

1 SB360
2 196139-1
3 By Senator Singleton
4 RFD: Healthcare
5 First Read: 30-APR-19

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8 SYNOPSIS: This bill would update provisions to reflect
9 new federal regulations.

10 Under existing law, the Office of the State
11 Long Term Care Ombudsman Program is responsible for
12 investigating complaints concerning certain
13 residential health care facilities and promoting
14 the well-being of long term residential health care
15 facility recipients.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

20
21 Relating to the Office of the Long Term Care
22 Ombudsman Program; to amend Sections 22-5A-1 to 22-5A-7, Code
23 of Alabama 1975; to update provisions to reflect new federal
24 regulations.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. Sections 22-5A-1 to 22-5A-7, inclusive,
27 of the Code of Alabama 1975, are amended to read as follows:

1 "§22-5A-1.

2 "This chapter shall be known and may be cited as the
3 ~~"Long-term Residential Health Care Recipient Ombudsman Act."~~
4 Office of the State Long Term Care Ombudsman Program Act.

5 "§22-5A-2.

6 "For the purposes of this chapter, the following
7 words shall have the meanings ascribed to them by this
8 section:

9 "(1) ADMINISTRATOR. Any individual charged with the
10 general administration or supervision of a health care,
11 ~~domiciliary or residential~~ facility without regard to whether
12 ~~such person~~ the individual has an ownership interest in ~~such~~
13 the facility or to whether ~~such person's~~ the individual's
14 functions and duties are shared with one or more other ~~persons~~
15 individuals.

16 "(2) ~~COMMUNITY OMBUDSMAN~~. A person selected by an
17 ~~area agency on aging who is then trained and certified as such~~
18 ~~by the commission pursuant to Section 22-5A-4.~~ AREA AGENCY ON
19 AGING. An entity that coordinates and provides services for
20 seniors and individuals with disabilities in a specific
21 planning and service area.

22 "(3) DEPARTMENT. Department of Senior Services.

23 "(4) HEALTH CARE FACILITY. Any skilled nursing
24 facility, intermediate care facility, ~~domiciliary~~, boarding
25 home facility, ~~or hospital, or other facility now or hereafter~~
26 subject to regulation or licensure by the Bureau of Licensure
27 and Certification of the State Department of Health or a

1 county department of health ~~which~~ that provides any generally
2 accepted facet of long-term residential health care or treats
3 any recipient of long-term residential health care.

4 "(5) LONG-TERM RESIDENTIAL HEALTH CARE. Those health
5 care services rendered to an individual who is a resident
6 in-patient of a health care facility for any period which is
7 expected to exceed 90 days.

8 "(6) ~~OMBUDSMAN. The State Ombudsman or any community~~
9 ~~ombudsman.~~ OFFICE. The Office of the State Long Term Care
10 Ombudsman Program which carries out its duties, functions, and
11 responsibilities directly or through local area agencies on
12 aging or other entities designated by the Office of the State
13 Long Term Care Ombudsman Program.

14 "(7) RECIPIENT. Any ~~person~~ individual receiving
15 long-term residential health care treatment in any health care
16 facility or other community setting in all its aspects
17 including, but not limited to, admission, retention,
18 confinement, commitment, length of stay, transfer, discharge,
19 physical examination, issuing or filling a prescription for a
20 controlled pharmaceutical substance, dispensing ~~drugs or~~
21 medication, counseling, and/or and treatment, ~~and any~~
22 ~~instances directly related.~~

23 "(8) RECIPIENT REPRESENTATIVE. An individual chosen
24 by a recipient to act on the recipient's behalf in order to
25 support the recipient in decision making; accessing medical,
26 social, or other personal information; managing financial
27 matters; or receiving notifications. This includes a person

1 authorized by state or federal law, including, but not limited
2 to, powers of attorney, representative payees, and other
3 fiduciaries; legal representatives; and court appointed
4 guardians or conservators of a recipient.

