

STATE OF NEW YORK

10161

IN ASSEMBLY

March 21, 2018

Introduced by M. of A. LUPARDO -- (at request of the Office for the Aging) -- read once and referred to the Committee on Aging

AN ACT to amend the elder law, in relation to the long-term care ombudsman program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 218 of the elder law, paragraph (b) of subdivision 1 as amended by section 1 of chapter 462 of the laws of 2015, subparagraph 3 of paragraph (c) of subdivision 3 as amended by chapter 95 of the laws of 2004, paragraph (g) of subdivision 3 as added by chapter 462 of the laws of 2015, and subparagraph 2 of paragraph (a) of subdivision 7 as amended by chapter 230 of the laws of 2004, is amended to read as follows:

§ 218. [~~Long-term~~] Long-term care ombudsman. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) [~~"Local ombudsman" shall mean an individual who is employed by the local entity designated pursuant to subdivision four of this section and who has been approved by the state ombudsman to perform or carry out the activities of the local long-term care ombudsman program. The local ombudsman may be either a paid employee or volunteer of the local entity~~] "Administrative action" shall mean any action or decision by an owner, employee, or agent of a long-term care facility, or by a government agency, which affects the provision of service to residents of or applicants for admission to long-term care facilities.

(b) "Immediate family" pertaining to conflicts of interest, shall mean a member of the household or a relative with whom there is a close personal or significant financial relationship.

(c) "Local ombudsman entity" shall mean any entity designated to operate a local long-term care ombudsman program.

[~~(b)~~] (d) "Long-term care facilities" shall mean residential health care facilities as defined in subdivision three of section twenty-eight hundred one of the public health law[~~7~~]; adult care facilities as defined in subdivision twenty-one of section two of the social

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [~~-~~] is old law to be omitted.

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services law, including those adult homes and enriched housing programs licensed as assisted living residences, [as defined in] pursuant to article forty-six-B of the public health law[7]; or any facilities which hold themselves out or advertise themselves as providing assisted living services and which are required to be licensed or certified under the social services law or the public health law. Within the amounts appropriated therefor, [long-term] long-term care facilities" shall also mean managed [long-term] long-term care plans and approved managed [long-term] long-term care or operating demonstrations as defined in section forty-four hundred three-f of the public health law and the term "resident", "residents", "patient" and "patients" shall also include enrollees of such plans.

~~[(c) "State ombudsman" shall mean the state long term care ombudsman appointed by the director pursuant to subdivision three of this section.]~~

(e) "Long-term care ombudsman" or "ombudsman" shall mean a person who:

(1) is an employee or volunteer of the state office for the aging or of a designated local long-term care ombudsman entity and represents the state long-term care ombudsman program;

(2) has been verified as having successfully completing a certification training program developed by the state ombudsman; and

(3) has a current designation as a long-term care ombudsman by the state long-term care ombudsman.

(f) "Resident representative" shall mean either of the following:

(1) an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; 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 power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications.

(g) "State long-term care ombudsman" or "state ombudsman" shall mean the individual who heads the office of the state long-term care ombudsman and is responsible to personally, or through representatives of the office of the state long-term care ombudsman, fulfill the functions, responsibilities and duties of the office of the state long-term care ombudsman.

(h) "Willful interference" shall mean actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede an ombudsman from performing any of the functions or responsibilities of the office of the state long-term care ombudsman.

2. Office of the state long-term care ombudsman established. (a) There is hereby established within the state office for the aging an office of the state [long-term] long-term care ombudsman [for the purpose of receiving and resolving complaints affecting applicants, patients and residents in long term care facilities and, where appropriate, referring complaints to appropriate investigatory agencies and acting in concert with such agencies] which shall be headed by the state long-term care ombudsman, who shall carry out, directly and/or through local ombudsman entities, the duties set forth in this section.

(b) The office of the state long-term care ombudsman is a distinct entity, separately identifiable, and located within the state office for the aging.

