WEST VIRGINIA CODE CHAPTER 16 ARTICLE 5L

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§16-5L-1. Short title.

This article may be known and cited as the "West Virginia Long-Term Care Ombudsman Program Act."

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§16-5L-2. Legislative purpose.

The Legislature recognizes that the state commission on aging, as set forth in article fourteen, chapter twenty-nine of this code, pursuant to a grant from the federal government, has established a West Virginia long-term care ombudsman program. The Legislature declares that it is the public policy of this state to encourage community contact and involvement with residents of long-term care facilities. The Legislature finds that in order to comply with the federal Older Americans Act of 1965, as amended, and to effectively assist residents of long-term care facilities in the assertion of their civil and human rights, the structure, powers and duties of the West Virginia long-term care ombudsman program shall be herein defined under this article.

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§16-5L-3. Definitions.

As used in this article, unless a different meaning appears from the context:

(a) "Government agency" means any department, division, office, bureau, board, commission, council, authority, or any other agency or instrumentality created by the state or political subdivision thereof or to which the state is a party or by any county or municipality which is responsible for the regulation, visitation, inspection, or supervision of long-term care facilities or which provides services to residents or long-term care facilities;

(b) "Long-term care facility" means any nursing home, personal care home, or residential board and care home as defined in section two, article five-c of this chapter; nursing homes operated by the federal government or the state government; extended care facilities operated in connection with hospitals; and any similar institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management for consideration, for the express and implied purpose of providing accommodations and care or personal assistance to one or more persons who are ill or otherwise incapacitated or are dependent upon the services of others by reasons of physical or mental impairment and who are not related within the degree of consanguinity of second cousin to the owner or manager of the institution, residence or place;

(c) "Long-term care ombudsman volunteer" or "ombudsman volunteer" means any uncompensated individual who performs the duties enumerated under section eight of this article: Provided, That the individual has received appropriate certification as set forth in section nine of this article;

(d) "Pecuniary interest" means holding a financial interest in or deriving financial benefit from the provision of long-term care, but does not include employment in the long-term care industry or in the home health care industry;

(e) "Personal assistance" means personal services, including, but not limited to, the following: Help in walking, bathing, dressing, feeding or getting in or out of bed, or supervision required because of the age or mental impairment of the resident;

(f) "Regional long-term care ombudsman" means any paid staff of a designated regional long-term care ombudsman program who has obtained appropriate certification from the state commission on aging and meets the qualifications set forth in section seven of this article;

(g) "Resident" means an individual living in a nursing home, personal care home, residential board and care home, or any long-term care facility as defined in subsection (b) of this section, or who has lived in such a setting, or who has made application to live in such a setting: Provided, That nothing in this article may be construed to give a long-term care ombudsman the right to obtain the waiting list of a long-term care facility;

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(h) "State long-term care ombudsman" means an individual who meets the qualifications of section five of this article and who is employed by the state commission on aging to implement the state long-term care ombudsman program as set forth in this article; and

(i) "Guardian" means a person lawfully invested with the power and charged with the duty of taking care of another person and managing the property and rights of another person who for some peculiarity of status or defect of age, understanding or self control is considered incapable of administering his or her own affairs, to include committees or other references under the code.

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§16-5L-4. Creation of the state long-term care ombudsman program.

There is hereby created within the state commission on aging, as set forth in article fourteen, chapter twenty-nine of this code, the West Virginia long-term care ombudsman program, pursuant to the Older Americans Act of 1965, as amended.

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§16-5L-5. State long-term care ombudsman; qualifications; duties.

