

LEGISLATIVE BILL 903

Approved by the Governor April 11, 2018

Introduced by Linehan, 39.

A BILL FOR AN ACT relating to aging services; to amend sections 81-2225, 81-2237, 81-2238, 81-2239, 81-2242, 81-2243, 81-2244, 81-2245, 81-2246, 81-2247, 81-2248, 81-2250, 81-2251, 81-2252, 81-2253, 81-2254, 81-2255, 81-2258, 81-2259, 81-2260, 81-2261, 81-2262, and 81-2264, Reissue Revised Statutes of Nebraska; to change reimbursement provisions under the Nebraska Community Aging Services Act; to change provisions of the Long-Term Care Ombudsman Act relating to complaints and investigations, rulemaking authority, long-term care facility residents, resident representatives, and access to medical and personal records; to define and redefine terms; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 81-2225, Reissue Revised Statutes of Nebraska, is amended to read:

81-2225 To qualify for reimbursement by the department, as provided for in section 81-2224, a designated area agency on aging shall have a department-approved plan and budget and shall provide no less than twenty-five percent of such approved plan and budget from local sources. Local sources shall include, but shall not be limited to, local tax dollars and ~~and~~ donations, ~~and fees,~~ and shall not include receipts from federal or state sources, except federal revenue-sharing trust funds.

Sec. 2. Section 81-2237, Reissue Revised Statutes of Nebraska, is amended to read:

81-2237 Sections 81-2237 to 81-2264 and sections 10 to 12 of this act shall be known and may be cited as the Long-Term Care Ombudsman Act.

Sec. 3. Section 81-2238, Reissue Revised Statutes of Nebraska, is amended to read:

81-2238 For purposes of the Long-Term Care Ombudsman Act, the definitions found in sections 81-2239 to 81-2248 and sections 10 to 12 of this act shall be used.

Sec. 4. Section 81-2239, Reissue Revised Statutes of Nebraska, is amended to read:

81-2239 Department means ~~shall mean~~ the Department of Health and Human Services.

Sec. 5. Section 81-2242, Reissue Revised Statutes of Nebraska, is amended to read:

81-2242 Local long-term care ombudsman program means ~~shall mean~~ an entity, either public or private and nonprofit, designated as a local long-term care ombudsman program by the office ~~department~~.

Sec. 6. Section 81-2243, Reissue Revised Statutes of Nebraska, is amended to read:

81-2243 Long-term care facility includes ~~shall include~~:

- (1) A nursing facility;
- (2) An assisted-living facility;
- (3) Any other adult care home;
- (4) A continuing care community;
- (5) Any swing bed in an acute care facility or extended care facility; and
- (6) Any adult day service.

Sec. 7. Section 81-2244, Reissue Revised Statutes of Nebraska, is amended to read:

81-2244 Office means ~~shall mean~~ the office of the state long-term care ombudsman.

Sec. 8. Section 81-2245, Reissue Revised Statutes of Nebraska, is amended to read:

81-2245 Older Americans Act means ~~shall mean~~ the federal Older Americans Act, as amended.

Sec. 9. Section 81-2247, Reissue Revised Statutes of Nebraska, is amended to read:

81-2247 Ombudsman advocate means ~~shall mean~~ an employee or a volunteer of the office other than the state long-term care ombudsman or of a local program trained and certified to carry out duties ~~prescribed in rules and regulations~~ of the office.

Sec. 10. Representative of the office means an employee or volunteer designated by the state long-term care ombudsman to fulfill the duties of the office, whether personnel supervision is provided by the state long-term care ombudsman or his or her designee or by an agency hosting a local long-term care ombudsman designated by the state long-term care ombudsman.

Sec. 11. Section 81-2246, Reissue Revised Statutes of Nebraska, is amended to read:

81-2246 Resident means Older individual shall mean an individual who resides in a long-term care facility as a patient, resident, or client is sixty years of age or older.

Sec. 12. Resident representative means:

(1) An individual chosen by the resident to act on behalf of the resident in order to support the resident in decisionmaking; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications; or

(2) A person authorized by state or federal law, including, but not limited to, agents under a power of attorney, representative payees, and other fiduciaries, to act on behalf of the resident in order to support the resident in decisionmaking; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications.