5 "(9) REPRESENTATIVE OF THE OFFICE. An individual who
6 is designated, trained, and certified by the ombudsman
7 pursuant to Section 22-5A-4, and selected by an area agency on
8 aging or by another designated entity funded by the
9 department.

10 "(10) STATE OMBUDSMAN. The State Long-term
11 Residential Health Care Recipient Ombudsman, currently known
12 as the Nursing Home Ombudsman of the Alabama Commission on
13 Aging. The State Ombudsman shall be appointed by the
14 commission and shall report to the executive director of the
15 commission Director of the Office of the State Long Term Care
16 Ombudsman Program, who is appointed by and reports to the
17 Commissioner of the Department of Senior Services.

18 "§22-5A-3.

19 "(a) The department shall establish the Office of
20 the State Long Term Care Ombudsman Program within the
21 department but as a separately identifiable entity, and shall
22 appoint a Director of the Office of the State Long Term Care
23 Ombudsman Program. The department shall be responsible for
24 supervision and personnel management of individuals in the
25 office who are employed by the department, but the department
26 shall not be responsible for programmatic oversight of the
27 office beyond what is necessary to comply with federal

1 regulations, nor shall it be responsible for supervision and
2 personnel management of representatives of the office who are
3 not employed by the department.

4 "(b) The department and the office shall identify
5 actual and potential conflicts of interest, both
6 organizational and individual, that may impact the
7 effectiveness and credibility of the work of the office and
8 shall take steps to remove or remedy any conflict of interest
9 between the office and the department, an area agency on
10 aging, or another designated entity carrying out the duties of
11 the program.

12 "(c) The ~~State Ombudsman~~ ombudsman and the
13 ~~department are~~ office are hereby authorized to investigate
14 complaints concerning health care, ~~domiciliary and residential~~
15 ~~care~~ facilities. The ~~State Ombudsman~~ ombudsman shall promote
16 the well-being and quality of life of long-term residential
17 health care recipients and encourage the development of
18 community ombudsman activities at the local level.

19 "(d) The ombudsman, in accordance with the
20 commissioner of the department, may enter into a contract or
21 other arrangement with any public agency or nonprofit
22 corporation to carry out the duties of the ombudsman program
23 as a designated entity.

24 "(e) After appropriate training and approval by the
25 ~~department~~ ombudsman, ~~community ombudsmen~~ representatives of
26 the office shall be certified and designated by the ~~department~~
27 ombudsman and shall have the powers and responsibilities set

1 forth in Sections 22-5A-4 and 22-5A-6, subject to the
2 procedures established by the ~~State Ombudsman~~ office pursuant
3 to Section 22-5A-5.

4 "(f) The ombudsman shall have the sole authority to
5 make or delegate to a representative of the office
6 determinations concerning the disclosure of files, records,
7 and other information maintained by the office and shall
8 provide that all files, records, and information obtained by
9 the office be disclosed only at the discretion of the
10 ombudsman or a representative of the office in accordance with
11 criteria developed by the office.

12 "(g) The ~~State Ombudsman~~ office shall submit to the
13 department and to the U.S. Department of Health and Human
14 Services Administration for Community Living an annual written
15 report documenting the kinds of complaints and problems
16 reported so that the department can make recommendations
17 concerning needed policy, and regulatory, and legislative
18 changes.

19 "(h) The office shall analyze, comment on, and
20 monitor the development and implementation of federal, state,
21 and local laws, regulations, and other government policies and
22 actions that pertain to long term care and other health care
23 facilities and services and to the health, safety, welfare,
24 and rights of recipients. The office shall recommend any
25 regulatory or legislative changes to the Commissioner of the
26 Department of Senior Services or the Legislature, as
27 appropriate.

1 "§22-5A-4.