(a) The state commission on aging shall employ a state long-term care ombudsman to effect the purposes of this article. The state long-term care ombudsman shall have at least a master's degree in gerontology, social work, health or a related field and shall have demonstrated experience in one of the following areas: (1) The field of aging; (2) health care; (3) community programs; (4) long-term care issues; (5) working with health care providers; (6) working with an involvement in volunteer programs; and (7) administrative and managerial experience. In lieu of the above educational and experience qualifications, the state long-term care ombudsman shall have a four-year degree in gerontology, social work, health or a related field, plus five years of full-time equivalent experience in gerontology, social work, health or a related field. The state long-term care ombudsman shall participate in ongoing training programs related to his or her duties or responsibilities. The state long-term care ombudsman shall not have been employed within the past two years prior to the date of his or her employment under this section by a long-term care facility, or by any association of long-term care facilities, or by any organization or corporation that directly or indirectly regulates, owns, or operates a long-term care facility.

(b) Neither the state long-term care ombudsman nor any member of his or her immediate family shall have, or have had within the two years preceding his or her employment under this section, any pecuniary interest in the provision of long-term care. For the purposes of this section, the term "immediate family" shall mean the spouse, children, natural mother, natural father, natural brothers or natural sisters of the state long-term care ombudsman.

(c) The duties of the state long-term care ombudsman shall include, but are not limited to, the following:

(1) Establishing a mandatory statewide procedure to receive, investigate, and resolve complaints filed on behalf of a resident, or filed on the state or regional long-term care ombudsman's own initiative on behalf of residents, relating to action, inaction or decisions of providers of long-term care services, or the representatives of such providers, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare and rights of such residents;

(2) Monitoring the development and implementation of federal, state and local legislation, regulations and policies with respect to long-term care facilities;

(3) Advocating for the rights of residents in long-term care facilities;

(4) Establishing a mandatory statewide training program and certification procedures for regional long-term care ombudsmen, excluding clerical staff, which shall include training in the following areas: (i) The review of medical records; (ii) regulatory requirements for long-term care facilities; (iii) confidentiality of records; (iv) techniques of complaint investigation; (v) the effects of institutionalization; and (vi) the special needs of the elderly;

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(5) Establishing and maintaining a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems faced by residents as a class. Such data shall be submitted to the office of health facility licensure and certification on a regular basis;

(6) Promulgating mandatory statewide rules, regulations and training related to the use of long-term care ombudsman volunteers in the program, including procedures to assure that the responsibility and authority of ombudsman volunteers shall be restricted to activities which do not involve access to confidential resident or facility records, which do not involve complaint investigation other than information gathering to ascertain the nature and facts of a complaint, and which do not involve the initiation or pursuit of legal proceedings, actions or remedies; and

(7) Other duties as mandated by the Older Americans Act of 1965, as amended.

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§16-5L-6. Establishment of regional long-term care ombudsman programs.

(a) The state commission on aging shall designate and maintain regional long-term care ombudsman programs encompassing all planning and development areas of the state under the direction of the state long-term care ombudsman. Any regional long-term care ombudsman program so designated and maintained shall be a representative of the state long-term care ombudsman program.

(b) In order to be so designated, a regional long-term care ombudsman program shall meet the following requirements: (1) It shall have no pecuniary, licensing, or organizational interest with long-term care facilities or an association thereof; and (2) it shall (i) maintain a private, nonprofit status as defined under the Internal Revenue Code of 1986, or (ii) function as a local or regional government agency.

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§16-5L-7. Regional long-term care ombudsmen; qualifications; duties; training; certification.

(a) Each regional long-term care ombudsman program shall employ one or more regional long-term care ombudsmen to effect the purposes of this article. The regional long-term care ombudsman shall have either: (1) At least a bachelor's degree in gerontology, social work, health, or a related field and demonstrated experience in one of the following areas: (A) The field of aging; (B) health care or social service programs; (C) community programs; or (D) long-term care issues; or (2) at least a bachelor's degree in any field and at least three years of experience in gerontology, social work, health or a related field. Experience in gerontology, social work, health or a related field may be substituted for up to two years (sixty hours) of college on a year-for-year basis. The supervising ombudsman must have at least a bachelor's degree in gerontology, social work, health or a related field and demonstrated experience in one of the following areas: (A) The field of aging; (B) health care or social service programs; (C) community programs; and (D) long-term care issues. Persons employed in a designated regional long-term care ombudsman program on the date of enactment of this article may be given a waiver from these requirements provided that within one year from the date of enactment of this article they enter into a program leading to a degree in gerontology, social work, health or a related field or complete fifty hours of continuing education units in gerontology, social work, health or a related field every two calendar year periods. The regional long-term care ombudsman shall participate in ongoing training programs related to his or her duties or responsibilities. The regional long-term care ombudsman may not have been employed within the past two years prior to the date of his or her employment under this section by any association of long-term care facilities. If a regional long-term care ombudsman has been employed within the past two years prior to the date of his or her employment under this section by a long-term care facility, or by any organization or corporation that directly or indirectly regulates, owns or operates a long-term care facility, that ombudsman may not act with the authority of a regional long-term care ombudsman in the facility of prior employment or in any other facility regulated, owned or operated by the same ownership as the facility of prior employment.