1 (c) The state office for the aging shall provide the ombudsman program
2 with legal counsel that is adequate, available, has competencies rele-
3 vant to the legal needs of the program, and is without conflict of
4 interest as determined by the state office for the aging in consultation
5 with the state long-term care ombudsman.

6 (d) The state office for the aging shall not establish personnel poli-
7 cies or practices which prohibit the ombudsman from performing the func-
8 tions and responsibilities of the ombudsman, as set forth in this
9 section.

10 (e) Nothing in this section shall prohibit the state office for the
11 aging from requiring that the state ombudsman, or other employees of the
12 office of the state long-term care ombudsman, adhere to the personnel
13 policies and procedures of the state office for the aging.

14 3. State [~~long-term~~] long-term care ombudsman. (a) The director of the
15 state office for the aging shall appoint a full-time state [~~long-term~~]
16 long-term care ombudsman to administer and supervise the office of the
17 state [~~long-term~~] long-term care ombudsman.

18 (b) The state ombudsman shall be selected from among individuals with
19 expertise and experience in [~~the fields of long-term~~] long-term care and
20 advocacy, long-term services and supports or other direct services for
21 older persons or individuals with disabilities, consumer-oriented public
22 policy advocacy, leadership and program, management skills, negotiation
23 and problem resolution skills, and with other qualifications determined
24 by the director of the state office for the aging to be appropriate for
25 the position.

26 (c) In no circumstance shall the state office for the aging appoint as
27 state ombudsman an individual who:

28 (1) has a direct involvement in the licensing or certification of a
29 long-term care facility or of a provider of a long-term care service;

30 (2) has an ownership or investment interest (represented by equity,
31 debt, or other financial relationship) in a long-term care facility or a
32 long-term care service; provided that divestment within a reasonable
33 time period may be considered an adequate remedy to this conflict;

34 (3) has been employed by, or participated in the management of, a
35 long-term care facility within the previous twelve months; and

36 (4) receives or has the right to receive, directly or indirectly,
37 remuneration (in cash or in kind) under a compensation arrangement with
38 an owner or operator of a long-term care facility.

39 (d) The state ombudsman [~~shall~~], personally or through authorized
40 representatives [~~as provided for in paragraph (d) of this subdivision~~]
41 shall:

42 (1) identify, investigate and resolve complaints that are made by, or
43 on behalf of, [~~long-term~~] long-term care residents in this state and
44 that relate to actions, inactions or decisions that may adversely affect
45 the health, safety and welfare or rights of such residents; [~~provided,~~
46 however, that the state ombudsman [~~shall immediately~~] may refer to the
47 appropriate investigatory agency information obtained during the inves-
48 tigation of a complaint which suggests the possible occurrence of phys-
49 ical abuse, mistreatment or neglect or Medicaid fraud, in accordance
50 with [~~procedures established by the state ombudsman~~] the older Americans
51 act of 1965, as amended and the regulations promulgated thereunder as
52 well as rules and regulations promulgated by the state office for the
53 aging. [~~Such procedures shall include, but not be limited to, the~~
54 reporting to the appropriate investigatory agency any reasonable infor-
55 mation which suggests the possible occurrence of physical abuse,
56 mistreatment or neglect as defined in section twenty-eight hundred

1 ~~three-d of the public health law.~~] Nothing in this section shall be
2 construed as authorizing the state ombudsman to impose a resolution
3 unacceptable to either party involved in a complaint or to assume powers
4 delegated to the commissioner of health or the department of health
5 pursuant to article twenty-eight of the public health law or to the
6 commissioner of the office of children and family services or the office
7 of children and family services pursuant to the social services law; nor
8 does it authorize the state ombudsman to investigate final administra-
9 tive determinations made pursuant to law by such commissioners if such
10 decisions become the subject of complaints to the state ombudsman;

