

1 SB328
2 182427-1
3 By Senator Glover
4 RFD: Health and Human Services
5 First Read: 16-MAR-17

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8 SYNOPSIS: This bill would update provisions relating
9 to the Office of the State Long Term Care Ombudsman
10 Program to reflect new federal regulations.

11 This bill would delete outdated and obsolete
12 terms and provisions.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

17
18 Relating to the Office of the Long Term Care
19 Ombudsman Program; to amend Sections 22-5A-1 to 22-5A-7, Code
20 of Alabama 1975; to update provisions to reflect new federal
21 regulations; and to delete outdated and obsolete terms and
22 provisions.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

26 "§22-5A-1.

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

4 "§22-5A-2.

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

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

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

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

21 "(4) HEALTH CARE FACILITY. Any skilled nursing
22 facility, intermediate care facility, ~~domiciliary,~~ boarding
23 home facility, hospital, or other facility now or hereafter
24 subject to regulation or licensure by the Bureau of Licensure
25 and Certification of the State Department of Health or a
26 county department of health ~~which~~ that provides any generally

1 accepted facet of long-term residential health care or treats
2 any recipient of long-term residential health care.

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

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

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

22 "(8) RECIPIENT REPRESENTATIVE. An individual chosen
23 by a recipient to act on the recipient's behalf in order to
24 support the recipient in decision making; accessing medical,
25 social, or other personal information; managing financial
26 matters; or receiving notifications. This includes a person
27 authorized by state or federal law, including but not limited

1 to powers of attorney, representative payees, and other
2 fiduciaries; legal representatives; and court appointed
3 guardians or conservators of a recipient.

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

9 "(11) STATE LONG TERM CARE OMBUDSMAN OR OMBUDSMAN.
10 ~~The State Long-term Residential Health Care Recipient~~
11 ~~Ombudsman, currently known as the Nursing Home Ombudsman of~~
12 ~~the Alabama Commission on Aging. The State Ombudsman shall be~~
13 ~~appointed by the commission and shall report to the executive~~
14 ~~director of the commission~~ Director of the Office of the State
15 Long Term Care Ombudsman Program, who is appointed by and
16 reports to the Commissioner of the Department of Senior
17 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 and the department are
13 office is hereby authorized to investigate complaints
14 concerning health care facilities, domiciliary and
15 residential care facilities. The State Ombudsman ombudsman
16 shall promote the well-being and quality of life of long-term
17 residential health care recipients and encourage the
18 development of community ombudsman activities at the local
19 level.

20 "(d) After appropriate training and approval by the
21 department ombudsman, community ombudsmen representatives of
22 the office shall be certified and designated by the department
23 ombudsman and shall have the powers and responsibilities set
24 forth in Sections 22-5A-4 and 22-5A-6, subject to the
25 procedures established by the State Ombudsman office pursuant
26 to Section 22-5A-5.

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

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

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

23 "§22-5A-4.

24 "(a) Each area agency on aging or other designated
25 entity funded by the department shall select at least one
26 ~~community ombudsman~~ full-time representative of the office in
27 each planning and service area established according to

1 regulations issued pursuant to the Older Americans Act of
2 1965, as amended. The ~~community ombudsman~~ representative of
3 the office shall be an employee or contractual employee of the
4 area agency on aging or other designated entity and shall
5 ~~certify~~ attest to having no association with any health care
6 facility or provider for reward or profit. Each representative
7 of the office shall be trained, certified, and designated by
8 the ombudsman as provided in this section.

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

11 "(1) To receive, investigate, respond to, and
12 attempt informally to resolve complaints made by or on behalf
13 of recipients;

14 "(2) To report immediately instances of fraud,
15 abuse, neglect, or exploitation to the ~~department of pensions~~
16 ~~and security for investigation and follow-up~~ ombudsman for
17 referral to the appropriate agency for investigation and
18 follow-up pursuant to Chapter 9 of Title 38, the Adult
19 Protective Services Act of 1976, and Article 1 of Chapter 16
20 of Title 26, the Child Abuse and Neglect Prevention Act or the
21 Department of Public Health pursuant to subsection (d) of
22 Section 38-9-8. The ombudsman shall determine if a report
23 should be made to the appropriate agency for further
24 investigation and follow-up when consent has not been given by
25 the complainant, recipient, or recipient representative. The
26 ombudsman and representatives of the office are excluded from
27 abuse reporting requirements when such reporting discloses the

1 identity of a complainant or recipient without appropriate
2 consent or court order;

3 "(3) To serve as a third-party mechanism for
4 protecting the health, safety, welfare, and human rights of
5 recipients;

6 "(4) To report ~~immediately~~ in a reasonable time, as
7 set forth by the office, any complaint that cannot be resolved
8 informally to the ~~State Ombudsman~~ ombudsman for appropriate
9 action under Section 22-5A-6;

10 "(5) To collect data about the number and kinds of
11 complaints handled; and

12 "(6) To report ~~regularly~~ monthly to the ~~State~~
13 ~~Ombudsman~~ ombudsman about the data collected and activities of
14 the community ombudsman program.

