

CHAPTER 290

[Engrossed Substitute House Bill No. 484]

LONG-TERM CARE OMBUDSMAN PROGRAM ESTABLISHED

AN ACT Relating to a long-term care ombudsman program; amending section 1, chapter 109, Laws of 1979 and RCW 36.39.060; amending section 4, chapter 131, Laws of 1975-'76 2nd ex. sess. as amended by section 3, chapter 321, Laws of 1977 ex. sess. and RCW 74.38.040; amending section 5, chapter 131, Laws of 1975-'76 2nd ex. sess. as last amended by section 1, chapter 147, Laws of 1979 ex. sess. and RCW 74.38.050; and adding a new chapter to Title 43 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that in order to comply with the federal Older Americans Act and to effectively assist residents, patients, and clients of long-term care facilities in the assertion of their civil and human rights, a long-term care ombudsman program should be instituted.

NEW SECTION. Sec. 2. As used in this chapter, "long-term care facility" means any of the following which provide services to persons sixty years of age and older and is:

(1) A facility which:

(a) Maintains and operates twenty-four hour skilled nursing services for the care and treatment of chronically ill or convalescent patients, including mental, emotional, or behavioral problems, mental retardation, or alcoholism;

(b) Provides supportive, restorative, and preventive health services in conjunction with a socially oriented program to its residents, and which maintains and operates twenty-four hour services including board, room, personal care, and intermittent nursing care. "Long-term health care facility" includes nursing homes, skilled nursing facilities, and intermediate care facilities, but does not include acute care hospital or other licensed facilities except for that distinct part of the hospital or facility which provides nursing home, skilled nursing facility, or intermediate care facility services.

(2) Any family home, group care facility, or similar facility determined by the secretary, for twenty-four hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

(3) Any swing bed in an acute care facility.

NEW SECTION. Sec. 3. (1) There is created within the department of social and health services the office of the state long-term care ombudsman. The secretary shall place the office in an area within the department which will enable the office to fully carry out the purposes of this chapter. The secretary shall ensure that all program and staff support necessary to enable the ombudsman to effectively protect the interests of residents, patients, and

clients of all long-term care facilities is made available to the ombudsman to the extent authorized by section 12 of this act.

(2) The state ombudsman shall have the following powers and duties:

(a) To provide services for coordinating the activities of long-term care ombudsmen throughout the state;

(b) Carry out such other activities as the secretary deems appropriate;

(c) Establish procedures consistent with section 11 of this act for appropriate access by long-term care ombudsmen to long-term care facilities and patients' records, including procedures to protect the confidentiality of the records and ensure that the identity of any complainant or resident will not be disclosed without the written consent of the complainant or resident, or upon court order;

(d) Establish a state-wide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems, with provision for submission of such data to the department of social and health services and to the federal department of health and human services, or its successor agency, on a regular basis; and

(e) Establish procedures to assure that any files maintained by ombudsman programs shall be disclosed only at the discretion of the ombudsman having authority over the disposition of such files, except that the identity of any complainant or resident of a long-term care facility shall not be disclosed by such ombudsman unless:

(i) Such complainant or resident, or the complainant's or resident's legal representative, consents in writing to such disclosure; or

(ii) Such disclosure is required by court order.

NEW SECTION. Sec. 4. (1) Any long-term care ombudsman authorized by this chapter or a local governmental authority shall have training or experience or both in the following areas:

(a) Gerontology, long-term care, or other related social services programs.

(b) The legal system.

(c) Dispute or problem resolution techniques, including investigation, mediation, and negotiation.

(2) A long-term care ombudsman shall not have been employed by any long-term care facility within the past three years.

(3) No long-term care ombudsman or any member of his or her immediate family shall have, or have had within the past three years, any pecuniary interest in the provision of long-term health care facilities.

NEW SECTION. Sec. 5. Every long-term care facility shall post in a conspicuous location a notice of the nursing home complaint toll-free number and the name, address, and phone number of the office of the appropriate long-term care ombudsman and a brief description of the services provided by the office. The form of the notice shall be approved by the office

and the organization responsible for maintaining the nursing home complaint toll-free number. This information shall also be distributed to the residents, family members, and legal guardians upon the resident's admission to the facility.

