

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 903

FINAL READING

Introduced by Linehan, 39.

Read first time January 08, 2018

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to aging services; to amend sections 81-2225,
2 81-2237, 81-2238, 81-2239, 81-2242, 81-2243, 81-2244, 81-2245,
3 81-2246, 81-2247, 81-2248, 81-2250, 81-2251, 81-2252, 81-2253,
4 81-2254, 81-2255, 81-2258, 81-2259, 81-2260, 81-2261, 81-2262, and
5 81-2264, Reissue Revised Statutes of Nebraska; to change
6 reimbursement provisions under the Nebraska Community Aging Services
7 Act; to change provisions of the Long-Term Care Ombudsman Act
8 relating to complaints and investigations, rulemaking authority,
9 long-term care facility residents, resident representatives, and
10 access to medical and personal records; to define and redefine
11 terms; to harmonize provisions; to repeal the original sections; and
12 to declare an emergency.

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

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

3 81-2225 To qualify for reimbursement by the department, as provided
4 for in section 81-2224, a designated area agency on aging shall have a
5 department-approved plan and budget and shall provide no less than
6 twenty-five percent of such approved plan and budget from local sources.
7 Local sources shall include, but shall not be limited to, local tax
8 dollars and ~~, donations, and fees,~~ and shall not include receipts from
9 federal or state sources, except federal revenue-sharing trust funds.

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

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

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

16 81-2238 For purposes of the Long-Term Care Ombudsman Act, the
17 definitions found in sections 81-2239 to 81-2248 and sections 10 to 12 of
18 this act shall be used.

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

21 81-2239 Department means ~~shall mean~~ the Department of Health and
22 Human Services.

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

25 81-2242 Local long-term care ombudsman program means ~~shall mean~~ an
26 entity, either public or private and nonprofit, designated as a local
27 long-term care ombudsman program by the office ~~department~~.

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

30 81-2243 Long-term care facility includes ~~shall include~~:

31 (1) A nursing facility;

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

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

9 81-2244 Office means ~~shall mean~~ the office of the state long-term
10 care ombudsman.

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

13 81-2245 Older Americans Act means ~~shall mean~~ the federal Older
14 Americans Act, as amended.

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

17 81-2247 Ombudsman advocate means ~~shall mean~~ an employee or a
18 volunteer of the office other than the state long-term care ombudsman or
19 of a local program trained and certified to carry out duties ~~prescribed~~
20 ~~in rules and regulations~~ of the office.

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

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

29 81-2246 Resident means ~~Older individual shall mean~~ an individual
30 who resides in a long-term care facility as a patient, resident, or
31 client is sixty years of age or older.

1 Sec. 12. Resident representative means:

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

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

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

14 81-2248 State long-term care ombudsman means ~~shall mean~~ the person
15 ~~or persons~~ appointed under section 81-2249 to fulfill the
16 responsibilities of the office.

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

19 81-2250 The department shall establish a long-term care ombudsman
20 program consisting of the state long-term care ombudsman and any local
21 long-term care ombudsman programs. The program, ~~as approved and~~
22 ~~administered by the department,~~ shall:

23 (1) Investigate and resolve complaints ~~not reportable under the~~
24 ~~Adult Protective Services Act~~ made by or on behalf of ~~older individuals~~
25 ~~who are patients, residents, or clients of long-term care facilities~~
26 relating to action, inaction, or decisions of providers of long-term care
27 services or their representatives, of public agencies, or of social
28 service agencies which may adversely affect the health, safety, welfare,
29 or rights of residents ~~such older individuals~~. The office ~~department~~
30 shall implement ~~adopt and promulgate rules and regulations regarding the~~
31 ~~handling of complaints received under this section, including procedures~~

1 ~~for conducting investigations of complaints. The rules and regulations~~
2 ~~shall include~~ procedures to ensure that no state long-term care ombudsman
3 or ombudsman advocate investigates any complaint involving a provider
4 with which the representative was once employed or associated;

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

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

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

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

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

31 (7) Provide information to public agencies, legislators, and others,

1 ~~as deemed necessary by the department,~~ regarding the problems and
2 concerns, including recommendations related to such problems and
3 concerns, of residents ~~older individuals residing in long-term care~~
4 ~~facilities.~~

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

7 81-2251 The department ~~may shall~~ adopt and promulgate rules and
8 regulations to carry out the Long-Term Care Ombudsman Act. The department
9 shall ensure that the state long-term care ombudsman has no conflicts of
10 interest in fulfilling the duties of the office, is capable of
11 administering the office impartially, has an understanding of long-term
12 care issues, has experience in the fields of aging and health care, and
13 has worked with and been involved in volunteer programs.

