

Chapter 155

(House Bill 536)

AN ACT concerning

Department of Aging – Long-Term Care Ombudsman Program

FOR the purpose of repealing certain powers and duties of the Secretary of Aging; repealing certain provisions of law relating to the Maryland Long-Term Care Ombudsman Program and the Maryland Long-Term Care Ombudsman; reestablishing the Long-Term Care Ombudsman Program in the Department of Aging; specifying the purpose of the Program; establishing the Office of the Long-Term Care Ombudsman in the Department; providing for the ~~appointment~~ selection of the State Long-Term Care Ombudsman; establishing certain powers and duties of the Secretary, the State Long-Term Care Ombudsman, and designated ombudsmen; establishing the qualifications of entities qualified to be designated as local long-term care ombudsman entities; requiring that an ombudsman have access to certain facilities, documents, and records; requiring the Secretary to adopt certain regulations; requiring the Secretary to adopt certain regulations in consultation with area agencies on aging; making it a misdemeanor, subject to a certain penalty, to willfully interfere with an ombudsman's performance of an official duty or to retaliate or make reprisals against certain persons; requiring the State Long-Term Care Ombudsman to submit a certain annual report to the Governor and the General Assembly; requiring the Department of Aging to reconvene a certain workgroup; requiring the workgroup to meet on a certain basis; providing for the duties of the Department and the State Long-Term Care Ombudsman in conducting the workgroup; defining certain terms; and generally relating to the Long-Term Care Ombudsman Program.

BY repealing

Article – Human Services
Section 10-212 and 10-213
Annotated Code of Maryland
(2007 Volume and 2009 Supplement)

BY adding to

Article – Human Services
Section 10-901 through 10-911 to be under the new subtitle “Subtitle 9.
Long-Term Care Ombudsman Program”
Annotated Code of Maryland
(2007 Volume and 2009 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 10-212 and 10-213 of Article – Human Services of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Human Services

SUBTITLE 9. LONG-TERM CARE OMBUDSMAN PROGRAM.

10-901.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “LOCAL LONG-TERM CARE OMBUDSMAN ENTITY” MEANS AN ENTITY DESIGNATED BY ~~THE SECRETARY AND~~ THE STATE LONG-TERM CARE OMBUDSMAN TO ASSIST IN CARRYING OUT THE DUTIES OF THE PROGRAM.

(C) “LONG-TERM CARE FACILITY” MEANS:

(1) A NURSING FACILITY, AS DEFINED IN § 19-301 OF THE HEALTH – GENERAL ARTICLE; OR

(2) AN ASSISTED LIVING PROGRAM, AS DEFINED IN § 19-1801 OF THE HEALTH – GENERAL ARTICLE.

(D) “OFFICE” MEANS THE OFFICE OF THE LONG-TERM CARE OMBUDSMAN ESTABLISHED UNDER THIS SUBTITLE.

(E) “OMBUDSMAN” MEANS:

(1) THE STATE LONG-TERM CARE OMBUDSMAN; AND

(2) ANY INDIVIDUAL, WHETHER A PAID EMPLOYEE OR A VOLUNTEER, WHO IS DESIGNATED BY THE STATE LONG-TERM CARE OMBUDSMAN AS AN OMBUDSMAN.

(F) “PROGRAM” MEANS THE LONG-TERM CARE OMBUDSMAN PROGRAM ESTABLISHED UNDER THIS SUBTITLE.

(G) “RESIDENT” MEANS A RESIDENT OF A LONG-TERM CARE FACILITY LOCATED IN THE STATE.

(H) “STATE LONG-TERM CARE OMBUDSMAN” MEANS THE INDIVIDUAL ~~APPOINTED~~ SELECTED BY THE SECRETARY UNDER § 10-903 OF THIS SUBTITLE.

10-902.

(A) THERE IS A LONG-TERM CARE OMBUDSMAN PROGRAM IN THE DEPARTMENT.

(B) THE PURPOSE OF THE PROGRAM IS TO FULFILL THE REQUIREMENTS OF:

(1) THE PROGRAM UNDER THIS SUBTITLE; AND

(2) THE FEDERAL OLDER AMERICANS ACT, INCLUDING THE REQUIREMENTS OF 42 U.S.C. § 3058G.

(C) (1) THE SECRETARY SHALL ADOPT REGULATIONS NECESSARY TO CARRY OUT THIS SUBTITLE.

