

AMENDMENTS TO LB903

Introduced by Health and Human Services.

1 1. Strike the original sections and insert the following new
2 sections:

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

5 81-2225 To qualify for reimbursement by the department, as provided
6 for in section 81-2224, a designated area agency on aging shall have a
7 department-approved plan and budget and shall provide no less than
8 twenty-five percent of such approved plan and budget from local sources.
9 Local sources shall include, but shall not be limited to, local tax
10 dollars and ~~,~~ donations, ~~and fees,~~ and shall not include receipts from
11 federal or state sources, except federal revenue-sharing trust funds.

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

14 81-2237 Sections 81-2237 to 81-2264 and sections 10 to 12 of this
15 act shall be known and may be cited as the Long-Term Care Ombudsman Act.

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

18 81-2238 For purposes of the Long-Term Care Ombudsman Act, the
19 definitions found in sections 81-2239 to 81-2248 and sections 10 to 12 of
20 this act shall be used.

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

23 81-2239 Department means ~~shall mean~~ the Department of Health and
24 Human Services.

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

27 81-2242 Local long-term care ombudsman program means ~~shall mean~~ an

1 entity, either public or private and nonprofit, designated as a local
2 long-term care ombudsman program by the office ~~department~~.

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

5 81-2243 Long-term care facility includes ~~shall include~~:

6 (1) A nursing facility;

7 (2) An assisted-living facility;

8 (3) Any other adult care home;

9 (4) A continuing care community;

10 (5) Any swing bed in an acute care facility or extended care
11 facility; and

12 (6) Any adult day service.

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

15 81-2244 Office means ~~shall mean~~ the office of the state long-term
16 care ombudsman.

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

19 81-2245 Older Americans Act means ~~shall mean~~ the federal Older
20 Americans Act, as amended.

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

23 81-2247 Ombudsman advocate means ~~shall mean~~ an employee or a
24 volunteer of the office other than the state long-term care ombudsman or
25 of a local program trained and certified to carry out duties ~~prescribed~~
26 ~~in rules and regulations~~ of the office.

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

1 term care ombudsman.

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

4 ~~81-2246 Resident means Older individual shall mean~~ an individual
5 who resides in a long-term care facility as a patient, resident, or
6 client is sixty years of age or older.

7 Sec. 12. Resident representative means:

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

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

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

20 81-2248 State long-term care ombudsman means shall mean the person
21 ~~or persons~~ appointed under section 81-2249 to fulfill the
22 responsibilities of the office.

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

25 81-2250 The department shall establish a long-term care ombudsman
26 program consisting of the state long-term care ombudsman and any local
27 long-term care ombudsman programs. The program, ~~as approved and~~
28 ~~administered by the department,~~ shall:

29 (1) Investigate and resolve complaints ~~not reportable under the~~
30 ~~Adult Protective Services Act~~ made by or on behalf of ~~older individuals~~
31 ~~who are patients, residents, or clients of long-term care facilities~~

1 relating to action, inaction, or decisions of providers of long-term care
2 services or their representatives, of public agencies, or of social
3 service agencies which may adversely affect the health, safety, welfare,
4 or rights of residents ~~such older individuals~~. The office ~~department~~
5 shall implement ~~adopt and promulgate rules and regulations regarding the~~
6 ~~handling of complaints received under this section, including procedures~~
7 ~~for conducting investigations of complaints. The rules and regulations~~
8 ~~shall include~~ procedures to ensure that no state long-term care ombudsman
9 or ombudsman advocate investigates any complaint involving a provider
10 with which the representative was once employed or associated;

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

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

23 (4) Establish a statewide, uniform reporting system to collect and
24 analyze data relating to complaints and conditions in long-term care
25 facilities for the purpose of identifying and resolving significant
26 problems. The data shall be submitted to the department at least on an
27 annual basis;

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

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

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

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

13 81-2251 The department ~~may shall~~ adopt and promulgate rules and
14 regulations to carry out the Long-Term Care Ombudsman Act. The department
15 shall ensure that the state long-term care ombudsman has no conflicts of
16 interest in fulfilling the duties of the office, is capable of
17 administering the office impartially, has an understanding of long-term
18 care issues, has experience in the fields of aging and health care, and
19 has worked with and been involved in volunteer programs.