11 (2) provide services to assist residents in protecting their health,
12 safety, welfare and rights, including but not limited to representing
13 the interests of residents before governmental agencies and seeking
14 appropriate administrative, legal and other remedies to protect their
15 welfare, safety, health and rights;

16 (3) inform the residents about means of obtaining services provided by
17 ~~[public health, social services and veterans' affairs or]~~ the long-term
18 care ombudsman program and other public agencies;

19 (4) analyze, comment on and monitor the development and implementation
20 of federal, state and local laws, regulations ~~[or]~~, policies ~~[with~~
21 ~~respect to the adequacy of long-term care facilities and services in the~~
22 state] and actions that pertain to the health, safety, welfare, and
23 rights of the residents of long-term care facilities and services in the
24 state;

25 (5) ~~[in consultation with the director, establish procedures for the]~~
26 ensure that residents have regular and timely access to the services
27 provided through the long-term care ombudsman program and that residents
28 and complainants receive timely responses to requests for information
29 and complaints;

30 (6) recommend changes in federal, state and local laws, regulations,
31 policies, and actions pertaining to the health, safety, welfare, and
32 rights of residents;

33 (7) develop a certification training program and continuing education
34 of [the authorized representatives and of local] ombudsmen ~~[and their~~
35 ~~staff]~~ which at a minimum shall specify the minimum hours of training
36 the annual number of hours of in-service training, and the content of
37 the training, including, but not limited to, training relating to feder-
38 al, state and local laws, regulations and policies with respect to ~~[long~~
39 ~~term]~~ long-term care facilities in the state, investigative and resol-
40 ution techniques, and such other training-related matters as the state
41 ombudsman determines to be appropriate; ~~[and~~

42 ~~(6)]~~ (8) provide administrative and technical assistance to the state
43 ombudsman and local ombudsman entities;

44 (9) make determinations and establish positions of the office of the
45 state long-term care ombudsman, without necessarily representing the
46 determinations or positions of the state office for the aging;

47 (10) recommend to the director of the state office for the aging poli-
48 cies and procedures for the state long-term care ombudsman program;

49 (11) coordinate with and promote the development of citizen organiza-
50 tions consistent with the interests of residents;

51 (12) promote, provide technical support for the development of, and
52 provide ongoing support as requested by resident and family councils to
53 protect the well-being and rights of residents;

54 (13) provide leadership to statewide systems advocacy efforts of the
55 office of the state long-term care ombudsman on behalf of long-term care
56 facility residents, including coordination of systems advocacy efforts

1 carried out by representatives of the office of the state long-term care
2 ombudsman;

3 (14) in accordance with applicable state contracting procedures, coor-
4 ordinate with the state office for the aging in the review and approval of
5 plans or contracts governing local ombudsman entity operations;

6 (15) carry out such other activities as the director of the state
7 office for the aging determines to be appropriate pursuant to the feder-
8 al older Americans act of 1965 and other applicable federal and state
9 laws and related regulations as may, from time to time, be amended; and

10 (16) in accordance with the regulations promulgated under this section
11 provide the director of the state office for the aging with notice prior
12 to performing the activities identified in paragraphs four, six and nine
13 of this subdivision. Such notice shall not give the director of the
14 state office for the aging or any other state official the right to
15 pre-approve the position or communications of the state ombudsman.

16 ~~[(d)(1)]~~ (e) The state ombudsman, with the approval of the director of
17 the state office for the aging, may appoint one or more [authorized
18 ~~representatives]~~ assistant state long-term care ombudsmen to assist the
19 state ombudsman in the performance of his or her duties under this
20 section. Such assistant state ombudsmen must be verified as having
21 completed a certification training program developed by the state
22 ombudsman within six (6) months of their appointment as assistant state
23 ombudsmen.

