be developed by the  
4 department in cooperation with representatives of the  
5 department of elder affairs, the state long-term care  
6 resident's advocate ombudsperson, representatives of care  
7 review committees, representatives of protection and advocacy  
8 entities, consumers, and other interested persons.

9 Sec. 2. Section 135C.37, Code 1999, is amended to read as  
10 follows:

11 135C.37 COMPLAINTS ALLEGING VIOLATIONS -- CONFIDENTIALITY.

12 A person may request an inspection of a health care  
13 facility by filing with the department, care review committee  
14 of the facility, or the state long-term care resident's  
15 advocate ombudsperson as defined in section 231.4, subsection  
16 ~~167~~ a complaint of an alleged violation of applicable  
17 requirements of this chapter or the rules adopted pursuant to  
18 this chapter. A person alleging abuse or neglect of a  
19 resident with a developmental disability or with mental  
20 illness may also file a complaint with the protection and  
21 advocacy agency designated pursuant to section 135B.9 or  
22 section 135C.2. A copy of a complaint filed with the care  
23 review committee or the state long-term care resident's  
24 ~~advocate-shall~~ ombudsperson may be forwarded to the  
25 department. The complaint shall state in a reasonably  
26 specific manner the basis of the complaint, and a statement of  
27 the nature of the complaint shall be delivered to the facility  
28 involved at the time of the inspection. The name of the  
29 person who files a complaint with the department, care review  
30 committee, or the state long-term care resident's advocate  
31 ombudsperson shall be kept confidential and shall not be  
32 subject to discovery, subpoena, or other means of legal  
33 compulsion for its release to a person other than department  
34 or the office of the state long-term care resident's  
35 ombudsperson employees involved in the investigation of the

1 complaint.

2 Sec. 3. Section 135C.38, subsection 2, paragraph d, Code  
3 1999, is amended to read as follows:

4 d. A person who is dissatisfied with any aspect of the  
5 department's handling of the complaint may contact the state  
6 long-term care resident's advocate ombudsperson, established  
7 pursuant to section 231.42, or may contact the protection and  
8 advocacy agency designated pursuant to section 135C.2 if the  
9 complaint relates to a resident with a developmental  
10 disability or a mental illness.

11 Sec. 4. Section 231.4, Code 1999, is amended by adding the  
12 following new subsection:

13 NEW SUBSECTION. 15A. "State long-term care resident's  
14 ombudsperson" or "state resident's ombudsperson" means the  
15 administrator of the state long-term care resident's  
16 ombudsperson program.

17 Sec. 5. Section 231.4, subsection 16, Code 1999, is  
18 amended to read as follows:

19 16. ~~"Resident's-advocate~~ "State long-term care resident's  
20 ombudsperson program" or "state resident's ombudsperson  
21 program" means the state long-term care resident's advocate  
22 ombudsperson program operated by the commission of elder  
23 affairs and administered by the state long-term care  
24 resident's advocate ombudsperson.

25 Sec. 6. Section 231.33, subsection 18, Code 1999, is  
26 amended to read as follows:

27 18. Coordinate activities in support of the statewide  
28 state long-term care resident's advocate ombudsperson program.

29 Sec. 7. Section 231.41, Code 1999, is amended to read as  
30 follows:

31 231.41 PURPOSE.

32 The purpose of this subchapter is to establish the state  
33 long-term care resident's advocate ombudsperson program  
34 operated by the Iowa commission of elder affairs in accordance  
35 with the requirements of the Older Americans Act of 1965~~-and~~

1 ~~to adopt the supporting federal regulations and guidelines for~~  
2 ~~its implementation.~~ In accordance with chapter 17A, the  
3 commission of elder affairs shall adopt and enforce rules for  
4 the implementation of this subchapter.

5 Sec. 8. Section 231.42, Code 1999, is amended to read as  
6 follows:

7 231.42 LONG-TERM CARE RESIDENT'S ~~ADVOCATE~~ OMBUDSPERSON --  
8 DUTIES.

9 The Iowa commission of elder affairs, in accordance with  
10 section 3027(a)(12) of the federal Act, shall establish the  
11 office of state long-term care resident's advocate  
12 ombudsperson within the commission. The state long-term care  
13 resident's advocate ombudsperson shall:

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

17 2. Monitor the development and implementation of federal,  
18 state, and local laws, regulations, and policies that relate  
19 to long-term care facilities in Iowa.

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

23 4. Train volunteers and assist in the development of  
24 citizens' organizations to participate in the ~~long-term-care~~  
25 state resident's advocate ombudsperson program.

26 5. Carry out other activities consistent with the state  
27 resident's advocate ombudsperson provisions of the federal  
28 Act.

29 6. Administer the care review committee program.

30 7. Report annually to the general assembly on the  
31 activities of the state resident's advocate ombudsperson  
32 office.

33 8. a. Establish an area long-term care resident's  
34 ombudsperson program in a designated entity in each of the  
35 area agency on aging planning and service areas throughout the

1 state. The state resident's ombudsperson, in consultation  
2 with the department, shall establish a procedure for  
3 certification of an area long-term care resident's  
4 ombudsperson. The certification procedure shall require, at a  
5 minimum, that the area long-term care resident's ombudsperson  
6 has demonstrated the capability to carry out the  
7 responsibilities of the office, be free of conflicts of  
8 interest, and meet any additional requirements as specified by  
9 the state resident's ombudsperson.