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

16 81-2252 The office ~~department~~ may designate for two-year periods,
17 within each planning-and-service area designated pursuant to section
18 81-2213, local long-term care ombudsman programs ~~in accordance with rules~~
19 ~~and regulations established by the department.~~ Such rules and regulations
20 ~~shall include specifications regarding the sites of the offices of the~~
21 ~~local long-term care ombudsman programs and requirements concerning~~
22 ~~staffing, levels of training required for ombudsman advocates and staff,~~
23 ~~standards of operation, and program review.~~

24 The office may withdraw or provisionally maintain the designation of
25 an entity as a local long-term care ombudsman program ~~if the entity fails~~
26 ~~to meet the rules and regulations established by the department.~~ If the
27 designation of a local long-term care ombudsman program is provisionally
28 maintained, the office shall notify the program of the reasons for the
29 provisional status, of the changes or corrections necessary for the
30 removal of the provisional status, of the length of time permitted to
31 make the changes or corrections, and that the office will withdraw the

1 designation if the program does not comply with the requirements
2 specified in the notice. If the designation of a local long-term care
3 ombudsman program is withdrawn, the office may provide for the
4 continuation of long-term care ombudsman services for that area.

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

7 81-2253 (1) The state long-term care ombudsman shall ensure that the
8 staff of the office and of local long-term care ombudsman programs are
9 trained in:

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

12 (b) Investigative techniques;

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

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

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

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

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

21 81-2254 The office shall investigate and seek to resolve complaints
22 and concerns ~~not reportable under the Adult Protective Services Act~~
23 communicated by or on behalf of a resident ~~an older individual who is a~~
24 ~~patient, resident, or client of any long-term care facility~~. The office
25 may initiate investigations based on its observations of the conditions
26 in a long-term care facility. If the office does not investigate a
27 complaint, the complainant shall be notified of the decision not to
28 investigate and the reasons for the decision.

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

31 81-2255 (1) Notwithstanding any other provision of law related to

1 ~~reporting, when~~ ~~When~~ abuse, neglect, or exploitation of a resident an
2 ~~older individual who is a patient, resident, or client of a long-term~~
3 ~~care facility~~ is suspected, the long-term care ombudsman program, with
4 the permission of the resident or the resident representative, shall make
5 an immediate referral to adult protective services of the department or
6 the appropriate law enforcement agency. ~~The long-term care ombudsman~~
7 ~~program shall coordinate with adult protective services or the~~
8 ~~appropriate law enforcement agency, if requested, pursuant to any~~
9 ~~investigation of such abuse, neglect, or exploitation.~~

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

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

18 81-2258 (1) ~~The~~ In order for the office to carry out its
19 ~~responsibilities under the Long-Term Care Ombudsman Act,~~ the office shall
20 have access to the medical and personal records of a resident an older
21 ~~individual who is a patient, resident, or client~~ of a long-term care
22 facility which are retained by the facility. If the resident older
23 ~~individual:~~

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

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

30 (c) Is under guardianship or conservatorship that provides the
31 guardian or conservator with the authority to approve review of records,

1 the office shall obtain the permission of the guardian or conservator for
2 review of the records unless (i) the existence of the guardianship or
3 conservatorship is unknown to the office or the facility, (ii) the
4 guardian or conservator cannot be reached within five working days, (iii)
5 the subject of the complaint is the guardian or the conservator, or (iv)
6 in case of an emergency; ~~and~~

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

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

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

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

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

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

31 Sec. 21. Section 81-2259, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 81-2259 A state long-term care ombudsman or an ombudsman advocate
3 shall have immediate access to any consenting ~~patient, resident, or~~
4 ~~client of a long-term care facility~~ for the purpose of effectively
5 carrying out the Long-Term Care Ombudsman Act if such state long-term
6 care ombudsman or ombudsman advocate identifies himself or herself and
7 presents his or her credentials to the individual in charge of the long-
8 term care facility.

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

11 81-2260 (1) Information relating to any complaints or investigation
12 made pursuant to the Long-Term Care Ombudsman Act that discloses the
13 identities of complainants or ~~, patients, residents, or clients~~ shall
14 remain confidential except:

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

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

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

24 (d) Upon court order.

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

31 (a) When disclosure is authorized in writing by such complainant,

1 witness, ~~patient,~~ resident, or resident client ~~or the older individual's~~
2 ~~guardian or legal~~ representative; or

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

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

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

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

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

13 81-2261 The department shall ensure that:

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

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

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

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

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

26 81-2262 Any local long-term care ombudsman program or any individual
27 certified by the office, whether an employee of the program or office or
28 an unpaid volunteer of the program or office, shall be treated as a
29 representative of the office.

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

1 81-2264 (1) No person shall willfully interfere with the lawful
2 actions of the office, including the request for immediate entry into a
3 long-term care facility by an individual certified pursuant to section
4 81-2253 who identifies himself or herself and presents his or her
5 credentials to the individual in charge of the long-term care facility.

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

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

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

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

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

26 Sec. 26. Original sections 81-2225, 81-2237, 81-2238, 81-2239,
27 81-2242, 81-2243, 81-2244, 81-2245, 81-2246, 81-2247, 81-2248, 81-2250,
28 81-2251, 81-2252, 81-2253, 81-2254, 81-2255, 81-2258, 81-2259, 81-2260,
29 81-2261, 81-2262, and 81-2264, Reissue Revised Statutes of Nebraska, are
30 repealed.

31 Sec. 27. Since an emergency exists, this act takes effect when

1 passed and approved according to law.