

§63-1-2211. Short title.  
This act shall be known and may be cited as the  
"Long-Term Care Ombudsman Act".

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§63-1-2212. Definitions.

As used in the Long-Term Care Ombudsman Act:

1. "Office" means the Office of the State Long-Term Care Ombudsman. For purposes of the Long-Term Care Ombudsman Act, any area or local ombudsman entity designated by the State Long-Term Care Ombudsman shall be deemed to be a subdivision of this Office;
2. "State Long-Term Care Ombudsman" means the individual employed by the Department of Human Services to be the chief administrative officer of the Office;
3. "Department" means the Department of Human Services;
4. "Representative" means the State Long-Term Care Ombudsman, and any state, area or local long-term care ombudsman designated by the State Long-Term Care Ombudsman, whether paid or unpaid; and
5. "Resident" means any person residing in a long-term care facility.

[3]Added by Laws 1989, c. 326, § 2, emerg. eff. May 26, 1989.  
Amended by Laws 1996, c. 336, § 10, emerg. eff. June 12, 1996.

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§63-1-2213. Office of the State Long-Term Care Ombudsman.

A. There is hereby created within the Department of Human Services the Office of the State Long-Term Care Ombudsman. The Office, under the auspices and general direction of the State Long-Term Care Ombudsman, shall carry out a long-term care ombudsman program in accordance with the Older Americans Act of 1965, as amended, and in accordance with federal regulations issued pursuant to the Older Americans Act or as provided by the Long-Term Care Ombudsman Act.

B. The State Long-Term Care Ombudsman shall, personally or through representatives of the Office:

1. Identify, investigate and resolve complaints that:
  - a. are made by, or on behalf of, residents, and
  - b. relate to action, inaction or decisions, of:
    - (1) providers, or representatives of providers, of long-term care services,
    - (2) public agencies, or
    - (3) health and social service agencies,that may adversely affect the health, safety, welfare or rights of the residents;
2. Provide services to assist the residents in protecting their health, safety, welfare and rights;

3. Inform residents about means of obtaining services offered by providers or agencies;
4. Ensure that the residents have regular and timely access to the services provided through the Office;
5. Ensure that the residents and complainant receive timely responses from the Office and representatives of the Office regarding complaints;
6. Represent the interests of residents before governmental agencies and seek administrative, legal and other remedies to protect the health, safety, welfare and rights of the residents;
7. Provide administrative and technical assistance to area or local ombudsman entities to assist the entities in participating in the State Long-Term Care Ombudsman Program;
8.
  - a. analyze, comment on and monitor the development and implementation of federal, state and local laws, rules and other government policies and actions that pertain to the health, safety, welfare and rights of the residents, with respect to the adequacy of long-term care facilities and services in this state,
  - b. recommend any changes in such laws, rules, policies and actions as the Office determines to be appropriate, and
  - c. facilitate public comment on the laws, rules, policies and actions;
9.
  - a. provide for training representatives of the Office,
  - b. promote the development of citizen organizations, to participate in the State Long-Term Care Ombudsman Program, and
  - c. provide technical support for the development of resident and family councils to protect the well-being and rights of residents; and
10. Carry out such other activities as the Commission for Human Services determines to be appropriate.

C. 1. In carrying out the duties of the Office, the State Long-Term Care Ombudsman may designate an entity as an area or local Ombudsman entity, and may designate an employee or volunteer to represent the entity.

2. An individual so designated shall, in accordance with the policies and procedures established by the Office and Commission for Human Services, carry out such duties and activities as required by the State Long-Term Care Ombudsman pursuant to the authority granted by the Long-Term Care Ombudsman Act and rules promulgated by the Commission thereto.

3. Entities eligible to be designated as area or local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall:

- a. have demonstrated capability to carry out the responsibilities of the Office,
- b. be free of conflicts of interest,
- c. in the case of the entities, be public or nonprofit private entities, and
- d. meet such additional requirements as the Ombudsman may specify.