24 ~~[(2)]~~ (f)(1) The state ombudsman [shall] may appoint [only those] as
25 ombudsmen individuals who have been [certified as having completed the
26 ~~training program developed pursuant to paragraph (e) of this subdivi-~~
27 ~~sion]~~ verified as completing the certification training program devel-
28 oped by the state ombudsman. In addition, the state long-term care
29 ombudsman may refuse, suspend, or remove such appointments of ombudsmen.

30 (2) The state ombudsman shall develop a grievance process to offer an
31 opportunity for reconsideration of any decision to refuse, suspend, or
32 remove appointment of any ombudsman. Notwithstanding the grievance
33 process, the state ombudsman shall make the final determination to
34 designate or to refuse, suspend, or remove appointment of an ombudsman.

35 ~~[(e) No state ombudsman, authorized representative, local ombudsman or~~
36 ~~immediate family member of such person shall-~~

37 ~~(1) have a direct involvement in the licensing or certification of a~~
38 ~~long term care facility or of a provider of a long term care service;~~

39 ~~(2) have an ownership or investment interest (represented by equity,~~
40 ~~debt, or other financial relationship) in a long term care facility or a~~
41 ~~long term care service;~~

42 ~~(3) be employed by, or participate in the management of, a long term~~
43 ~~care facility; and~~

44 ~~(4) receive remuneration (in cash or in kind) under a compensation~~
45 ~~arrangement with an owner or operator of a long term care facility.~~

46 ~~(f) The state ombudsman shall establish written procedures to identify~~
47 ~~and remove conflicts of interest set out in paragraph (e) of this subdivi-~~
48 ~~sion and shall include actions that the director may require an indi-~~
49 ~~vidual ombudsman or immediate family member to take to remove such~~
50 ~~conflicts of interest.]~~

51 (g) No ombudsman shall be appointed if they or an immediate family
52 member has a conflict of interest that cannot be remedied. The state
53 ombudsman shall recommend to the director of the state office for the
54 aging written procedures to identify, remove, and/or remedy individual
55 conflicts of interest.

(h) Within the amounts appropriated therefor, the state ombudsman program shall include services specifically designed to serve persons enrolled in managed ~~[long-term]~~ long-term care plans or approved managed ~~[long-term]~~ long-term care or operating demonstrations authorized under section forty-four hundred three-f of the public health law, and shall also review and respond to complaints relating to marketing practices by such plans and demonstrations.

4. Local ~~[long-term]~~ long-term care ombudsman program. (a) The state ombudsman, in coordination with ~~[the approval of the director]~~ the state office for the aging, and in accordance with applicable state contracting procedures, may designate an entity to operate a local ~~[long-term]~~ long-term care ombudsman program for one or more counties, and shall monitor the performance of such entity. If the state office for the aging is aware or becomes aware of any compelling reason why the state ombudsman should not designate an entity to operate a long-term care ombudsman program, the state ombudsman will comply with the state office for the aging's determination.

(b) The designated entity shall be an area agency on aging, a public agency or a private not-for-profit corporation which is ~~[neither a provider or regulator of long term care facilities, or an affiliate or unit of such agency or corporation]~~ free from any conflict of interest that cannot be remedied. The state ombudsman shall recommend to the director of the state office for the aging written procedures to identify, remove, and/or remedy organizational conflicts of interest.

(c)(1) Each local ~~[long-term]~~ long-term care ombudsman program shall be directed by a qualified individual who is employed and paid by the local entity and who shall have the duties and responsibilities as provided in regulations, consistent with the provisions of this section and of Title VII of the federal older Americans act of 1965, as amended. In addition, upon designation, the entity is responsible for providing for adequate and qualified staff, which may include trained volunteers to perform the functions of the local ~~[long-term]~~ long-term care ombudsman program.

(2) No local program staff, including the supervisor and any volunteers, shall perform or carry out the activities on behalf of the ~~[local long-term]~~ state long-term care ombudsman program unless such staff has ~~[received the training pursuant to paragraph (c) of subdivision three of this section]~~ been verified as completing the training program developed by the state ombudsman and has been approved by the state ombudsman as qualified to carry out the activities on behalf of the local program.