(2) THE REGULATIONS ADOPTED UNDER SUBSECTION (C) OF THIS SECTION SHALL ESTABLISH:

(I) THE REQUIREMENTS FOR AN ANNUAL REVIEW BY THE DEPARTMENT OF ALL OMBUDSMAN ACTIVITIES; AND

(II) THE PROCESS FOR ASSISTING INDIVIDUALS WITH ORGANIZING AND OPERATING A RESIDENT COUNCIL AND A FAMILY COUNCIL IN A LONG-TERM CARE FACILITY.

10-903.

(A) THERE IS AN OFFICE OF THE LONG-TERM CARE OMBUDSMAN IN THE DEPARTMENT.

(B) (1) UNLESS THE SECRETARY IS SUBJECT TO A CONFLICT OF INTEREST THAT CANNOT BE REMOVED, THE SECRETARY SHALL ~~APPOINT~~ SELECT A STATE LONG-TERM CARE OMBUDSMAN.

(2) IF THE SECRETARY IS SUBJECT TO A CONFLICT OF INTEREST THAT CANNOT BE REMOVED, THE SECRETARY SHALL DESIGNATE ANOTHER INDIVIDUAL, WHO IS NOT SUBJECT TO A CONFLICT OF INTEREST, TO ~~APPOINT~~ SELECT THE STATE LONG-TERM CARE OMBUDSMAN.

(C) THE STATE LONG-TERM CARE OMBUDSMAN:

(1) SHALL PERSONALLY ADMINISTER THE OFFICE;

(2) SHALL HAVE EXPERTISE AND EXPERIENCE IN THE FIELD OF LONG-TERM CARE ADVOCACY, ~~OTHER CONSUMER PROTECTION SERVICES, OR AGING;~~

(3) MAY NOT HAVE ANY CONFLICT OF INTEREST WITH THE POSITION; AND

(4) SHALL, ON A FULL-TIME BASIS, PERFORM DUTIES RELATED TO THE PROGRAM.

(D) THE STATE LONG-TERM CARE OMBUDSMAN SHALL PERSONALLY OR THROUGH DESIGNATED OMBUDSMEN:

(1) IDENTIFY, INVESTIGATE, AND ~~SOLVE~~ RESOLVE COMPLAINTS FROM ANY SOURCE MADE BY, OR ON BEHALF OF, A RESIDENT RELATING TO ANY ACTION, INACTION, OR DECISION, ~~BY A LONG TERM CARE FACILITY, A GOVERNMENTAL ENTITY, OR A PRIVATE SOCIAL SERVICE AGENCY~~ THAT MAY ADVERSELY AFFECT THE HEALTH, SAFETY, WELFARE, OR RIGHTS OF A RESIDENT INCLUDING THE WELFARE AND RIGHTS OF RESIDENTS WITH RESPECT TO THE APPOINTMENT AND ACTIVITIES OF GUARDIANS AND REPRESENTATIVE PAYEES, OF:

(I) A PROVIDER, OR A REPRESENTATIVE OF A PROVIDER, OF LONG-TERM CARE SERVICES;

(II) A PUBLIC AGENCY; OR

(III) A HEALTH OR SOCIAL SERVICE AGENCY;

(2) REPRESENT THE INTERESTS OF RESIDENTS BEFORE GOVERNMENTAL AGENCIES AND SEEK ADMINISTRATIVE, LEGAL, AND OTHER REMEDIES TO PROTECT THE HEALTH, SAFETY, WELFARE, AND RIGHTS OF RESIDENTS;

(3) PROVIDE INFORMATION AS APPROPRIATE TO OTHER AGENCIES AND THE PUBLIC REGARDING THE PROBLEMS AND CONCERNS OF RESIDENTS;

(4) INFORM RESIDENTS, FAMILY MEMBERS, AND OTHERS ACTING ON BEHALF OF RESIDENTS ABOUT HOW TO ACCESS THE ASSISTANCE AND SERVICES OF THE OFFICE AND THE SERVICES AND ASSISTANCE OF OTHER PROVIDERS OR AGENCIES, INCLUDING LEGAL SERVICES;

(5) ENSURE REGULAR AND TIMELY ACCESS TO AND RESPONSE FROM THE OFFICE;

(6) COMMENT ON, FACILITATE PUBLIC COMMENT ON, AND RECOMMEND CHANGES TO EXISTING OR PROPOSED LAWS, RULES, REGULATIONS, AND OTHER GOVERNMENTAL POLICIES AND ACTIONS THAT AFFECT THE HEALTH, SAFETY, WELFARE, AND RIGHTS OF RESIDENTS;

(7) PROVIDE TECHNICAL SUPPORT FOR THE DEVELOPMENT OF RESIDENT AND FAMILY COUNCILS TO PROTECT THE WELL-BEING AND RIGHTS OF RESIDENTS;