Sec. 13. Section 81-2248, Reissue Revised Statutes of Nebraska, is amended to read:

81-2248 State long-term care ombudsman means ~~shall mean~~ the person or persons appointed under section 81-2249 to fulfill the responsibilities of the office.

Sec. 14. Section 81-2250, Reissue Revised Statutes of Nebraska, is amended to read:

81-2250 The department shall establish a long-term care ombudsman program consisting of the state long-term care ombudsman and any local long-term care ombudsman programs. The program, ~~as approved and administered by the department,~~ shall:

(1) Investigate and resolve complaints ~~not reportable under the Adult Protective Services Act~~ made by or on behalf of ~~older individuals who are patients, residents, or clients of long-term care facilities~~ relating to action, inaction, or decisions of providers of long-term care services or their representatives, of public agencies, or of social service agencies which may adversely affect the health, safety, welfare, or rights of ~~residents such older individuals~~. The ~~office~~ department shall implement ~~adopt and promulgate~~ rules and regulations regarding the handling of complaints received under this section, including procedures for conducting investigations of complaints. The ~~rules and regulations shall include~~ procedures to ensure that no state long-term care ombudsman or ombudsman advocate investigates any complaint involving a provider with which the representative was once employed or associated;

(2) Provide for the training of the state long-term care ombudsman and ombudsman advocates and promote the development of citizen organizations to participate in the program, provide training to ombudsman advocates and staff of local long-term care ombudsman programs, issue certificates attesting to the successful completion of the prescribed training, and provide ongoing technical assistance to such local programs;

(3) Analyze and monitor the development and implementation of federal, state, and local laws, regulations, and policies with respect to long-term care facilities and services and recommend any changes in such laws, regulations, and policies deemed by the long-term care ombudsman program to be appropriate;

(4) Establish a statewide, 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. The data shall be submitted to the department at least on an annual basis;

(5) Prepare reports ~~as requested by the department~~ and provide policy, regulatory, and legislative recommendations to solve problems, resolve complaints, and improve the quality of care and life in long-term care facilities;

(6) Provide for public forums to discuss concerns and problems relating to action, inaction, or decisions that may adversely affect the health, safety, welfare, or civil rights of residents of ~~long-term care facilities~~ and resident ~~their~~ representatives, public agencies and entities, and social service agencies; and

(7) Provide information to public agencies, legislators, and others, ~~as deemed necessary by the department,~~ regarding the problems and concerns, including recommendations related to such problems and concerns, of residents ~~older individuals residing in long-term care facilities~~.

Sec. 15. Section 81-2251, Reissue Revised Statutes of Nebraska, is amended to read:

81-2251 The department may ~~shall~~ adopt and promulgate rules and regulations to carry out the Long-Term Care Ombudsman Act. The department shall ensure that the state long-term care ombudsman has no conflicts of interest in fulfilling the duties of the office, is capable of administering the office impartially, has an understanding of long-term care issues, has experience in the fields of aging and health care, and has worked with and been involved in volunteer programs.

Sec. 16. Section 81-2252, Reissue Revised Statutes of Nebraska, is amended to read:

81-2252 The office ~~department~~ may designate for two-year periods, within each planning-and-service area designated pursuant to section 81-2213, local long-term care ombudsman programs ~~in accordance with rules and regulations established by the department. Such rules and regulations shall include specifications regarding the sites of the offices of the local long-term care ombudsman programs and requirements concerning staffing, levels of training required for ombudsman advocates and staff, standards of operation, and program review.~~

The office may withdraw or provisionally maintain the designation of an entity as a local long-term care ombudsman program ~~if the entity fails to meet the rules and regulations established by the department. If the designation of a local long-term care ombudsman program is provisionally maintained, the~~

office shall notify the program of the reasons for the provisional status, of the changes or corrections necessary for the removal of the provisional status, of the length of time permitted to make the changes or corrections, and that the office will withdraw the designation if the program does not comply with the requirements specified in the notice. If the designation of a local long-term care ombudsman program is withdrawn, the office may provide for the continuation of long-term care ombudsman services for that area.