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

22 81-2252 The office ~~department~~ may designate for two-year periods,
23 within each planning-and-service area designated pursuant to section
24 81-2213, local long-term care ombudsman programs ~~in accordance with rules~~
25 ~~and regulations established by the department.~~ Such rules and regulations
26 ~~shall include specifications regarding the sites of the offices of the~~
27 ~~local long-term care ombudsman programs and requirements concerning~~
28 ~~staffing, levels of training required for ombudsman advocates and staff,~~
29 ~~standards of operation, and program review.~~

30 The office may withdraw or provisionally maintain the designation of
31 an entity as a local long-term care ombudsman program ~~if the entity fails~~

1 ~~to meet the rules and regulations established by the department.~~ If the
2 designation of a local long-term care ombudsman program is provisionally
3 maintained, the office shall notify the program of the reasons for the
4 provisional status, of the changes or corrections necessary for the
5 removal of the provisional status, of the length of time permitted to
6 make the changes or corrections, and that the office will withdraw the
7 designation if the program does not comply with the requirements
8 specified in the notice. If the designation of a local long-term care
9 ombudsman program is withdrawn, the office may provide for the
10 continuation of long-term care ombudsman services for that area.

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

13 81-2253 (1) The state long-term care ombudsman shall ensure that the
14 staff of the office and of local long-term care ombudsman programs are
15 trained in:

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

18 (b) Investigative techniques;

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

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

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

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

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

27 81-2254 The office shall investigate and seek to resolve complaints
28 and concerns ~~not reportable under the Adult Protective Services Act~~
29 communicated by or on behalf of a resident ~~an older individual who is a~~
30 ~~patient, resident, or client of any long-term care facility.~~ The office
31 may initiate investigations based on its observations of the conditions

1 in a long-term care facility. If the office does not investigate a
2 complaint, the complainant shall be notified of the decision not to
3 investigate and the reasons for the decision.

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

6 81-2255 (1) Notwithstanding any other provision of law related to
7 reporting, when ~~When~~ abuse, neglect, or exploitation of a resident an
8 ~~older individual who is a patient, resident, or client of a long-term~~
9 ~~care facility~~ is suspected, the long-term care ombudsman program, with
10 the permission of the resident or the resident representative, shall make
11 an immediate referral to adult protective services of the department or
12 the appropriate law enforcement agency. ~~The long-term care ombudsman~~
13 ~~program shall coordinate with adult protective services or the~~
14 ~~appropriate law enforcement agency, if requested, pursuant to any~~
15 ~~investigation of such abuse, neglect, or exploitation.~~

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

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

24 81-2258 (1) The ~~In order for the office to carry out its~~
25 ~~responsibilities under the Long-Term Care Ombudsman Act,~~ the office shall
26 have access to the medical and personal records of a resident an ~~older~~
27 ~~individual who is a patient, resident, or client of a long-term care~~
28 ~~facility which are retained by the facility. If the~~ resident ~~older~~
29 ~~individual:~~

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

1 consent of the resident ~~elder individual~~;

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

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

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

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

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

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

1 or next of kin of a ~~any patient,~~ resident, ~~or client.~~

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

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

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

8 81-2259 A state long-term care ombudsman or an ombudsman advocate
9 shall have immediate access to any consenting ~~patient,~~ resident, ~~or~~
10 ~~client of a long-term care facility~~ for the purpose of effectively
11 carrying out the Long-Term Care Ombudsman Act if such state long-term
12 care ombudsman or ombudsman advocate identifies himself or herself and
13 presents his or her credentials to the individual in charge of the long-
14 term care facility.

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

17 81-2260 (1) Information relating to any complaints or investigation
18 made pursuant to the Long-Term Care Ombudsman Act that discloses the
19 identities of complainants or ~~, patients,~~ residents, ~~or clients~~ shall
20 remain confidential except:

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

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

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

30 (d) Upon court order.

31 (2) Access to the records and files of the office relating to any

1 complaint or investigation made pursuant to the Long-Term Care Ombudsman
2 Act shall be permitted only at the discretion of the state long-term care
3 ombudsman, except that the identity of any complainant, witness, or
4 ~~patient, resident, or client~~ shall not be disclosed by such ombudsman
5 except:

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

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

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

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

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

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

19 81-2261 The department shall ensure that:

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

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

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

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

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

1 81-2262 Any local long-term care ombudsman program or any individual
2 certified by the office, whether an employee of the program or office or
3 an unpaid volunteer of the program or office, shall be treated as a
4 representative of the office.

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

7 81-2264 (1) No person shall willfully interfere with the lawful
8 actions of the office, including the request for immediate entry into a
9 long-term care facility by an individual certified pursuant to section
10 81-2253 who identifies himself or herself and presents his or her
11 credentials to the individual in charge of the long-term care facility.

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

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

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

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

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

1 Sec. 26. Original sections 81-2225, 81-2237, 81-2238, 81-2239,
2 81-2242, 81-2243, 81-2244, 81-2245, 81-2246, 81-2247, 81-2248, 81-2250,
3 81-2251, 81-2252, 81-2253, 81-2254, 81-2255, 81-2258, 81-2259, 81-2260,
4 81-2261, 81-2262, and 81-2264, Reissue Revised Statutes of Nebraska, are
5 repealed.

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