D. 1. In accordance with the Older Americans Act of 1965, as amended and in accordance with federal regulations issued pursuant thereto, or as otherwise provided by the Long-Term Care Ombudsman Act, the State Long-Term Care Ombudsman and representatives of the Office shall have:

- a. access to long-term care facilities and residents,
- b. (1) access to review the medical and social records of a resident, if:
  - (a) the representative of the Office has the permission of the resident, or the legal representative of the resident, or
  - (b) the resident is unable to consent to the review and has no legal representative and the representative of the Office obtains the approval of the State Long-Term Care Ombudsman, or
- (2) access to the records as is necessary to investigate a complaint if:
  - (a) a legal guardian of the resident refuses to give the permission,
  - (b) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident, and
  - (c) the representative obtains the approval of the State Long-Term Care Ombudsman,
- c. access to the administrative records, policies and documents, to which the residents have, or the general public has access, of long-term care facilities, and
- d. access to copies of all licensing and certification records maintained by the Department or any other agency of this state with respect to long-term care facilities.

2. For purposes of this subsection, the term "Representative of the Office" shall not include any unpaid or volunteer state, area, or local ombudsman.

[5]Added by Laws 1989, c. 326, § 3, emerg. eff. May 26, 1989.  
Amended by Laws 1994, c. 89, § 1, emerg. eff. April 20, 1994;  
Laws 1996, c. 336, § 11, emerg. eff. June 12, 1996.

[6]

§63-1-2214. Liability of long-term care ombudsman - Legal representation.

A. For purposes of the Governmental Tort Claims Act, any state, area or local long-term care ombudsman shall be deemed to be an employee of this state and as such shall not be personally liable for any act or omission made within the "scope of employment", as such term is defined by the Governmental Tort Claims Act.

B. 1. The Department of Human Services shall assure that adequate legal counsel is available to the Office of the State Long-Term Care Ombudsman for the advice and consultation needed to protect the health, safety, welfare and rights of residents, and that legal representation is provided to any representative of the Office:

- a. against whom suit or other legal action is brought in connection with any act or omission of a representative made within the scope of employment, or
- b. to assist the ombudsman and representatives of the Office in the performance of their official duties.

2. The provisions of this section shall not be construed to require or authorize any legal counsel provided by the Department of Human Services to represent any resident of a nursing facility in an individual capacity.

[7]Added by Laws 1989, c. 326, § 4, emerg. eff. May 26, 1989.  
Amended by Laws 1994, c. 89, § 2, emerg. eff. April 20, 1994.

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§63-1-2215. Willful interference with official duties - Retaliation or reprisal for filing complaint - Penalty.

A. No person shall willfully interfere with a representative of the Office of the State Long-Term Care Ombudsman in the performance of official duties.

B. No person shall engage in retaliation or reprisal against any resident or employee of a long-term care facility or other entity for having filed a complaint with or provided information to the Office.

C. Any person convicted of violating any provisions of this section shall be guilty of a misdemeanor.

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§63-1-2216. Duties of Commission for Human Services - Advisory capacity of State Council on Aging.

A. The Commission for Human Services shall promulgate rules regarding:

1. The powers and official duties of the State Long-Term Care Ombudsman consistent with applicable federal law and rules or as provided by the Long-Term Care Ombudsman Act;

2. Minimum qualifications for persons to serve as representatives of the Office of the State Long-Term Care Ombudsman;

3. Initial and continuing training requirements for ombudsman staff and volunteers;

4. Procedures to ensure that officers, employees or other representatives of the Office are not subject to a conflict of interest which would impair their ability to carry out their official duties in an impartial manner; and

5. The disclosure by the State Long-Term Care Ombudsman or area or local Ombudsman entities of files maintained by the State Long-Term Care Ombudsman Program. Such rules shall:

a. provide that such files and records may be disclosed only at the discretion of the State Long-Term Care Ombudsman or the person designated by the State Long-Term Care Ombudsman to disclose the files and records, and

b. prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless:

(1) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing,

(2) (a) the complainant or resident gives consent orally, and

(b) the consent is documented contemporaneously in a writing made by a State Long-Term Care Ombudsman representative of the Office in accordance with such rules as the Commission shall promulgate, or

(3) the disclosure is required by court order.

B. The Oklahoma State Council on Aging, established by the Commission for Human Services to review, monitor and evaluate programs targeted to older persons, shall serve in an advisory capacity to the State Long-Term Care Ombudsman through establishment of a committee with equal provider and consumer representation.