(d) ~~[The director, in consultation with the state ombudsman, shall establish in regulations standards for the operation of a local long term care ombudsman program.]~~

~~(e)]~~ When the state ombudsman determines that a local ~~[long-term]~~ long-term care ombudsman program does not meet the standards set forth in this section and in any related regulations, the state ombudsman ~~[shall with the approval of the director withdraw]~~, in coordination with the state office for the aging, may refuse, suspend, or withdraw the designation of the local program. Prior to taking such action, the state ombudsman shall send to the affected local program a notice of ~~[intention]~~ the state ombudsman's intentions to withdraw the designation~~[, which notice shall also inform the local program of its right to an administrative hearing prior to the director's final determination. Such administrative hearing shall be conducted in accordance with procedures set forth in regulations]~~. If the state office for the aging is aware or becomes aware of any compelling reason why the state ombudsman should

1 not designate an entity to operate a long-term care ombudsman program or
2 why the state ombudsman should refuse, suspend or remove designation of
3 a local ombudsman entity, the state ombudsman will comply with the state
4 office for the aging's determination.

5 (e) The state ombudsman shall develop a grievance process to offer an
6 opportunity for reconsideration of any decision to refuse, suspend, or
7 remove designation of a local ombudsman entity. Notwithstanding the
8 grievance process, the state ombudsman in coordination with the state
9 office for the aging shall make the final determination to designate or
10 to refuse, suspend, or remove designation of a local ombudsman entity.
11 If the state office for the aging is aware or becomes aware of any
12 compelling reason why the state ombudsman should not designate an entity
13 to operate a long-term care ombudsman program or why the state ombudsman
14 should refuse, suspend or remove designation of a local ombudsman enti-
15 ty, the state ombudsman will comply with the state office for the
16 aging's determination.

17 5. Review of complaint. [~~(a)~~] Upon receipt of a complaint, the ombuds-
18 man shall determine [~~immediately~~] whether there are reasonable grounds
19 for an investigation. Such investigation shall be conducted in a manner
20 prescribed in regulations. The [~~state~~] ombudsman[~~, or the local ombuds-~~
21 ~~man, whoever is appropriate, shall~~] may immediately refer to the appro-
22 priate investigatory agency information obtained during the investi-
23 gation of a complaint which suggests the possible occurrence of physical
24 abuse, mistreatment or neglect or Medicaid fraud, in accordance with
25 [~~procedures established by the state ombudsman. Such procedures shall~~
26 ~~include, but not be limited to, the reporting to the appropriate inves-~~
27 ~~tigatory agency if there is reasonable cause to believe the occurrence~~
28 ~~of physical abuse, mistreatment or neglect as defined in section twenty-~~
29 ~~eight hundred three-d of the public health law.~~

30 ~~(b) If the referral is made by the local ombudsman, a copy of the~~
31 ~~referral, together with copies of any relevant information or records,~~
32 ~~shall be sent forthwith to the state ombudsman] and subject to any limi-~~
33 ~~tations identified in the older Americans act of 1965, as amended and~~
34 ~~the regulations promulgated thereunder as well as rules and regulations~~
35 ~~promulgated by the state office for the aging.~~

36 6. [~~Retaliatory discrimination prohibited. (a) No person shall~~
37 ~~discriminate against any resident of a long term care facility because~~
38 ~~such resident or any person acting on behalf of the resident has brought~~
39 ~~or caused to be brought any complaint to the state or local long term~~
40 ~~care ombudsman for investigation, or against any resident or employee of~~
41 ~~a long term care facility or any other person because such resident or~~
42 ~~employee or any other person has given or provided or is to give or~~
43 ~~provide any statements, testimony, other evidence or cooperation for the~~
44 ~~purposes of any such complaint.~~

