

STATE OF NEW YORK

7975

IN SENATE

March 15, 2018

Introduced by Sen. SERINO -- (at request of the Office for the Aging) --
read twice and ordered printed, and when printed to be committed to
the Committee on Aging

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

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

1 Section 1. Section 218 of the elder law, paragraph (b) of subdivision
2 1 as amended by section 1 of chapter 462 of the laws of 2015, subpara-
3 graph 3 of paragraph (c) of subdivision 3 as amended by chapter 95 of
4 the laws of 2004, paragraph (g) of subdivision 3 as added by chapter 462
5 of the laws of 2015, and subparagraph 2 of paragraph (a) of subdivision
6 7 as amended by chapter 230 of the laws of 2004, is amended to read as
7 follows:

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

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

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

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

25 [~~(b) "Long-term~~] (d) "Long-term care facilities" shall mean residen-
26 tial health care facilities as defined in subdivision three of section
27 twenty-eight hundred one of the public health law[~~7~~]; adult care facili-

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

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ties as defined in subdivision twenty-one of section two of the social 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.

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

(d) The state office for the aging shall not establish personnel policies or practices which prohibit the ombudsman from performing the functions and responsibilities of the ombudsman, as set forth in this section.

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

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

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

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

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

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

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

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

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

(1) identify, investigate and resolve complaints that are made by, or on behalf of, ~~[long-term]~~ long-term care residents in this state and that relate to actions, inactions or decisions that may adversely affect the health, safety and welfare or rights of such residents; ~~[provided, however, that]~~ the state ombudsman ~~[shall immediately]~~ may refer to the appropriate investigatory agency information obtained during the investigation of a complaint which suggests the possible occurrence of physical abuse, mistreatment or neglect or Medicaid fraud, in accordance with ~~[procedures established by the state ombudsman]~~ 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. ~~[Such procedures shall include, but not be limited to, the~~

~~reporting to the appropriate investigatory agency any reasonable information which suggests the possible occurrence of physical abuse, mistreatment or neglect as defined in section twenty-eight hundred three-d of the public health law.~~ Nothing in this section shall be construed as authorizing the state ombudsman to impose a resolution unacceptable to either party involved in a complaint or to assume powers delegated to the commissioner of health or the department of health pursuant to article twenty-eight of the public health law or to the commissioner of the office of children and family services or the office of children and family services pursuant to the social services law; nor does it authorize the state ombudsman to investigate final administrative determinations made pursuant to law by such commissioners if such decisions become the subject of complaints to the state ombudsman;

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

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

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

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

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

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

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

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

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

(11) coordinate with and promote the development of citizen organizations consistent with the interests of residents;

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

(13) provide leadership to statewide systems advocacy efforts of the office of the state long-term care ombudsman on behalf of long-term care facility residents, including coordination of systems advocacy efforts carried out by representatives of the office of the state long-term care ombudsman;

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

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

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

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

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

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

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

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

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

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

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

~~(f) The state ombudsman shall establish written procedures to identify and remove conflicts of interest set out in paragraph (e) of this subdivision and shall include actions that the director may require an individual ombudsman or immediate family member to take to remove such conflicts of interest.]~~

(g) No ombudsman shall be appointed if they or an immediate family member has a conflict of interest that cannot be remedied. The state ombudsman shall recommend to the director of the state office for the

1 aging written procedures to identify, remove, and/or remedy individual
2 conflicts of interest.

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

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

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

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

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

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

46 ~~(e)]~~ When the state ombudsman determines that a local ~~[long-term]~~
47 long-term care ombudsman program does not meet the standards set forth
48 in this section and in any related regulations, the state ombudsman
49 ~~[shall with the approval of the director withdraw],~~ in coordination with
50 the state office for the aging, may refuse, suspend, or withdraw the
51 designation of the local program. Prior to taking such action, the state
52 ombudsman shall send to the affected local program a notice of ~~[inten-~~
53 ~~tion]~~ the state ombudsman's intentions to withdraw the designation~~[,~~
54 ~~which notice shall also inform the local program of its right to an~~
55 ~~administrative hearing prior to the director's final determination. Such~~
56 ~~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 not designate an entity to operate a long-term care ombudsman program or why the state ombudsman should refuse, suspend or remove designation of a local ombudsman entity, the state ombudsman will comply with the state office for the aging's determination.

(e) The state ombudsman shall develop a grievance process to offer an opportunity for reconsideration of any decision to refuse, suspend, or remove designation of a local ombudsman entity. Notwithstanding the grievance process, the state ombudsman in coordination with the state office for the aging shall make the final determination to designate or to refuse, suspend, or remove designation of a local ombudsman 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 or why the state ombudsman should refuse, suspend or remove designation of a local ombudsman entity, the state ombudsman will comply with the state office for the aging's determination.

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

~~(b) If the referral is made by the local ombudsman, a copy of the referral, together with copies of any relevant information or records, shall be sent forthwith to the state ombudsman]~~ and subject to any limitations identified in 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.

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

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

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

~~(2) A records access ombudsman shall be an employee of the office of 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.~~

~~(e)]~~ 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

1 through the use of auxiliary aids and services. Alternatively, communi-
2 cation of consent may be made orally or visually, including through the
3 use of auxiliary aids and services, and such consent must be documented
4 contemporaneously by an ombudsman in accordance with the procedures of
5 the office of the state long-term care ombudsman;

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

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

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

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

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

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

55 (g) Nothing in this section shall prohibit the disclosure by an
56 ombudsman or local ombudsman entity of aggregate data for monitoring or

1 reporting purposes to the state office for the aging or an agency in
2 which a local ombudsman entity is organizationally located.

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

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

11 (a) refuse to permit [the state] an ombudsman[~~, his or her authorized~~
12 ~~representative, or any local ombudsman]~~ entry into such facility or
13 ~~[refuses], interfere with, refuse to cooperate with [the state] an~~
14 ~~ombudsman[~~, his or her authorized representative, or any local ombuds-~~~~
15 ~~man]~~ in the carrying out of their mandated duties and responsibilities
16 set forth in this section and any regulations promulgated pursuant ther-
17 eto[~~, or refuses~~];

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

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

26 (d) retaliate or discriminate against any resident, resident represen-
27 tative, complainant, or staff member for filing a complaint with,
28 providing information to, or otherwise cooperating with any ombudsman.

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

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

46 ~~[10-]~~ 11. Grievance process. In addition to the provisions listed in
47 this section, the state ombudsman shall recommend policies and proce-
48 dures for the receipt and review of grievances regarding determinations
49 or actions of the state ombudsman or ombudsmen to the director of the
50 state office for the aging.

51 12. Regulations. The director, in consultation with the state ombuds-
52 man, is authorized to promulgate regulations to implement the provisions
53 of this section.

54 ~~[11-]~~ 13. Annual report. On or before March thirty-first, two thousand
55 five, and annually thereafter, the state ombudsman shall submit to the
56 governor, commissioner of the federal administration on aging, speaker

1 of the assembly, temporary president of the senate, director of the
2 state office for the aging, commissioner of the department of health,
3 and the commissioner of children and family services a report and make
4 such report available to the public:

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

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

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

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

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

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

21 (f) describing barriers that prevent the optimal operation of the
22 ombudsman program;

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

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

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

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

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

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

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