(8) PROVIDE FOR THE EDUCATION AND TRAINING OF OMBUDSMEN;

(9) EDUCATE FACILITIES, AGENCIES, AND STAFF MEMBERS CONCERNING THE RIGHTS AND WELFARE OF RESIDENTS;

(10) PROMOTE THE DEVELOPMENT OF CITIZEN ORGANIZATIONS TO ADVOCATE FOR THE WELL-BEING AND RIGHTS OF RESIDENTS;

(11) ~~PROVIDE TECHNICAL SUPPORT FOR THE DEVELOPMENT OF RESIDENT AND FAMILY COUNCILS TO PROTECT THE WELL-BEING AND RIGHTS OF RESIDENTS~~ PROVIDE SERVICES TO ASSIST RESIDENTS IN PROTECTING THE HEALTH, SAFETY, WELFARE, AND RIGHTS OF RESIDENTS; AND

(12) CARRY OUT ANY OTHER ACTIVITIES THAT THE SECRETARY DETERMINES TO BE APPROPRIATE OR THAT ARE REQUIRED BY THE FEDERAL OLDER AMERICANS ACT.

10-904.

(A) ENTITIES ELIGIBLE TO BE DESIGNATED AS LOCAL LONG-TERM CARE OMBUDSMAN ENTITIES SHALL:

(1) HAVE DEMONSTRATED CAPABILITY TO CARRY OUT THE RESPONSIBILITIES OF THE OFFICE;

(2) BE PUBLIC OR NONPROFIT ~~AGENCIES~~ ENTITIES;

(3) BE FREE OF CONFLICTS OF INTEREST; AND

(4) MEET ANY ADDITIONAL REQUIREMENTS THAT THE SECRETARY AND THE STATE LONG-TERM CARE OMBUDSMAN SPECIFY.

(B) (1) THE SECRETARY, IN CONSULTATION WITH AREA AGENCIES ON AGING, SHALL ADOPT REGULATIONS TO ESTABLISH REQUIREMENTS FOR TRAINING AND DESIGNATING OMBUDSMEN, INCLUDING IN-SERVICE TRAINING.

(2) THE REGULATIONS SHALL PROHIBIT THE STATE LONG-TERM CARE OMBUDSMAN FROM DESIGNATING AN INDIVIDUAL AS AN OMBUDSMAN UNLESS THE INDIVIDUAL HAS SUCCESSFULLY COMPLETED THE REQUIRED TRAINING AND SATISFIED THE REQUIREMENTS FOR DESIGNATION.

10-905.

IN ACCORDANCE WITH REQUIREMENTS OF THE FEDERAL OLDER AMERICANS ACT, AN OMBUDSMAN SHALL HAVE ACCESS TO:

(1) LONG-TERM CARE FACILITIES AND RESIDENTS;

(2) THE MEDICAL AND SOCIAL RECORDS OF A RESIDENT, IF:

(I) THE OMBUDSMAN HAS THE PERMISSION OF THE RESIDENT OR THE LEGAL REPRESENTATIVE OF THE RESIDENT; OR

(II) THE RESIDENT IS UNABLE TO CONSENT AND HAS NO LEGAL REPRESENTATIVE;

(3) THE RECORDS THAT ARE NECESSARY TO INVESTIGATE A COMPLAINT IF:

(I) A LEGAL GUARDIAN OF THE RESIDENT REFUSES TO GIVE PERMISSION TO ACCESS THE RECORDS;

(II) THE OMBUDSMAN HAS REASONABLE CAUSE TO BELIEVE THAT THE GUARDIAN IS NOT ACTING IN THE BEST INTERESTS OF THE RESIDENT; AND

(III) THE OMBUDSMAN OBTAINS THE APPROVAL OF THE STATE LONG-TERM CARE OMBUDSMAN;

(4) THE ADMINISTRATIVE RECORDS, POLICIES, AND DOCUMENTS OF LONG-TERM CARE FACILITIES TO WHICH THE RESIDENTS OR MEMBERS OF THE GENERAL PUBLIC HAVE ACCESS; AND

(5) COPIES OF ALL LICENSING AND CERTIFICATION RECORDS MAINTAINED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE OR ANY OTHER STATE UNIT WITH RESPECT TO LONG-TERM CARE FACILITIES.

10-906.