45 ~~(b) Any resident who has reason to believe that he or she may have~~
46 ~~been discriminated against in violation of this subdivision may, within~~
47 ~~thirty days after such alleged violation occurs, file a complaint with~~
48 ~~the commissioner of health pursuant to subdivision ten of section twenty-~~
49 ~~eight hundred one-d of the public health law.~~

50 7. Record access. (a) [~~(1) The state ombudsman, with the approval of~~
51 ~~the director, may approve and certify one or more previously designated~~
52 ~~local ombudsmen or state representatives as a records access ombudsman~~
53 ~~upon their having completed the training program for records access~~
54 ~~ombudsman set out in paragraph (b) of this subdivision; and~~

55 ~~(2) A records access ombudsman shall be an employee of the office of~~
56 ~~the state ombudsman or of the local entity designated to carry out a~~

~~local ombudsman program, except that the state ombudsman may certify as a records access ombudsman a volunteer under the direct supervision of the state ombudsman or of the supervisor of the local program, whichever is appropriate, if such volunteer is licensed in a medical, legal, or social work profession, or whose experience and training demonstrate equivalent competency in medical and personal records review.~~

~~(b) Except as otherwise provided by law, no person, including the state ombudsman, his or her authorized representatives, or any local ombudsman, shall be authorized to have access to or review the medical or personal records of a patient or resident pursuant to section twenty-eight hundred three c of the public health law and section four hundred sixty one a of the social services law or pursuant to written consent to such access by the patient or resident, or his or her legal representative unless such person has been:~~

~~(1) Certified as having satisfactorily completed a training program prescribed by the office and designed, among other purposes, to (A) impress upon the participant the value, purpose, and confidentiality of medical and personal records, (B) familiarize the participant with the operational aspects of long term care facilities, and (C) deal with the medical and psycho-social needs of patients or residents in such facilities; and~~

~~(2) Certified as a records access ombudsman by the state ombudsman.~~

~~(c)]~~ An ombudsman shall have access to:

(1) medical, social and other records relating to a resident, if:

(A) the resident or resident representative communicates informed consent to the access and the consent is given in writing or through the use of auxiliary aids and services;

(B) the resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services, and such consent is documented contemporaneously by an ombudsman in accordance with procedures established by the state ombudsman; and

(C) access is necessary in order to investigate a complaint, the resident representative refuses to consent to the access, an ombudsman has reasonable cause to believe that the resident representative is not acting in the best interests of the resident, and the ombudsman obtains the approval of the state ombudsman;

(2) administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities;

(3) copies of all licensing and certification records maintained by the state with respect to long-term care facilities; and

(4) a list of resident names and room numbers.

(b) No ombudsman shall disclose [the identity of the resident or complainant that made a complaint to the ombudsman] information about a complaint, including identifying information of any resident or complainant unless:

(1) the complainant or resident or his or her [legal] resident representative gives [written] informed consent to the ombudsman[; except that written consent shall also include the resident or complainant giving oral consent that is documented contemporaneously in a writing made by the ombudsman with the agreement of the complainant or resident and in accordance with requirements established by the director; or].
Communication of informed consent may be made in writing, including through the use of auxiliary aids and services. Alternatively, communication of consent may be made orally or visually, including through the

use of auxiliary aids and services, and such consent must be documented contemporaneously by an ombudsman in accordance with the procedures of the office of the state long-term care ombudsman;

(2) the disclosure is required pursuant to a court order; or

(3) the resident is unable to communicate informed consent and does not have a resident representative, or the state long-term care ombudsman determines that the resident representative is not acting in the best interest of the resident. In such cases, disclosures may be made in accordance with criteria to be developed by the ombudsman.

