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SESSION 1989

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SENATE BILL 80
House Committee Substitute Favorable 5/1/89
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Short Title: Ombudsman Program.

(Public)

Sponsors:

Referred to:

January 31, 1989

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A LONG-TERM CARE OMBUDSMAN PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"PART 4D. LONG-TERM CARE OMBUDSMAN PROGRAM.

"§ 143B-181.15. Long-Term Care Ombudsman Program/Office; policy.

The General Assembly finds that a significant number of older citizens of this State reside in long-term care facilities and are dependent on others to provide their care. It is the intent of the General Assembly to protect and improve the quality of care and life for residents through the establishment of a program to assist residents and providers in the resolution of complaints or common concerns, to promote community involvement and volunteerism in long-term care facilities, and to educate the public about the long-term care system. It is the further intent of the General Assembly that the Department of Human Resources, within available resources and pursuant to its duties under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001-3057g, ensure that the quality of care and life for these residents is maintained, that necessary reports are made, and that, when necessary, corrective action is taken at the Department level.

"§ 143B-181.16. Long-Term Care Ombudsman Program/Office; definition.

Unless the content clearly requires otherwise, as used in this Article:

- 1 (1) 'Long-term care facility' means any skilled nursing facility and
2 intermediate care facility as defined in G.S. 131A-(4) or any
3 domiciliary home as defined in G.S. 131D-20(2).
4 (2) 'Resident' means any person who is receiving treatment or care in any
5 long-term care facility.
6 (3) 'State Ombudsman' means the State Ombudsman as defined by the
7 Older Americans Act of 1965, as amended, who carries out the duties
8 and functions established by this Article.
9 (4) 'Regional Ombudsman' means a person employed by an Area Agency
10 on Aging to carry out the functions of the Regional Ombudsman
11 Office established by this Article.

12 **"§ 143B-181.17. Office of State Long-Term Care Ombudsman Program/Office;**
13 **establishment.**

14 The Secretary of Department of Human Resources shall establish and maintain the
15 Office of State Long-Term Ombudsman in the Division of Aging. The Office shall
16 carry out the functions and duties required by the Older Americans Act of 1965, as
17 amended. This Office shall be headed by a State Ombudsman who is a person qualified
18 by training and with experience in geriatrics and long-term care. The Attorney General
19 shall provide legal staff and advice to this Office.

20 **"§ 143B-181.18. Office of State Long-Term Care Ombudsman Program/State**
21 **Ombudsman duties.**

22 The State Ombudsman shall:

- 23 (1) Promote community involvement with long-term care provider and
24 residents of long-term care facilities and serve as liaison between
25 residents, residents' families, facility personnel, and facility
26 administration;
27 (2) Supervise the Long-Term Care Program pursuant to rules adopted by
28 the Secretary of the Department of Human Resources pursuant to G.S.
29 143B-10;
30 (3) Certify regional ombudsmen. Certification requirements shall include
31 an internship training in the aging process, complaint resolution, long-
32 term care issues, mediation techniques, recruitment and training of
33 volunteers, and relevant federal, State, and local laws, policies, and
34 standards;
35 (4) Attempt to resolve complaints made by or on behalf of individuals
36 who are residents of long-term care facilities, which complaints relate
37 to administrative action that may adversely affect the health, safety, or
38 welfare of residents;
39 (5) Provide training and technical assistance to regional ombudsmen;
40 (6) Establish procedures for appropriate access by regional ombudsmen to
41 long-term care facilities and residents' records including procedures to
42 protect the confidentiality of these records and to ensure that the
43 identity of any complainant or resident will not be disclosed without
44 the written consent of the complainant or resident or upon court order;

- 1 (7) Analyze data relating to complaints and conditions in long-term care
2 facilities to identify significant problems and recommend solutions;
- 3 (8) Prepare an annual report containing data and findings regarding the
4 types of problems experienced and complaints reported by residents as
5 well as recommendations for resolutions of identified long-term care
6 issues;
- 7 (9) Prepare findings regarding public education and community
8 involvement efforts and innovative programs being provided in long-
9 term care facilities; and
- 10 (10) Provide information to public agencies, and through the State
11 Ombudsman, to legislators, and others regarding problems
12 encountered by residents or providers as well as recommendations for
13 resolution.

14 **"§ 143B-181.19. Office of Regional Long-Term Care Ombudsman; Regional**
15 **Ombudsman; duties.**

16 (a) An Office of Regional Ombudsman Program shall be established in each of
17 the Area Agencies on Aging, and shall be headed by a Regional Ombudsman who shall
18 carry out the functions and duties of the Office. The Area Agency on Aging
19 administration shall provide administrative supervision to each Regional Ombudsman.

