

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2003**

**A N A C T**

**RELATING TO LONG-TERM CARE -- OMBUDSPERSON**

Introduced By: Representatives Ginaitt, Costantino, Long, and Reilly

Date Introduced: February 11, 2003

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 42-66.7-3, 42-66.7-5, 42-66.7-6, 42-66.7-7, 42-66.7-9, 42-66.7-10,  
2   42-66.7-12 and 42-66.7-13 of the General Laws in Chapter 42-66.7 entitled "Long-Term Care  
3   Ombudsperson Act of 1995" are hereby amended to read as follows:

4           **42-66.7-3. Definitions.** -- As used in this chapter:

5           (1) An "act" of any facility or government agency includes any failure or refusal to act  
6   by any facility or government agency.

7           (2) "Administrator" means any person who is charged with the general administration or  
8   supervision of a facility whether or not that person has an ownership interest and whether or not  
9   that person's functions and duties are shared with one or more other persons.

10          (3) "Elderly" means any person sixty (60) years of age or older who is a resident of any  
11   facility.

12          (4) "Facility" means any facility, or institution, home care provider or home nursing care  
13   provider, whether public or private, offering health or health related services for the  
14   institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision  
15   by any government agency. "Facilities" include, but are not limited to, nursing homes,  
16   intermediate care facilities, extended care facilities, convalescent homes, rehabilitation centers,  
17   home care agencies, homes for the aged, veterans' homes, boarding homes, and residential care  
18   and assisted living ~~facilities.~~ residences.

19          (5) "Government agency" means any department, division, office, bureau, board,

1 commission, authority, non-profit community organization, or any other agency or  
2 instrumentality created by any municipality or by the state, or to which the state is a party, which  
3 is responsible for the regulation, inspection, visitation, or supervision of facilities or which  
4 provides services to residents of facilities.

5 (6) "Ombudsperson" means the person or persons designated by the director ~~of the~~  
6 ~~department of elderly affairs~~. That person or persons shall have expertise and experience in the  
7 fields of social work, long term care, and advocacy, and shall be qualified and experienced in  
8 communicating with the elderly.

9 (7) "Resident" means any person age sixty (60) years of age or older who is receiving  
10 treatment, care, or housing in any facility in all of its aspects including, but not limited to,  
11 admission, retention, confinement, period of residence, transfer, discharge, and in any instances  
12 directly related to that status. Residents include patients and clients. Residents shall also include  
13 disabled persons under sixty (60) years of age residing in nursing homes, or clients of residential  
14 and assisted living facilities and home care providers/home nursing care providers.

15 (8) "Interfer" means willing and continuous conduct which prevents the ombudsperson  
16 from performing her/his official duties.

17 (9) "Official duties" means work pursuant to the long-term care ombudsperson program  
18 authorized by the federal Older Americans Act or the long-term care ombudsperson program  
19 authorized by state law and carried out under the auspices and general direction of the state long-  
20 term care ombudsperson.

21 (10) "Director" means the director of the department of elderly affairs.

22 (11) "Person" means any individual, trust, or estate, partnership, limited liability  
23 corporation, corporation (including associations, joint stock companies, and insurance  
24 companies), state, or political subdivision or instrumentality of a state.

25 **42-66.7-5. Powers and duties.** -- The long term care ombudsperson shall:

26 (1) Identify, investigate, and resolve complaints that (a) are made by, or on behalf of,  
27 residents; and (b) relate to action, inaction, or decisions, that may adversely effect the health,  
28 safety, welfare, or rights of the residents (including the welfare and rights of the residents with  
29 respect to the appointment and activities of guardians and representative payees);

30 (2) Provide referral services to assist residents in protecting their health, safety, welfare  
31 and rights;

32 (3) Inform residents of their rights and advocate on their behalf to improve their quality  
33 of life and live with dignity and respect;

34 (4) Formulate policies and procedures to identify, investigate, and resolve complaints;

1 (5) Make appropriate referrals of investigations to other state agencies, such as the  
2 department of health and the department of attorney general; ~~and~~

3 (6) Offer assistance and training to public and private organizations on long term care of  
4 elders- and persons with disabilities;

5 (7) Represent the interests of residents of facilities before government agencies and seek  
6 administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the  
7 residents including rights with respect to the appointment and activities of guardians and  
8 representative payees; and

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

12 **42-66.7-6. Confidentiality.** -- The files maintained by the long term care ombudsperson  
13 program are confidential and shall be disclosed only with the written consent of the resident  
14 client affected or his or her legal representative, or if any disclosure is required by court order.  
15 Nothing in this paragraph shall be construed to prohibit the disclosure of information gathered in  
16 an investigation to any interested party as may be necessary to resolve the complaint or to refer to  
17 other appropriate state agencies investigating civil, criminal or licensing violations.