(c) all files, records, and other information of the long-term care ombudsman program, including information maintained by local ombudsman entities pertaining to the cases and activities of the program are the property of the office of the state long-term care ombudsman. Such files, records, and information may be disclosed only at the discretion of the state ombudsman or designee of the state ombudsman for such purpose and in accordance with the criteria developed by the state ombudsman.

(d) No ombudsman shall disclose to any person outside of the ombudsman program any information obtained from a [~~patient's or~~] resident's [~~records~~] record without the approval of the state ombudsman or his or her designee, in accordance with procedures for disclosure established by [~~the director in consultation with~~] the state ombudsman. [~~Such approval is not required for suspected instances of physical abuse, mistreatment or neglect or Medicaid fraud and, subject to withholding identifying information of a non-consenting complainant or resident under paragraph (e) of this subdivision, a local ombudsman or state representative shall provide needed file information to the appropriate state and federal regulatory authorities and cooperate with them to help further their investigation.~~]

(e) No [~~records access or other~~] ombudsman who directly or indirectly obtains access to a [~~patient's or~~] resident's medical or personal records pursuant to section twenty-eight hundred three-c of the public health law shall disclose to such [~~patient or~~] resident or to any other person outside of the ombudsman program the content of any such records to which such [~~patient,~~] resident or other person had not previously had the right of access, provided that this restriction shall not prevent such ombudsman from advising such [~~patient or~~] resident of the status or progress of an investigation or complaint process initiated at the request of such [~~patient or~~] resident or from referring such complaint, together with the relevant records, to appropriate investigatory agencies. Any person who intentionally violates the provisions of this subdivision shall be guilty of a misdemeanor. Nothing contained in this section shall be construed to limit or abridge any right of access to records, including financial records, otherwise available to ombudsmen, [~~patients or~~] residents, or any other person.

(f) Any individual, when acting in his or her official capacity as an ombudsman, shall be exempt from the mandatory reporting of abuse, neglect, exploitation, or maltreatment, notwithstanding any law to the contrary. However, an ombudsman may report abuse, neglect, exploitation, or maltreatment in accordance with the older Americans act of 1965, as amended and the regulations promulgated thereunder as well as rules and regulations promulgated by the state office for the aging.

(g) Nothing in this section shall prohibit the disclosure by an ombudsman or local ombudsman entity of aggregate data for monitoring or reporting purposes to the state office for the aging or an agency in which a local ombudsman entity is organizationally located.

7. Access to long-term care facilities. An ombudsman shall have authority to enter all long-term care facilities at any time during a facility's regular business hours or regular visiting hours, and at any other time when access may be required by the circumstances to be investigated and shall have access to all residents and/or the resident representative to perform all functions and duties enumerated herein.

8. ~~[Failure to cooperate. Any long-term]~~ Noninterference. No long-term care facility ~~[which refuses]~~ shall:

(a) refuse to permit ~~[the state]~~ an ombudsman~~[, his or her authorized representative, or any local ombudsman]~~ entry into such facility or ~~[refuses], interfere with, refuse~~ to cooperate with ~~[the state]~~ an ombudsman~~[, his or her authorized representative, or any local ombudsman]~~ in the carrying out of their mandated duties and responsibilities set forth in this section and any regulations promulgated pursuant thereto~~[, or refuses];~~

(b) retaliate against an ombudsman for carrying out his or her mandated duties and responsibilities set forth in this section and any regulations promulgated pursuant thereto;

(c) refuse to permit ~~[patients]~~ residents or staff to communicate freely and privately with ~~[the state]~~ an ombudsman~~[, his or her authorized representative, or any local ombudsman shall be subject to the appropriate sanction or penalties of the state agency that licenses the facility]; or~~

(d) retaliate or discriminate against any resident, resident representative, complainant, or staff member for filing a complaint with, providing information to, or otherwise cooperating with any ombudsman.