Sec. 17. Section 81-2253, Reissue Revised Statutes of Nebraska, is amended to read:

81-2253 (1) The state long-term care ombudsman shall ensure that the staff of the office and of local long-term care ombudsman programs are trained in:

(a) Federal, state, and local laws, regulations, and policies with respect to long-term care facilities in the state;

(b) Investigative techniques;

(c) Management of long-term care facilities; and

(d) Such other matters as the office department deems appropriate.

(2) The state long-term care ombudsman shall develop procedures for the certification of ombudsman advocates.

(3) No ombudsman advocate shall investigate any complaint filed with the office unless such person is certified by the office.

Sec. 18. Section 81-2254, Reissue Revised Statutes of Nebraska, is amended to read:

81-2254 The office shall investigate and seek to resolve complaints and concerns ~~not reportable under the Adult Protective Services Act~~ communicated by or on behalf of ~~a resident an older individual who is a patient, resident, or client of any long-term care facility~~. The office may initiate investigations based on its observations of the conditions in a long-term care facility. If the office does not investigate a complaint, the complainant shall be notified of the decision not to investigate and the reasons for the decision.

Sec. 19. Section 81-2255, Reissue Revised Statutes of Nebraska, is amended to read:

81-2255 (1) Notwithstanding any other provision of law related to reporting, when ~~when~~ abuse, neglect, or exploitation of a resident an older individual who is a patient, resident, or client of a long-term care facility is suspected, the long-term care ombudsman program, with the permission of the resident or the resident representative, shall make an immediate referral to adult protective services of the department or the appropriate law enforcement agency. ~~The long-term care ombudsman program shall coordinate with adult protective services or the appropriate law enforcement agency, if requested, pursuant to any investigation of such abuse, neglect, or exploitation.~~

(2) Any state agency or board which responds to a complaint against a long-term care facility or an individual employed by a long-term care facility that was referred to the state agency or board by the office shall forward to the office copies of related inspection reports, plans of correction, and notice of any citations and sanctions levied against the long-term care facility or the individual.

Sec. 20. Section 81-2258, Reissue Revised Statutes of Nebraska, is amended to read:

81-2258 (1) ~~The~~ In order for the office to carry out its responsibilities under the Long-Term Care Ombudsman Act, the office shall have access to the medical and personal records of a resident an older individual who is a patient, resident, or client of a long-term care facility which are retained by the facility. If the resident older individual:

(a) Has the ability to consent in writing or through the use of auxiliary aids and services, access may only be obtained by the written consent of the resident older individual;

(b) Is unable to consent in writing or through the use of auxiliary aids and services, oral consent may be given ~~in the presence of a third party as witness before access is given~~;

(c) Is under guardianship or conservatorship that provides the guardian or conservator with the authority to approve review of records, the office shall obtain the permission of the guardian or conservator for review of the records unless (i) the existence of the guardianship or conservatorship is unknown to the office or the facility, (ii) the guardian or conservator cannot be reached within five working days, (iii) the subject of the complaint is the guardian or the conservator, or (iv) in case of an emergency; ~~and~~

(d) Has a resident representative other than a guardian or conservator as described in subdivision (c) of this subsection, the office shall obtain the permission of the resident representative for review of the records unless (i) the existence of the resident representative is unknown to the office or the facility, (ii) the resident representative cannot be reached within five working days, (iii) the subject of the complaint is the resident representative, or (iv) in case of emergency; and

(e) ~~(d)~~ Is unable to express written or oral consent and there is no guardian, or conservator, or other resident representative or the notification of the guardian, or conservator, or other resident representative is not applicable for reasons set forth in subdivision (c) or (d) of this subsection or the resident older individual is deceased, inspection of records may be made by the state long-term care ombudsman or representatives of the office.

(2) Copies of records may be reproduced by the office.

(3) Upon request by the office, a long-term care facility shall provide to the office the name, address, and telephone number of the resident guardian, conservator, attorney in fact, legal representative, or next of kin of a any

~~patient, resident, or client.~~

(4) The long-term care facility and personnel who disclose records pursuant to this section shall not be liable for the disclosure.

(5) The office shall establish procedures to protect the confidentiality of records obtained pursuant to this section.