18 **42-66.7-7. Access to records, facility, resident.** --(a) In the course of an investigation,  
19 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 service providers; and

22 (3) enter facilities and, after notifying the person in charge, inspect any books, files,  
23 medical records, or other records that pertain to the resident, ~~and are required by law to be~~  
24 ~~maintained by the facility~~

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  
32 to them the full enjoyment of their rights.

33 **42-66.7-9. Cooperation required.** -- (a) The long term care ombudsperson may request  
34 from any government agency, and the agency is authorized and directed to provide, any

1 cooperation and assistance, services, and data as will enable the long term care ombudsperson to  
2 properly perform or exercise any of his or her functions, duties and powers under this chapter.

3 (b) The long term care ombudsperson shall, to the extent permissible under the  
4 provisions of section 712 of the Older Americans Act (42 U.S.C. 3058g) as amended in 2000,  
5 cooperate and assist other government agencies in their investigations, such as the department of  
6 health, the department of attorney general, the department of human services and any other  
7 pertinent department or agency.

8 **42-66.7-10. Annual reports.** -- The long term care ombudsperson shall ~~file a~~ submit an  
9 annual report of the activities of the long term care ombudsperson program and the long term care  
10 ombudsperson's activities concerning facilities and the protection of the rights of residents of the  
11 facilities with the assistant secretary for aging, director, governor, general assembly, director of  
12 the Rhode Island department of health, chair of the long-term-care coordinating council and other  
13 appropriate governmental entities. The report shall be available to the public. ~~director of the~~  
14 ~~department of elderly affairs. This report shall be submitted by the director of elderly affairs to~~  
15 ~~the chair of the long term care coordinating council for review.~~

16 **42-66.7-12. Rules and regulations.** -- The director of the department of elderly affairs  
17 shall promulgate and, from time to time, revise rules and regulations for the implementation and  
18 enforcement of the long-term ombudsperson program including, but not limited to, the procedures  
19 for the receipt, investigation and resolution, through administrative action, of complaints. As  
20 applicable, the rules and regulations promulgated by the director shall be in accordance with the  
21 provisions set forth in section 712 of the Older Americans Act (42 U.S.C. 3058g) as amended in  
22 2000.

23 **42-66.7-13. Interagency cooperation.** -- Nothing in this chapter shall be construed to be  
24 a limitation of the powers and responsibilities assigned by law to other state agencies or  
25 departments. The director ~~of the department of elderly affairs~~ shall establish an interagency  
26 agreement among the elderly affairs department, the department of health, the department of  
27 attorney general and the department of human services to ensure a cooperative effort in meeting  
28 the needs of the residents of long term care facilities.

29 SECTION 2. Chapter 42-66.7 of the General Laws entitled "Long-Term Care  
30 Ombudsperson Act of 1995" is hereby amended by adding thereto the following sections:

31 **42-66.7-14. Noninterference.** -- No person shall willfully interfere with the long-term care  
32 ombudsperson in the performance of the ombudsperson's official duties.

33 **42-66.7-15. Enforcement.** -- The director shall have the power to enforce the provisions  
34 of this chapter.

1           **42-66.7-16. Penalty for violations of sections 42-66.7-8 and 42-66.7-14.** – (a) Every  
2 person who shall willfully violate the provisions of sections 42-66.7-8 or 42-66.7-14 will be  
3 subject to a fine up to one thousand dollars (\$1,000) for each violation of these sections and any  
4 other remedy provided for in the Rhode Island law.

5           **42-66.7-17. Severability.** – If any provision of this chapter or any rule or regulation  
6 made under this chapter, or the application of any provision of this chapter to any person or  
7 circumstance shall be held invalid by any court of competent jurisdiction, the remainder of the  
8 chapter, rule or regulation and the application of such provision to other persons or circumstances  
9 shall not be affected thereby. The invalidity of any section or sections or parts of any section of  
10 this chapter shall not affect the validity of the remainder of this chapter and to this end the  
11 provisions of the chapter are declared to be severable.

12           SECTION 3. This act shall take effect upon passage.

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LC01930/SUB A  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO LONG-TERM CARE -- OMBUDSPERSON

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- 1           This act would add elder care service providers to those covered by the long-term care
- 2   ombudspersons act.
- 3           This act would take effect upon passage.

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LC01930/SUB A  
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