20 (b) Pursuant to policies and procedures established by the State Office of Long-
21 Term Care Ombudsman, the Regional Ombudsman shall:

- 22 (1) Promote community involvement with long-term care facilities and
23 residents of long-term care facilities and serve as a liaison between
24 residents, residents' families, facility personnel, and facility
25 administration;
- 26 (2) Receive and attempt to resolve complaints made by or on behalf of
27 residents in long-term care facilities;
- 28 (3) Collect data about the number and types of complaints handled;
- 29 (4) Work with long-term care providers to resolve issues of common
30 concern;
- 31 (5) Work with long-term care providers to promote increased community
32 involvement;
- 33 (6) Offer assistance to long-term care providers in staff training regarding
34 residents' rights;
- 35 (7) Report regularly to the office of State Ombudsman about the data
36 collected and about the activities of the Regional Ombudsman;
- 37 (8) Provide training and technical assistance to the community advisory
38 committees; and
- 39 (9) Provide information to the general public on long-term care issues.

40 **"§ 143B-181.20. State/Regional Long-Term Care Ombudsman; authority to enter;**
41 **cooperation of government agencies; communication with residents.**

42 (a) The State and Regional Ombudsman may enter any long-term care facility
43 and may have reasonable access to any resident in the reasonable pursuit of his function.
44 The Ombudsman may communicate privately and confidentially with residents of the

1 facility individually or in groups. The Ombudsman shall have access to the patient
2 records of any resident, under procedures established by the State Ombudsman pursuant
3 to G.S.143B-181.18(6), provided that the medical and personal financial records
4 pertaining to an individual resident may be inspected only with the permission of the
5 resident or his legally appointed guardian, if any. Entry shall be conducted in a manner
6 that will not significantly disrupt the provision of nursing or other care to residents.
7 Any State or Regional Ombudsman who discloses any information obtained from the
8 patient's medical or personal financial records without a court order or without
9 authorization in writing from the resident, or his legal representative, is guilty of a
10 general misdemeanor.

11 (b) The State or Regional Ombudsman shall identify himself as such to the
12 resident, and the resident has the right to refuse to communicate with the Ombudsman.

13 (c) The resident has the right to participate in planning any course of action to be
14 taken on his behalf by the State or Regional Ombudsman, and the resident has the right
15 to approve or disapprove any proposed action to be taken on his behalf by the
16 Ombudsman.

17 (d) The State or Regional Ombudsman shall meet with the facility administrator
18 or person in charge before any action is taken to allow the facility the opportunity to
19 respond, provide additional information, or take appropriate action to resolve the
20 concern.

21 (e) The State and Regional Ombudsman may obtain from any government
22 agency, and this agency shall provide, that cooperation, assistance, services, data, and
23 access to files and records that will enable the Ombudsman to properly perform his
24 duties and exercise his powers, provided this information is not privileged by law.

25 (f) If the subject of the complaint involves suspected abuse, neglect, or
26 exploitation, the State or Regional Ombudsman shall notify the county department of
27 social services' Adult Protection Services section of the county department of social
28 services, pursuant to Article 6 of Chapter 108A of the General Statutes.

29 **"§ 143B-181.21. State/Regional Long-Term Care Ombudsman; resolution of**
30 **complaints.**

31 (a) Following receipt of a complaint, the State or Regional Ombudsman shall
32 attempt to resolve the complaint using, whenever possible, informal technique of
33 mediation, conciliation, and persuasion.

34 (b) Complaints or conditions adversely affecting residents of long-term care
35 facilities that cannot be resolved in the manner described in subsection (a) of this
36 section shall be referred by the State or Regional Ombudsman to the appropriate
37 licensure agency pursuant to G.S. 131E-100 through 110 and G.S.131D-2.

38 **"§ 143B-181.22. State/Regional Long-Term Care Ombudsman; confidentiality.**

39 The identity of any complainant, resident on whose behalf a complaint is made, or
40 individual providing information on behalf of the resident or complainant relevant to the
41 attempted resolution of a complaint is confidential and may be disclosed only with the
42 express permission of the person. The information produced by the process of
43 complaint resolution may be disclosed by the State Ombudsman or Regional
44 Ombudsman only if the identity of any such person is not disclosed by name or

1 inference. If the identity of any such person is disclosed by name or inference in such
2 information, the information may be disclosed only with his express permission. If the
3 complaint becomes the subject of a judicial proceeding, the investigative information
4 may be disclosed for the purpose of the proceeding.

5 **"§ 143B-181.23. State/Regional Long-Term Care Ombudsman; prohibition of**
6 **retaliation.**

7 No person shall discriminate or retaliate in any manner against any resident or
8 relative or guardian of a resident, any employee of a long-term care facility, or any other
9 person because of the making of a complaint or providing of information in good faith
10 to the State Ombudsman or Regional Ombudsman.

11 **"§ 143B-181.24. Office of State/Regional Long-Term Care Ombudsman; immunity**
12 **from liability.**

13 No representative of the Office shall be liable for good faith performance of official
14 duties.

15 **"§ 143B-181.25. Office of State/Regional Long-Term Care Ombudsman; penalty**
16 **for willful interference.**

17 Willful or unnecessary obstruction with the State or Regional Long-Term Care
18 Ombudsman in the performance of his official duties is a general misdemeanor."

19 Sec. 2. This act is effective upon ratification.