Sec. 21. Section 81-2259, Reissue Revised Statutes of Nebraska, is amended to read:

81-2259 A state long-term care ombudsman or an ombudsman advocate shall have immediate access to any consenting ~~patient, resident, or client of a long-term care facility~~ for the purpose of effectively carrying out the Long-Term Care Ombudsman Act if such state long-term care ombudsman or ombudsman advocate identifies himself or herself and presents his or her credentials to the individual in charge of the long-term care facility.

Sec. 22. Section 81-2260, Reissue Revised Statutes of Nebraska, is amended to read:

81-2260 (1) Information relating to any complaints or investigation made pursuant to the Long-Term Care Ombudsman Act that discloses the identities of complainants or ~~, patients, residents, or clients~~ shall remain confidential except:

(a) When disclosure is authorized in writing by the complainant, ~~patient, resident, or resident client or the older individual's guardian or legal representative;~~

(b) When disclosure is necessary to an investigation of abuse, neglect, or exploitation and the disclosure is made to the Attorney General, the county attorney, or the department;

(c) When disclosure is necessary for the provision of services to the ~~patient, resident, or client~~ and the ~~patient, resident, or client~~ is unable to express written or oral consent; or

(d) Upon court order.

(2) Access to the records and files of the office relating to any complaint or investigation made pursuant to the Long-Term Care Ombudsman Act shall be permitted only at the discretion of the state long-term care ombudsman, except that the identity of any complainant, witness, or patient, resident, or client shall not be disclosed by such ombudsman except:

(a) When disclosure is authorized in writing by such complainant, witness, ~~patient, resident, or resident client or the older individual's guardian or legal representative; or~~

(b) Upon court order. ~~;~~ ~~or~~

~~(c) Pursuant to subsection (3) of this section.~~

~~(3) The records and files of the office shall be released to adult protective services of the department if it so requests for purposes of the Adult Protective Services Act.~~

~~(4) The department shall have access to the records and files of the office to verify the effectiveness and quality of the long-term care ombudsman program.~~

Sec. 23. Section 81-2261, Reissue Revised Statutes of Nebraska, is amended to read:

81-2261 The department shall ensure that:

(1) No individual involved in the designation of the state long-term care ombudsman has a pecuniary or other interest in a long-term care facility;

(2) No state long-term care ombudsman or ombudsman advocate has a pecuniary or other interest in a long-term care facility;

(3) Mechanisms are in place to identify and remedy all such or other similar conflicts; and

(4) The office has the ability to pursue administrative, legal, and other appropriate remedies on behalf of ~~patients, residents, and clients of long-term care facilities.~~

Sec. 24. Section 81-2262, Reissue Revised Statutes of Nebraska, is amended to read:

81-2262 Any local long-term care ombudsman program or any individual certified by the office, whether an employee of the program or office or an unpaid volunteer of the program or office, shall be treated as a representative of the office.

Sec. 25. Section 81-2264, Reissue Revised Statutes of Nebraska, is amended to read:

81-2264 (1) No person shall willfully interfere with the lawful actions of the office, including the request for immediate entry into a long-term care facility by an individual certified pursuant to section 81-2253 who identifies himself or herself and presents his or her credentials to the individual in charge of the long-term care facility.

(2) No person shall institute discriminatory, disciplinary, or retaliatory action against any officer or employee of a long-term care facility or governmental agency or against any ~~patient, resident, resident representative, or client of a long-term care facility or guardian or family member of a resident~~ thereof for any communications by him or her with the office or for any information given or disclosed by him or her in good faith to aid the office in carrying out its duties and responsibilities.

(3) The department shall implement mechanisms to prohibit, and investigate allegations of, interference, retaliation, and reprisals:

(a) By a long-term care facility, another entity, or an individual with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the office; or

(b) By a long-term care facility, another entity, or an individual against the ombudsman or representatives of the office for fulfillment of their functions, responsibilities, or duties.

(4) The department shall provide for appropriate sanctions with respect to such interference, retaliation, and reprisals if verified by such investigation.

Sec. 26. Original sections 81-2225, 81-2237, 81-2238, 81-2239, 81-2242, 81-2243, 81-2244, 81-2245, 81-2246, 81-2247, 81-2248, 81-2250, 81-2251, 81-2252, 81-2253, 81-2254, 81-2255, 81-2258, 81-2259, 81-2260, 81-2261, 81-2262, and 81-2264, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 27. Since an emergency exists, this act takes effect when passed and approved according to law.