2 "(a) Each area agency on aging or other designated
3 entity funded by the department shall select at least one
4 ~~community ombudsman~~ full-time representative of the office in
5 each planning and service area established according to
6 regulations issued pursuant to the Older Americans Act of
7 1965, as amended. The ~~community ombudsman~~ representative of
8 the office shall be an employee or contractual employee of the
9 area agency on aging or other designated entity and shall
10 certify to having no association with any health care facility
11 or provider for reward or profit. Each representative of the
12 office shall be trained, certified, and designated by the
13 ombudsman as provided in this section.

14 "(b) The duties of each ~~community ombudsman~~
15 representative of the office shall be as follows:

16 "(1) To receive, investigate, respond to, and
17 attempt informally to resolve complaints made by or on behalf
18 of recipients~~;~~ related to action, inaction, or decisions that
19 adversely affect the health, safety, welfare, or rights of the
20 recipients.

21 "(2) To investigate and report immediately instances
22 of fraud, abuse, neglect, or exploitation to the ~~department of~~
23 ~~pensions and security for investigation and follow-up~~
24 ombudsman for referral to the appropriate agency for
25 investigation and follow-up pursuant to Chapter 9 of Title 38,
26 the Adult Protective Services Act of 1976, and Article 1 of
27 Chapter 16 of Title 26, the Child Abuse and Neglect Prevention

1 Act or the Department of Public Health pursuant to subsection
2 (d) of Section 38-9-8. The ombudsman shall determine if a
3 report should be made to the appropriate agency for further
4 investigation and follow-up when consent has not been given by
5 the complainant, recipient, or recipient representative. The
6 ombudsman and representatives of the office are excluded from
7 abuse reporting requirements when reporting the abuse would
8 disclose the identity of a complainant or recipient without
9 appropriate consent or court order, unless the circumstances
10 of the complaint could lead to immediate danger or harm to the
11 complainant or recipient.7

12 "(3) To serve as a third-party mechanism for
13 protecting the health, safety, welfare, and human rights of
14 recipients7.

15 "(4) To report ~~immediately~~ in a reasonable time, as
16 set forth by the office, any complaint that cannot be resolved
17 informally to the ~~State Ombudsman~~ ombudsman for appropriate
18 action under Section 22-5A-67.

19 "(5) To collect data about the number and kinds of
20 complaints handled7; ~~and~~.

21 "(6) To report ~~regularly~~ monthly to the ~~State~~
22 ~~Ombudsman~~ ombudsman about the data collected and activities of
23 the ~~community~~ ombudsman program.

24 "(c) A description of the operation of its ~~community~~
25 ombudsman program shall be included by each area agency on
26 aging or other designated entity in its area plan, which is
27 subject to the approval of the department and the office.

1 "(d) Each area agency on aging shall immediately
2 notify the ~~department~~ ombudsman of the selection of, and
3 request the certification and designation of, prospective
4 ~~community~~ ombudsmen representatives.

5 "(e) The ~~State Ombudsman~~ ombudsman shall arrange for
6 the training of all prospective ~~community ombudsmen~~
7 representatives of the office selected by area agencies on
8 aging or other designated entities. ~~Such~~ The training shall
9 include instructions in at least the following subjects as
10 they relate to health care:

11 "(1) The responsibilities, duties and authority of
12 ~~community ombudsmen~~ representatives of the office.7.

13 "(2) The laws and regulations governing the receipt,
14 investigation, and resolution of complaints7.

15 "(3) The role of local, state and federal agencies
16 that regulate health care facilities7.

17 "(4) The different kinds of health care facilities
18 in Alabama and the services provided in each setting7.

19 "(5) The special needs of the elderly and of the
20 physically and mentally handicapped7.

21 "(6) The role of the family, the sponsor, the legal
22 representative, the physician, the church and other public and
23 private agencies, and the community7.

24 "(7) How to work with health providers, medical
25 professionals, and staff7.