9. Failure to cooperate. Any resident who has reason to believe that he or she may have been discriminated or retaliated against in violation of subdivision eight of this section may file a complaint with the commissioner of health pursuant to subdivision ten of section twenty-eight hundred one-d of the public health law. Any such facility that violates the provisions of subdivision eight of this section shall be subject to the appropriate sanctions pursuant to section twenty-eight hundred three-c of the public health law, and accompanying regulations, if such facility is a residential healthcare facility or section four hundred sixty-d of the social services law, and accompanying regulations, if such facility is an adult care facility.

10. Civil immunity. Notwithstanding any other provision of law, ombudsmen designated under this section or who are also records access ombudsmen functioning in accordance with this section shall be included within the definition of employee as set forth in section seventeen of the public officers law and shall be defended and indemnified in accordance with the provisions of article two of such law.

~~[10.]~~ 11. Grievance process. In addition to the provisions listed in this section, the state ombudsman shall recommend policies and procedures for the receipt and review of grievances regarding determinations or actions of the state ombudsman or ombudsmen to the director of the state office for the aging.

12. Regulations. The director, in consultation with the state ombudsman, is authorized to promulgate regulations to implement the provisions of this section.

~~[11.]~~ 13. Annual report. On or before March thirty-first, two thousand five, and annually thereafter, the state ombudsman shall submit to the governor, commissioner of the federal administration on aging, speaker of the assembly, temporary president of the senate, director of the state office for the aging, commissioner of the department of health,

1 and the commissioner of children and family services a report and make
2 such report available to the public:

3 (a) describing the activities carried out by the office of the state
4 ~~[long-term]~~ long-term care ombudsman during the prior calendar year;

5 (b) containing and analyzing data relating to complaints and condi-
6 tions in ~~[long-term]~~ long-term care facilities and to residents for the
7 purpose of identifying and resolving significant problems;

8 (c) evaluating the problems experienced by, and the complaints made by
9 or on behalf of, residents;

10 (d) containing recommendations for~~+~~
11 ~~(1)~~ appropriate state legislation, rules and regulations and other
12 action to improve the quality of the care and life of the residents~~+~~
13 ~~and~~

14 ~~(2)~~, protecting the health, safety and welfare and rights of the
15 residents and resolving resident complaints and identified problems or
16 barriers;

17 (e) containing an analysis of the success of the ombudsman program,
18 including success in providing services to residents;

19 (f) describing barriers that prevent the optimal operation of the
20 ombudsman program;

21 (g) describing any organizational conflicts of interest in the ombuds-
22 man program that have been identified and the steps taken to remove or
23 remedy such conflicts; and

24 (h) any other matters as the state ombudsman, in consultation with the
25 director of the state office for the aging, determines to be appropri-
26 ate.

27 § 2. Paragraph (b) of subdivision 1 of section 218 of the elder law,
28 as amended by section 2 of chapter 462 of the laws of 2015, is amended
29 to read as follows:

30 ~~[(b) "Long-term"]~~ (d) "Long-term care facilities" shall mean residen-
31 tial health care facilities as defined in subdivision three of section
32 twenty-eight hundred one of the public health law, adult care facilities
33 as defined in subdivision twenty-one of section two of the social
34 services law, and assisted living residences, as defined in article
35 forty-six-B of the public health law, or any facilities which hold them-
36 selves out or advertise themselves as providing assisted living services
37 and which are required to be licensed or certified under the social
38 services law or the public health law.

39 § 3. This act shall take effect immediately; provided, however that:

40 (a) the amendments to paragraph (b) of subdivision 1 of section 218 of
41 the elder law made by section two of this act shall take effect on the
42 same date and in the same manner as section 2 of chapter 462 of the laws
43 of 2015, takes effect; and

44 (b) the amendments to paragraph (g) of subdivision 3 of section 218 of
45 the elder law made by section one of this act shall not affect the
46 repeal of such paragraph as provided in section 5 of chapter 462 of the
47 laws of 2015, as amended, and shall be deemed repealed therewith.