

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 1956

By: Larason

AS INTRODUCED

An Act relating to public health and safety; amending 63 O.S. 1991, Sections 1-2214 and 1-2216, which relate to long-term care ombudsman; requiring certain legal counsel; specifying certain assistance; providing for powers and duties; modifying certain duties of the Commissioner for Human Services; authorizing and granting certain access; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-2214, is amended to read as follows:

Section 1-2214. A. For purposes of the Governmental Tort Claims Act, any state, area or local long-term care ombudsman shall be deemed to be an employee of this state and as such shall not be personally liable for any act or omission made within the "scope of employment", as such term is defined by the Governmental Tort Claims Act.

B. The Department of Human Services shall assure that adequate legal counsel is available to the Office of the State Long-Term Care Ombudsman for the advice and consultation needed to protect the

health, safety, welfare and rights of residents, and that legal representation is provided to any representative of the Office against:

1. Against whom suit or other legal action is brought in connection with any act or omission of a representative made within the scope of employment;

2. When the State Long-Term Care Ombudsman pursues administrative, legal, or other appropriate remedies on behalf of a resident of a long-term care facility; or

3. To assist the ombudsman and representatives of the Office in the performance of their official duties.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 63 of Title 1-2216.1, unless there is created a duplication in numbering, reads as follows:

A. The ombudsman shall personally or through representatives of the Office:

1. Identify, investigate and resolve complaints that:

a. are made by, or on behalf of, residents, and

b. relate to action, inaction or decisions that may adversely affect the health, safety, welfare or rights of the residents, including but not limited to the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees, of:

(1) providers, or representatives of providers, of long-term care services,

(2) public agencies, or

(3) health and social service agencies;

2. Provide services to assist the residents in protecting the health, safety, welfare and rights of the residents;

3. Inform the residents about means of obtaining services provided by long-term care providers or state agencies;

4. Ensure that the residents have regular and timely access to the services provided through the Office and that the residents and complainants receive timely responses from representatives of the Office to complaints;

5. Represent the interests of the residents before governmental agencies and seek administrative, legal and other remedies to protect the health, safety, welfare and rights of the residents;

6. a. analyze, comment on and monitor the development and implementation of federal, state and local laws, rules and other government policies and actions that pertain to the health, safety, welfare and rights of the residents with respect to the adequacy of long-term care facilities and services in the state,
- b. recommend any changes in such laws, regulations, policies and actions as the Office determines to be appropriate, and
- c. facilitate public comment on the laws, regulations, policies and actions;

7. a. provide for training representatives of the Office,
- b. promote the development of citizen organizations to participate in the program, and
- c. provide technical support for the development of resident and family councils to protect the well-being and rights of residents; and

8. Carry out such other activities as the Commission for Human Services determines to be appropriate.

B. When deemed necessary by the State Long-Term Care Ombudsman to resolve or prevent problems affecting the quality of life and care of any resident of a long-term care facility in this state, the ombudsman shall have standing to appear before any:

1. Court of this state; and

2. Agency of this state for purposes of participating as a party in an individual proceeding brought pursuant to Article II of the Administrative Procedures Act or any other state law.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-2216, is amended to read as follows:

Section 1-2216. A. The Commission for Human Services shall establish by rule or regulation:

1. The powers and official duties of the State Long-Term Care Ombudsman consistent with applicable federal law and regulations;

2. Minimum qualifications for persons to serve as representatives of the Office of the State Long-Term Care Ombudsman;

3. Initial and continuing training requirements for ombudsman staff and volunteers; and

4. Procedures to ensure that no officer, employee or other representative of the Office is subject to a conflict of interest which would impair the ability of any such person to carry out his or her official duties in an impartial manner.

B. The Oklahoma State Council on Aging, established by the Commission for Human Services to review, monitor and evaluate programs targeted to older persons, shall serve in an advisory capacity to the State Long-Term Care Ombudsman through establishment of a committee with equal provider and consumer representation.

C. The State Long-Term Care Ombudsman shall have and the Commission for Human Services shall ensure that representatives of the Office have:

1. Access to long-term care facilities and residents;

2. a. appropriate access to review the medical and social records of a resident, if:

(1) the representative has the permission of the resident, or the legal representative of the resident, or

(2) the resident is unable to consent to the review and has no legal representative, or

b. access to the records as is necessary to investigate a compliant if:

(1) a legal guardian of the resident refuses to give the permission,

(2) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident, and

(3) the representative obtains the approval of the Commission;

3. Access to the administrative records, policies and documents, to which the residents have, or the general public has, access, of long-term care facilities; and

4. Access to and, on request, copies of all licensing and certification records maintained by the Department or any other agency of this state with respect to long-term care facilities.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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