(A) THE SECRETARY, IN CONSULTATION WITH AREA AGENCIES ON AGING, SHALL ADOPT REGULATIONS TO GOVERN CONFLICTS OF INTEREST TO ENSURE THAT:

(1) NO INDIVIDUAL, OR MEMBER OF THE IMMEDIATE FAMILY OF AN INDIVIDUAL, INVOLVED IN THE DESIGNATION OF THE STATE LONG-TERM CARE OMBUDSMAN OR A LOCAL LONG-TERM CARE OMBUDSMAN ENTITY, IS SUBJECT TO A CONFLICT OF INTEREST; AND

(2) NO OMBUDSMAN OR IMMEDIATE FAMILY MEMBER OF AN OMBUDSMAN IS SUBJECT TO A CONFLICT OF INTEREST.

(B) THE SECRETARY, IN CONSULTATION WITH AREA AGENCIES ON AGING, SHALL ADOPT REGULATIONS GOVERNING ~~CONFIDENTIALITY AND PRIVACY OF COMPLAINANTS.~~ THE CONFIDENTIALITY OF INFORMATION AND DOCUMENTS, INCLUDING RESIDENT RECORDS, FACILITY RECORDS, AND COMPLAINANT IDENTIFICATION.

10-907.

THE SECRETARY SHALL REQUIRE THE STATE LONG-TERM CARE OMBUDSMAN TO COORDINATE OMBUDSMAN SERVICES WITH:

(1) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE;

(2) THE DEPARTMENT OF HUMAN RESOURCES;

(3) PROTECTION AND ADVOCACY SYSTEMS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES AND MENTAL ILLNESSES; AND

(4) LEGAL ASSISTANCE.

10-908.

THE SECRETARY SHALL ESTABLISH AND MAINTAIN A STATEWIDE UNIFORM REPORTING SYSTEM FOR THE PROGRAM TO COLLECT AND ANALYZE DATA RELATING TO COMPLAINTS AND CONDITIONS IN LONG-TERM FACILITIES AND TO RESIDENTS FOR THE PURPOSE OF IDENTIFYING AND RESOLVING SIGNIFICANT PROBLEMS.

10-909.

THE STATE LONG-TERM CARE OMBUDSMAN SHALL SUBMIT AN ANNUAL REPORT TO THE GOVERNOR AND THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON THE ACTIVITIES OF THE PROGRAM THAT INCLUDES RECOMMENDATIONS OF THE STATE LONG-TERM CARE OMBUDSMAN FOR IMPROVING SERVICES FOR RESIDENTS.

10-910.

(A) IN ACCORDANCE WITH 42 U.S.C. § 3058G(J)(1), A PERSON MAY NOT WILLFULLY INTERFERE WITH AN OMBUDSMAN'S PERFORMANCE OF AN OFFICIAL DUTY.

(B) A PERSON MAY NOT RETALIATE OR MAKE REPRISALS WITH RESPECT TO ANY PERSON WHO FILED A COMPLAINT WITH, OR PROVIDED INFORMATION TO, AN OMBUDSMAN.

(C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,500.

10-911.

AN OMBUDSMAN IS NOT LIABLE UNDER STATE LAW FOR GOOD FAITH PERFORMANCE OF OFFICIAL DUTIES.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) On or before July 31, 2010, the Department of Aging shall reconvene, and the State Long-Term Care Ombudsman shall attend meetings with the stakeholder groups involved in the Department's "A Plan for Excellence for the Maryland Long-Term Care Ombudsman Program" including the AARP Maryland, Maryland Disabilities Law Center, Legal Aid Bureau, United Seniors of Maryland, and Voices for Quality Care.

(b) (1) The State Long-Term Care Ombudsman shall expand the stakeholder group to include at least one nursing home resident or representative of a

nursing home resident and one assisted living facility resident or representative of an assisted living facility resident.

(2) The nursing home resident or assisted living facility resident included in the stakeholder group, or the nursing home resident or assisted living facility resident who has a representative who is included in the stakeholder group shall be a current resident of a facility and may not be represented by any other member of the stakeholder group.

(c) (1) The stakeholder group shall meet at least quarterly until January 2013, unless the stakeholder group determines that the meetings can be held less frequently.

(2) At the meetings, the Department shall provide updates, solicit input, and identify barriers to the progress to refine and implement the strategic action plan to improve the Ombudsman Program.

(3) Before the first meeting of the stakeholder group, the State Long-Term Care Ombudsman shall gather up-to-date names, addresses, and electronic mail addresses of the individuals who will represent the stakeholder groups to set dates for the meetings and ensure the timely dispersal of information required under this section.

(4) Between meetings, the Department shall provide information to the stakeholder group of any significant proposed actions regarding the Ombudsman Program.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ June 1, 2010.

Approved by the Governor, April 13, 2010.