

2020 -- H 7578

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LC004451
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- LONG-TERM CARE
OMBUDSPERSON ACT OF 1995

Introduced By: Representatives Ackerman, McNamara, Donovan, McEntee, and
Casimiro

Date Introduced: February 13, 2020

Referred To: House Health, Education & Welfare

(Office of Healthy Aging)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-66.7-5 and 42-66.7-7 of the General Laws in Chapter 42-66.7
2 entitled "Long-Term Care Ombudsperson Act of 1995" are hereby amended to read as follows:

3 **42-66.7-5. Powers and duties.**

4 The long-term care ombudsperson shall:

- 5 (1) Identify, investigate, and resolve complaints that: (a) are made by, or on behalf of,
6 residents; and (b) relate to action, inaction, or decisions, that may adversely affect the health,
7 safety, welfare, or rights of the residents (including the welfare and rights of the residents with
8 respect to the appointment and activities of guardians and representative payees) and health care
9 and financial powers of attorney;
- 10 (2) Receive all reports of incidents reportable to the department of health within twenty-
11 four (24) hours, or by the next business day of the occurrence, in cases of resident abuse, neglect,
12 exploitation, theft, sexual abuse, accidents involving fires, elopement and patient to patient
13 abuses;
- 14 (3) Receive all reports of thirty (30) day notices of resident discharge from long-term care
15 facilities;
- 16 (4) Provide referral services to assist residents in protecting their health, safety, welfare
17 and rights;
- 18 (5) Inform residents of their rights and advocate on their behalf to improve their quality

1 of life and live with dignity and respect;

2 (6) Formulate policies and procedures to identify, investigate, and resolve complaints;

3 (7) Make appropriate referrals of investigations to other state agencies, including, but not
4 limited to, the departments of health, human services and attorney general [with the informed](#)
5 [consent of the elder in accordance with 45 C.F.R. § 1324.11\(3\) and without the disclosure of](#)
6 [identifying information of any resident with respect to whom the ombudsman program maintains](#)
7 [files, records, or information, except as otherwise provided in accordance with 45 C.F.R. §](#)
8 [1324.19\(b\)\(6\) through \(8\).](#)

9 (8) Offer assistance and training to public and private organizations on long-term care of
10 elders and persons with disabilities;

11 (9) Represent the interests of residents of facilities before government agencies and seek
12 administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the
13 residents including, but not limited to, rights with respect to the appointment or removal of
14 guardians and representative payees powers of attorney;

15 (10) Review and, if necessary, comment on any existing and proposed laws, regulations,
16 and other government policies and actions, that pertain to the rights and well-being of residents of
17 facilities.

18 **42-66.7-7. Access to records, facility, resident.**

19 (a) In the course of an investigation, the long-term care ombudsperson shall:

20 (1) Make the necessary inquiries and obtain information as is deemed necessary;

21 (2) Have access to facilities and residents; and

22 (3) Enter facilities and, after notifying the person in charge [and with the informed consent](#)
23 [of the resident or authorized representative](#), inspect any books, files, medical records, or other
24 records that pertain to the resident.

25 (b) In the ordinary course of the long-term care ombudsperson's duties, the long-term
26 care ombudsperson shall have access to residents of a facility to:

27 (1) Visit, talk with, make personal, social, and other appropriate services available;

28 (2) Inform them of their rights and entitlements and corresponding obligations under
29 federal and state law by distribution of educational materials, discussion in groups, or discussion
30 with individual residents and their families; and

31 (3) Engage in other methods of assisting, advising, and representing residents to extend to
32 them the full enjoyment of their rights.

33 (c) The office of the long-term care ombudsperson is considered a health oversight
34 agency.

1 (d) Notwithstanding any other provision of law, a health oversight agency, and its
2 employees and agents, shall comply with all state and federal confidentiality laws, including, but
3 not limited to, chapter 37.3 of title 5 (Confidentiality of Health Care Communications and
4 Information Act) and specifically subsection 5-37.3-4(c), which requires limitation on the
5 distribution of information which is the subject of this chapter on a "need to know" basis, and §
6 40.1-5-26; [45 C.F.R. §1324.11\(3\)](#); and [45 C.F.R. § 1324.19\(b\)\(6\) through \(8\)](#).

7 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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1 This act would require informed consent of the elderly for referral of investigations to be
2 made by other state agencies by the long-term care ombudsperson (LTCO). This act would also
3 prohibit disclosure of identifying information of any resident of whom the LTCO maintains a
4 record or file.

5 This act would take effect upon passage.

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