1 "(8) The laws and regulations governing Medicare,
2 Medicaid, ~~social security~~ Social Security, supplemental
3 security income, and the Veterans Administration; ~~and.~~

4 "(9) The licensure requirements for administrators
5 of hospitals, nursing homes, home health care agencies, ~~etc.~~
6 and other licensed entities, including familiarity with the
7 actual information required to obtain the various licenses.

8 "(f) ~~Persons~~ Individuals selected by area agencies
9 on aging or other designated entities who shall have
10 satisfactorily completed the training arranged by the ~~State~~
11 ~~Ombudsman~~ ombudsman shall be certified and designated as
12 ~~community ombudsmen~~ representatives of the office by the
13 ~~department~~ ombudsman. The certification can be terminated at
14 any time by the ~~Department of Senior Services or appropriate~~
15 ~~area agency on aging~~ ombudsman for either of the following:

16 "(1) ~~When the community ombudsman~~ When the
17 representative of the office is no longer ~~employed by the~~
18 ~~Department of Senior Services or~~ an employee or contractual
19 employee of the area agency on aging or other designated
20 entity.

21 "(2) For cause.

22 "(g) Each area's agency on aging or other designated
23 entity's advisory council shall appoint a subcommittee to
24 advise it in the operation of its ~~community~~ ombudsman program.
25 The number and qualifications of members of the advisory
26 subcommittee shall be determined by the respective area agency
27 on aging or other designated entity but shall contain adequate

1 representation from the various types of health facilities
2 covered under the ~~Area Agency Community Ombudsman Plan~~
3 ombudsman plan of the respective area agency on aging or other
4 designated entity.

5 "§22-5A-5.

6 "The ~~State Ombudsman~~ office shall establish written
7 procedures for receiving complaints involving ~~long-term~~
8 ~~residential~~ health care facilities and their employees. The
9 ~~Department of Senior Services~~ office shall provide written
10 information on the ombudsman program to health care,
11 ~~domiciliary and residential~~ facilities ~~written information on~~
12 ~~the ombudsman program~~ to be distributed to recipients at the
13 time of admission, ~~or~~ rendering of care, ~~and/or~~ or treatment
14 at or by a health care facility.

15 "§22-5A-6.

16 "~~(a) A community ombudsman's access to any health~~
17 ~~care facility shall be limited to standard operating hours~~
18 ~~unless prior arrangements with the operator of the facility~~
19 ~~has been made~~ (a) (1) A representative of the office shall have
20 access to any health care facility to investigate a complaint
21 at any time during regular business hours or regular visiting
22 hours and at any time when access is required to investigate
23 the circumstances of any complaint that could lead to
24 immediate danger or harm to the complainant or recipient.

25 "(2) If the circumstances of the complaint could
26 lead to immediate danger or harm to the complainant or
27 recipient, the ombudsman shall review the complaint and

1 determine if investigation during hours other than those
2 considered to be regular operating or visiting hours is
3 warranted, and if so, shall approve off-hour access.

4 "(3) If the complaint involves more than one
5 provider or alleges to involve more than one provider, the
6 ~~ombudsman~~ representative of the office shall investigate all
7 providers.

8 "(b) Any complaint requiring remedial action and
9 deemed valid by the ~~ombudsman~~ representative of the office
10 shall be identified and brought to the attention of the office
11 as well as the administrator or provider involved; provided
12 the legal representative or recipient gives permission. The
13 ~~and followed up in writing within a reasonable time. Upon~~
14 ~~receipt of such document, the administrator or provider, in~~
15 ~~coordination with the~~ ~~ombudsman~~ representative of the office,
16 shall establish a course of appropriate remedial action. If
17 the remedial action is not forthcoming within a reasonable
18 time, the ~~ombudsman must~~ representative of the office shall
19 refer the case to the ~~State Ombudsman~~ ombudsman who may take
20 any one or more of the following actions:

21 "(1) Allow more time if the ~~State Ombudsman~~
22 ombudsman has reason to believe ~~such action~~ allowing for more
23 time would facilitate resolution of the complaint~~7.~~

24 "(2) Refer a complaint regarding a nursing home,
25 assisted living facility, specialty care assisted living
26 facility, or long term care unit of a hospital or domiciliary

1 in writing to the Bureau of Licensure and Certification or the
2 Department of Human Resources.