10 b. The state resident's ombudsperson, the designated  
11 entities in which area long-term care resident's ombudsperson  
12 programs are established, and the area long-term care  
13 resident's ombudsperson are not liable for any action  
14 undertaken by an area long-term care resident's ombudsperson  
15 in the performance of duty, if the action is undertaken and  
16 carried out in good faith.

17 c. The area long-term care resident's ombudsperson shall  
18 assist the state resident's ombudsperson by doing, at a  
19 minimum, all of the following:

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

22 (2) Ensuring that the residents of long-term care  
23 facilities in the service area of the area long-term care  
24 resident's ombudsperson program have regular, timely access to  
25 the area long-term care resident's ombudsperson and are  
26 provided timely responses to complaints and requests for  
27 assistance.

28 (3) Identifying, investigating, and resolving complaints  
29 and grievances regarding actions or omissions that may  
30 adversely affect the health, safety, welfare, or rights of  
31 residents in long-term care facilities.

32 (4) Representing the interests of residents of long-term  
33 care facilities before government agencies and seeking  
34 administrative, legal, and other remedies to protect the  
35 health, safety, welfare, and rights of the residents of long-

1 term care facilities.

2 (5) Providing information to other agencies and to the  
3 public about the problems of residents in long-term care  
4 facilities and facilitating the ability of the public to  
5 comment on laws, regulations, and policies which affect the  
6 residents in long-term care.

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

11 (7) Developing and assisting care review committees in the  
12 performance of their duties through recruitment, training, and  
13 publicity.

14 (8) Supporting the development of resident and family  
15 councils.

16 (9) Assisting in the development of consumer organizations  
17 to participate in the area long-term care resident's  
18 ombudsperson program.

19 (10) Carrying out other activities that the state  
20 resident's ombudsperson determines to be appropriate.

21 d. The department shall establish, in consultation with  
22 the state resident's ombudsperson, policies and procedures for  
23 monitoring area long-term care resident's ombudsperson  
24 programs, the entities in which the programs are established,  
25 and the area long-term care resident's ombudsperson.

26 9. ~~The resident's advocate shall have~~ Have access to long-  
27 term care facilities, private access to residents, access to  
28 residents' personal, social, and medical records, and access  
29 to other records maintained by the facilities or governmental  
30 agencies only as necessary pertaining only to the person on  
31 whose behalf a complaint is being investigated. An area long-  
32 term care resident's ombudsperson shall have comparable access  
33 to facilities, residents, and records as provided in this  
34 paragraph if the area long-term care resident's ombudsperson  
35 obtains consent from the resident or from the resident's legal

1 representative. If the resident is unable to provide consent  
2 and the resident's legal representative refuses to consent to  
3 the access, access shall be granted if the area long-term care  
4 resident's ombudsperson has reasonable cause to believe that  
5 the legal representative is not acting in the resident's best  
6 interests and if the area long-term care resident's  
7 ombudsperson obtains approval from the state long-term care  
8 resident's ombudsperson.

9 Sec. 9. Section 231.43, subsection 3, Code 1999, is  
10 amended to read as follows:

11 3. Procedures to enable the long-term-care state  
12 resident's advocate ombudsperson and area long-term care  
13 resident's ombudspersons to elicit, receive, and process  
14 complaints regarding administrative actions which may  
15 adversely affect the health, safety, welfare, or rights of  
16 elderly residents in long-term care facilities.

17 Sec. 10. Section 231.44, subsection 1, Code 1999, is  
18 amended to read as follows:

19 1. The care review committee program is administered by  
20 the state long-term care resident's advocate ombudsperson  
21 program.

22 Sec. 11. AREA LONG-TERM CARE RESIDENT'S OMBUDSPERSON  
23 PROGRAM -- DEMONSTRATION PROJECT -- APPROPRIATION. There is  
24 appropriated from the general fund of the state to the  
25 department of elder affairs for the fiscal period beginning  
26 July 1, 1999, and ending June 30, 2001, the following amount,  
27 or so much thereof as is necessary, to be used for the purpose  
28 designated:

29 For the establishment of a demonstration program beginning  
30 July 1, 1999, and ending June 30, 2001, to create the position  
31 of area long-term care resident's ombudsperson in each of  
32 three area agency on aging planning and service areas in the  
33 state to determine the efficacy of establishing an area  
34 resident's ombudsperson program in all area agency on aging  
35 planning and service area locations:

1 ..... \$ 240,000

2 Notwithstanding section 8.33, the moneys appropriated in  
3 this section that remain unencumbered and unobligated at the  
4 end of each fiscal year shall not revert to the general fund  
5 but shall remain available for expenditure during subsequent  
6 fiscal years for the purposes for which originally  
7 appropriated.

8 Sec. 12. EFFECTIVE DATE. Sections 1 through 10 of this  
9 Act take effect July 1, 2000.

10 EXPLANATION

11 This bill makes changes in the office of the state long-  
12 term care resident's advocate program, including changing  
13 references throughout the Code to replace the "resident's  
14 advocate program" with references to the "state long-term care  
15 resident's ombudsperson program". The bill also provides for  
16 establishment of area ombudsperson entities in each of the  
17 area agency on aging planning and service areas.

18 The bill specifies the duties of the area ombudsperson,  
19 provides for the establishment of area ombudsperson pilot  
20 projects in three areas of the state, provides an  
21 appropriation for the pilot project, and provides for future  
22 expansion of the area programs statewide by making the  
23 provisions not related to the pilot project effective July 1,  
24 2000.

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