NEW SECTION. Sec. 6. A long-term care ombudsman shall:

(1) Investigate and resolve complaints made by or on behalf of older individuals who are residents of long-term care facilities relating to administrative action which may adversely affect the health, safety, welfare, and rights of these individuals;

(2) Monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies with respect to long-term care facilities in this state;

(3) Provide information as appropriate to public agencies regarding the problems of individuals residing in long-term care facilities; and

(4) Provide for training volunteers and promoting the development of citizen organizations to participate in the ombudsman program. Volunteers shall not be used for complaint investigation or problem resolution activities authorized in subsection (1) of this section.

NEW SECTION. Sec. 7. (1) The office of the state long-term care ombudsman shall develop referral procedures for all long-term care ombudsman programs to refer any complaint to any appropriate state or local government agency. The department of social and health services shall act as quickly as possible on any complaint referred to them by a long-term care ombudsman.

(2) The department of social and health services shall respond to any complaint against a long-term care facility which was referred to it by a long-term care ombudsman and shall forward to that ombudsman a summary of the results of the investigation and action proposed or taken.

NEW SECTION. Sec. 8. (1) The office of the state long-term care ombudsman shall develop procedures governing the right of entry of all long-term care ombudsmen to long-term care facilities and shall have access to residents with provisions made for privacy for the purpose of hearing, investigating, and resolving complaints of, and rendering advice to, individuals who are patients or residents of the facilities at any time deemed necessary and reasonable by the state ombudsman to effectively carry out the provisions of this chapter.

(2) Nothing in this chapter restricts, limits, or increases any existing right of any organizations or individuals not described in subsection (1) of this section to enter or provide assistance to patients or residents of long-term care facilities.

(3) Nothing in this chapter restricts any right or privilege of any patient or resident of a long-term care facility to receive visitors of his or her choice.

NEW SECTION. Sec. 9. (1) No long-term care ombudsman is liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against any employee of a facility or agency, any patient, resident, or client of a long-term care facility, or any volunteer, for any communication made, or information given or disclosed, to aid the long-term care ombudsman in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith. This subsection is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(3) All communications by a long-term care ombudsman, if reasonably related to the requirements of that individual's responsibilities under this chapter and done in good faith, are privileged and that privilege shall serve as a defense to any action in libel or slander.

(4) A representative of the office is exempt from being required to testify in court as to any confidential matters except as the court may deem necessary to enforce this chapter.

NEW SECTION. Sec. 10. The office shall prepare and submit by January 1 of each year a report on the operations of the office to the governor, the legislature, the federal commissioner on aging, any area agencies on aging, and the department. The report shall include information on complaints and conditions in long-term care facilities and may include recommendations for policy and program changes and appropriate supporting data.

NEW SECTION. Sec. 11. All records and files of long-term care ombudsmen relating to any complaint or investigation made pursuant to carrying out their duties and the identities of complainants, witnesses, patients, or residents shall remain confidential unless disclosure is authorized by the patient or resident or his or her guardian or legal representative. No disclosures may be made outside the office without the consent of any named witnesses, resident, patient, client, or complainant unless the disclosure is made without the identity of any of these individuals being disclosed.

NEW SECTION. Sec. 12. It is the intent that federal requirements be complied with and the department annually expend at least one percent of the state's allotment of social services funds from Title III B of the Older Americans Act of 1965, as it exists as of the effective date of this act, or twenty thousand dollars, whichever is greater to establish the state long-term care ombudsman program established by this chapter if funds are appropriated by the legislature.