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

19 "~~(d) Each area agency on aging shall immediately~~
20 ~~notify the department of the selection of, and request the~~
21 ~~certification of, prospective community ombudsmen.~~

22 "~~(e) (d)~~ (d) The ~~State Ombudsman~~ ombudsman shall
23 arrange for the training of all prospective ~~community~~
24 ~~ombudsmen~~ representatives of the office selected by area
25 agencies on aging or other designated entities. Such training
26 shall include instructions in at least the following subjects
27 as they relate to health care:

1 "(1) The responsibilities, duties and authority of
2 ~~community ombudsmen~~ representatives of the office;

3 "(2) The laws and regulations governing the receipt,
4 investigation, and resolution of complaints;

5 "(3) The role of local, state and federal agencies
6 that regulate health care facilities;

7 "(4) The different kinds of health care facilities
8 in Alabama and the services provided in each setting;

9 "(5) The special needs of the elderly and of the
10 physically and mentally handicapped;

11 "(6) The role of the family, the sponsor, the legal
12 representative, the physician, the church and other public and
13 private agencies, and the community;

14 "(7) How to work with health providers, medical
15 professionals and staff;

16 "(8) The laws and regulations governing Medicare,
17 Medicaid, social security, supplemental security income, and
18 the Veterans Administration; and

19 "(9) The licensure requirements for administrators
20 of hospitals, nursing homes, home health care agencies, etc.,
21 including familiarity with the actual information required to
22 obtain the various licenses.

23 "~~(f) Persons~~ (e) Individuals selected by area
24 agencies on aging or other designated entities who shall have
25 satisfactorily completed the training arranged by the ~~State~~
26 ~~Ombudsman~~ ombudsman shall be certified and designated as
27 ~~community ombudsmen~~ representatives of the office by the

1 ~~department~~ ombudsman. The certification can be terminated at
2 any time by the ~~Department of Senior Services or appropriate~~
3 ~~area agency on aging~~ ombudsman for either of the following:

4 "(1) ~~When the community ombudsman~~ The representative
5 of the office is no longer ~~employed by the Department of~~
6 ~~Senior Services or~~ an employee or contractual employee of the
7 area agency on aging or other designated entity; or

8 "(2) For cause.

9 "~~(g)~~ (h) Each area's agency on aging or other
10 designated entity's advisory council shall appoint a
11 subcommittee to advise it in the operation of its ~~community~~
12 ombudsman program. The number and qualifications of members of
13 the advisory subcommittee shall be determined by the
14 respective area agency on aging or other designated entity but
15 shall contain adequate representation from the various types
16 of health facilities covered under the ~~Area Agency Community~~
17 ~~Ombudsman Plan~~ ombudsman plan of the respective area agency on
18 aging or other designated entity.

19 "§22-5A-5.

20 "The ~~State Ombudsman~~ office shall establish written
21 procedures for receiving complaints involving ~~long-term~~
22 ~~residential~~ health care facilities and their employees. The
23 ~~Department of Senior Services~~ office shall provide to health
24 care, ~~domiciliary and residential~~ facilities written
25 information on the ombudsman program to be distributed to
26 recipients at the time of admission, ~~or~~ rendering of care,
27 ~~and/or~~ or treatment at or by a health care facility.

1 "§22-5A-6.

2 "(a) ~~A community ombudsman's access~~ The access by a
3 representative of the office to any health care facility to
4 investigate a complaint shall be ~~limited to standard operating~~
5 ~~hours unless prior arrangements with the operator of the~~
6 ~~facility has been made~~ at any time during regular business
7 hours or regular visiting hours and any time when access is
8 required to investigate the circumstances of the complaint. If
9 the complaint involves more than one provider or alleges to
10 involve more than one provider, the ~~ombudsman~~ representative
11 of the office shall investigate all providers.

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

25 "(1) Allow more time if the ~~State Ombudsman~~
26 ombudsman has reason to believe such action would facilitate
27 resolution of the complaint;

1 "(2) Refer a complaint regarding a nursing home,
2 assisted living facility, specialty care assisted living
3 facility, or long term care unit of a hospital or domiciliary
4 in writing to the Bureau of Licensure and Certification or the
5 Department of Human Resources.

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

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

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

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

1 legally authorized to act on behalf of the recipient. Requests
2 for copies of any medical records must be accompanied by a
3 current valid duly executed authorization and release which
4 has been signed by the recipient or by one legally authorized
5 to act on behalf of the recipient; provided, however, a
6 current, valid, and duly executed authorization and release
7 signed by the recipient or by one legally authorized to act on
8 the recipient's behalf is not required to review or obtain
9 copies of these records if the ombudsman determines the
10 circumstances of a complaint could lead to immediate danger or
11 harm to the recipient. The Health Insurance Portability and
12 Accountability Act of 1996 (HIPAA) Privacy Rule, 45 CFR Part
13 160 and 45 CFR Part 164, subparts A and E, does not preclude
14 release by covered entities of resident private health
15 information or other resident identifying information to the
16 ombudsman program, including but not limited to, residents'
17 medical, social, or other records, a list of resident names
18 and room numbers, or information collected in the course of a
19 state or federal survey or inspection process. Any physician
20 providing medical information ~~and/or~~ or copies of medical
21 records and any health care facility providing copies of
22 health care facility medical records shall be entitled to the
23 payment of a reasonable charge for the preparation ~~and/or~~ and
24 reproduction of the records. Information concerning any aspect
25 of a complaint resolution proceeding shall be kept
26 confidential and shall not be disclosed by ~~an ombudsman~~ the
27 representative of the office to any person not directly

1 involved in the particular complaint, except in strict
2 accordance with the provisions of this chapter. Such
3 disclosure shall result in the ~~ombudsman's dismissal~~
4 termination of the representative of the office.

5 "§22-5A-7.

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

16 Section 2. This act shall become effective
17 immediately following its passage and approval by the
18 Governor, or its otherwise becoming law.