

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2407

By: Deutschendorf of the House

and

Maddox of the Senate

AS INTRODUCED

An Act relating to public health and safety;

specifying purpose of State Long-Term Care
Ombudsman Program; specifying powers and duties;
providing legislative intent to strengthen and fund
the program; amending 63 O.S. Sections 1-2213, as
amended by Section 1, Chapter 89, O.S.L. 1994 and
1-2216 (63 O.S. Supp. 1995, Section 1-2213), which
relate to the State Long-Term Care Ombudsman;
providing for alternate basis of powers and duties;
providing for codification; and declaring an
emergency.

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

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

A. 1. The purpose of the State Long-Term Care Ombudsman
Program is to improve the quality of life and the quality of care of
elderly citizens residing in long-term care facilities in Oklahoma.

2. Specifically, through the state Ombudsman Program complaints made by or in behalf of the elderly citizens residing in long-term facilities are resolved. Often, in order to resolve such complaints, investigations of action or inaction of long-term care service providers or of public or service agencies which may adversely affect the health, safety, welfare or rights of residents of long-term care facilities are made by the State Ombudsman.

3. Another responsibility of the Ombudsman Program is to publish an annual report which includes:

- a. the number and categories of complaints regarding abuse and neglect of elderly citizens residing in long-term care facilities received, using the state's complaint documentation system,
- b. the percentage of complaints which were verified,
- c. other statistical data, and
- d. identification of significant long-term care issues and recommendations for resolution.

B. The Ombudsman Program is the most cost-effective program in this state due to the utilization of volunteers who worked over five thousand seven hundred (5,700) hours in fiscal year 1994. This resulted in a savings for the state and the public of over Twenty-eight Thousand Five Hundred Dollars (\$28,500.00).

C. Because many elderly citizens of this state who reside in long-term care facilities are still plagued by verbal, physical and sometimes sexual abuse, and since no other program in this state duplicates the Ombudsman Program, it is imperative to the citizens of Oklahoma that the Ombudsman Program be continued with the same scope of authority and direction and at the present level of funding regardless of whether the existing federal regulations or laws protecting the care of elderly and incapacitated residents of long-term care facilities are downgraded or eliminated by the federal government.

D. Therefore, it is the intent of the Legislature that:

1. An amount equal to the difference between federal funds appropriated to the Program for the fiscal year ending June 30, 1995, and the federal funds appropriated to the Program for the fiscal year ending June 30, 1996, be appropriated to the Department of Human Services, earmarked for the State Long-Term Care Ombudsman Program. These funds shall be appropriated from the General Revenue Fund or the State Treasury for the fiscal year ending June 30, 1996; and

2. Should federal laws or rules protecting the elderly residents of long-term care facilities be downgraded or eliminated, the state statutes and rules concerning the State Long-Term Care Ombudsman Program shall be strengthened to protect the state elderly and incapacitated citizens.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-2213, as amended by Section 1, Chapter 89, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-2213), is amended to read as follows:

Section 1-2213. A. There is hereby created within the Department of Human Services the Office of the State Long-Term Care Ombudsman. The Office, under the auspices and general direction of the State Long-Term Care Ombudsman, shall carry out a long-term care ombudsman program in accordance with the Older Americans Act of 1965, as amended, and in accordance with federal regulations issued pursuant to the Older Americans Act or as otherwise provided by this act.

B. 1. In accordance with the Older Americans Act of 1965, as amended and in accordance with federal regulations issued pursuant thereto, or as otherwise provided by this act, the State Long-Term Care Ombudsman and representatives of the Office shall have:

- a. access to long-term care facilities and residents,
- b. (1) access to review the medical and social records of a resident, if:

- (a) the representative of the Office has the permission of the resident, or the legal representative of the resident, or
 - (b) the resident is unable to consent to the review and has no legal representative and the representative of the Office obtains the approval of the State Long-Term Care Ombudsman, or
- (2) access to the records as is necessary to investigate a complaint if:
- (a) a legal guardian of the resident refuses to give the permission,
 - (b) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident, and
 - (c) the representative obtains the approval of the State Long-Term Care Ombudsman,
- c. 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
- d. access to 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.

2. For purposes of this subsection, the term "Representative of the Office" shall not include any unpaid or volunteer state, area, or local ombudsman.

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~~ rules or as provided by this act;

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~~ officers, ~~employee~~ employees or other ~~representative~~ representatives of the Office ~~is~~ are not subject to a conflict of interest which would impair ~~the ability~~ their ability ~~of any such person~~ to carry out ~~his or her~~ their 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.

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.

45-2-8982

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