3 "(3) Refer a complaint regarding a boarding ~~house~~
4 home to the appropriate agency and request that appropriate
5 action be initiated.

6 "(4) Refer any and all complaints arising out of or
7 in any way related to the provision of any medical or surgical
8 service or medical care and treatment to a recipient by a
9 physician licensed to practice medicine in Alabama, in
10 whatever setting the said complaint should arise, to the State
11 Board of Medical Examiners only.

12 "(c) ~~The Department of Senior Services, the State~~
13 ~~Ombudsman~~ office and the affected ~~community ombudsman~~
14 representative of the office shall be kept advised and shall
15 be notified in writing by the state agency of the resolution
16 of any complaint that has been referred to the state agency by
17 the ~~State Ombudsman~~ office.

18 "(d) Any ~~ombudsmen~~ representative of the office
19 shall respect the right to privacy of all involved parties
20 when engaged in resolving complaints. Any requests to review
21 information concerning the medical condition of a recipient or
22 any health care facility records of a recipient must be
23 accompanied by ~~a current valid duly executed~~ an authorization
24 and release which has been signed by the recipient or by ~~one~~
25 an individual legally authorized to act on behalf of the
26 recipient. Requests for copies of any medical records must be
27 accompanied by ~~a current valid duly executed~~ an authorization

1 and release which has been signed by the recipient or by ~~one~~
2 an individual legally authorized to act on behalf of the
3 recipient. The recipient or an individual legally authorized
4 to act on behalf of the recipient may provide informed consent
5 in writing, orally, or through the use of assistive
6 technology, and the representative of the office must document
7 that the recipient or the individual legally authorized to act
8 on behalf of the recipient provided the informed consent.
9 However, the requirement for a signed authorization and
10 release may be waived by the ombudsman if the ombudsman
11 determines the circumstances of a complaint could lead to
12 immediate danger or harm to the recipient. The Health
13 Insurance Portability and Accountability Act of 1996 (HIPAA)
14 Privacy Rule, 45 CFR Part 160 and 45 CFR Part 164, subparts A
15 and E, do not preclude release by covered entities of resident
16 private health information or other resident identifying
17 information to the ombudsman program, including, but not
18 limited to, residents' medical, social, or other records, a
19 list of resident names and room numbers, or information
20 collected in the course of a state or federal survey or
21 inspection process. Any ~~physician~~ health care provider
22 providing medical information ~~and/or~~ or copies of medical
23 records and any health care facility providing copies of
24 health care facility medical records shall be entitled to the
25 payment of a reasonable charge for the preparation ~~and/or~~ and
26 reproduction of the records. Information concerning any aspect
27 of a complaint resolution proceeding shall be kept

1 confidential and shall not be disclosed by ~~an ombudsman~~ the
2 representative of the office to any person not directly
3 involved in the particular complaint, except in strict
4 accordance with the provisions of this chapter. ~~Such~~ Any
5 disclosure of information concerning any aspect of a complaint
6 resolution proceeding by the representative of the office in
7 violation of this section shall result in the ~~ombudsman's~~
8 ~~dismissal~~ termination of that representative.

9 "§22-5A-7.

10 "Any person or agency who in good faith participates
11 in the making of a report or provides information or evidence
12 in direct accordance with the procedures for resolving
13 complaints under the provisions of this chapter shall, in so
14 doing, be immune from any liability, civil or criminal, that
15 might otherwise be incurred or imposed. Notwithstanding the
16 foregoing, this immunity shall not apply if ~~an ombudsman~~ a
17 representative of the office communicates any information
18 concerning a complaint to any party not involved in ~~such~~ the
19 complaint."

20 Section 2. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.