Sec. 13. Section 1, chapter 109, Laws of 1979 and RCW 36.39.060 are each amended to read as follows:

(1) Counties, cities, and towns are granted the authority, and it is hereby declared to be a public purpose for counties, cities, and towns, to establish and administer senior citizens programs either directly or by creating

public corporations or authorities to carry out the programs and to expend their own funds for such purposes, as well as to expend federal, state, or private funds that are made available for such purposes. Such federal funds shall include, but not be limited to, funds provided under the federal Older Americans Act, as amended (42 U.S.C. Sec. 3001 et seq.).

(2) Counties, cities, and towns may establish and administer long-term care ombudsman programs for residents, patients, and clients if such a program is not prohibited by federal or state law. Such local ombudsman programs shall be coordinated with the efforts of other long-term care ombudsman programs, including the office of the state long-term care ombudsman established in section 3 of this act, to avoid multiple investigation of complaints.

Sec. 14. Section 4, chapter 131, Laws of 1975-'76 2nd ex. sess. as amended by section 3, chapter 321, Laws of 1977 ex. sess. and RCW 74-.38.040 are each amended to read as follows:

The community based services for low-income eligible persons provided by the department or the respective area agencies may include:

(1) Access services designed to provide identification of eligible persons, assessment of individual needs, reference to the appropriate service, and follow-up service where required. These services shall include information and referral, outreach, transportation and counseling;

(2) Day care offered on a regular, recurrent basis. General nursing, rehabilitation, personal care, nutritional services, social casework, mental health as provided pursuant to chapter 71.24 RCW and/or limited transportation services may be made available within this program;

(3) In-home care for persons, including basic health care; performance of various household tasks and other necessary chores, or, a combination of these services;

(4) Counseling on death for the terminally ill and care and attendance at the time of death; except, that this is not to include reimbursement for the use of life-sustaining mechanisms;

(5) Health services which will identify health needs and which are designed to avoid institutionalization; assist in securing admission to medical institutions or other health related facilities when required; and, assist in obtaining health services from public or private agencies or providers of health services. These services shall include health screening and evaluation, in-home services, health education, and such health appliances which will further the independence and well-being of the person;

(6) The provision of low cost, nutritionally sound meals in central locations or in the person's home in the instance of incapacity. Also, supportive services may be provided in nutritional education, shopping assistance, diet counseling and other services to sustain the nutritional well-being of these persons;

(7) The provisions of services to maintain a person's home in a state of adequate repair, insofar as is possible, for their safety and comfort. These services shall be limited, but may include housing counseling, minor repair and maintenance, and moving assistance when such repair will not attain standards of health and safety, as determined by the department;

(8) Civil legal services, as limited by RCW 2.50.100, for counseling and representation in the areas of housing, consumer protection, public entitlements, property, and related fields of law;

(9) Long-term care ombudsman programs for residents of all long-term care facilities.

Sec. 15. Section 5, chapter 131, Laws of 1975-'76 2nd ex. sess. as last amended by section 1, chapter 147, Laws of 1979 ex. sess. and RCW 74.38.050 are each amended to read as follows:

The services provided in RCW 74.38.040 may be provided to nonlow income eligible persons: PROVIDED, That the department and the area agencies on aging shall utilize volunteer workers and public assistant recipients to the maximum extent possible to provide the services provided in RCW 74.38.040; PROVIDED, FURTHER, That the department and the area agencies shall utilize the bid procedure pursuant to chapter 43.19 RCW for providing such services to low income and nonlow income persons whenever the services to be provided are available through private agencies at a cost savings to the department. The department shall establish a fee schedule based on the ability to pay and graduated to full recovery of the cost of the service provided; except, that nutritional services, health screening, services under the long-term care ombudsman program under chapter 43.—RCW (sections 1 through 12 of this 1983 act) and access services provided in RCW 74.38.040 shall not be based on need and no fee shall be charged; except further, notwithstanding any other provision of this chapter, that well adult clinic services may be provided in lieu of health screening services if such clinics use the fee schedule established by this section.

NEW SECTION. Sec. 16. Sections 1 through 12 of this act shall constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 17. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 7, 1983.

Passed the Senate April 21, 1983.

Approved by the Governor May 17, 1983.

Filed in Office of Secretary of State May 17, 1983.