(b) Neither the regional long-term care ombudsman nor any member of his or her immediate family may have, or have had within the two years preceding his or her employment under this section, any pecuniary interest in the provision of long-term care. For the purposes of this section, the term "immediate family" shall mean the spouse, children, natural mother, natural father, natural brothers or natural sisters of the regional long-term care ombudsman.

(c) The duties of the regional long-term care ombudsman shall include, but are not limited to, the following:

(1) Regularly monitoring long-term care facilities and investigating complaints filed on behalf of a resident, or filed on the regional long-term care ombudsman's own initiative, relating to the health, safety, welfare and rights of such residents, in accordance with complaint investigation procedures developed by the state long-term ombudsman care program: Provided, That nothing in this section shall be construed as to grant a regional

long-term care ombudsman the right of entry to a long-term care facility's drug rooms or to treatment rooms occupied by a resident unless prior consent has been obtained from the resident;

(2) Monitoring the development and implementation of federal, state and local laws, regulations and policies with respect to long-term care facilities;

(3) Training certified volunteers in accordance with the training and certification program developed by the state long-term care ombudsman program;

(4) Encouraging, cooperating with, and assisting the development and operation of referral services which can provide current, valid and reliable information on long-term care facilities and alternatives to institutionalization to persons in need of these services and the general public;

(5) Submitting reports as required by the state long-term care ombudsman program; and

(6) Other duties as mandated by the Older Americans Act of 1965, as amended.

(d) The state long-term care ombudsman shall develop and implement procedures for training and certification of regional long-term care ombudsmen. Regional long-term care ombudsmen who satisfactorily complete the training requirements shall be certified by the state commission on aging and shall be given identification cards which shall be presented to employees of a long-term care facility upon request. No regional long-term care ombudsman may investigate any complaint filed with the West Virginia long-term care ombudsman program unless the person has been certified by the state commission on aging. Consistent with the provisions of this article and any rules promulgated pursuant to section twenty-one, certified regional long-term ombudsmen shall be representatives of the state long-term care ombudsman program.

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§16-5L-8. Long-term care ombudsman volunteers; qualifications; duties.

(a) The regional long-term care ombudsman programs shall each create and maintain a volunteer program to effect the purposes of this article, pursuant to rules promulgated by the state long-term care ombudsman and the state commission on aging.

(b) A long-term care ombudsman volunteer shall have demonstrated interest in the field of aging and long-term care issues and be able to communicate effectively orally and in writing.

(c) No long-term care ombudsman volunteer nor any member of his or her immediate family shall have, or have had within the two years preceding his or her employment under this section, any pecuniary interest in the provision of long-term care. Nor shall any long-term care ombudsman volunteer perform his or her duties in any specific facility in which an immediate family member of the long-term care ombudsman volunteer is or has been a resident or applicant of that specific facility. For the purposes of this section, the term "immediate family" shall mean the spouse, children, natural mother, natural father, natural brothers or natural sisters of the long-term care ombudsman volunteer.

(d) The long-term care ombudsman volunteer shall perform only those duties assigned by the regional long-term care ombudsman, including, but not limited to, the following:

(1) Regularly visiting and talking with residents of long-term care facilities, and inspecting all public areas of the facility;

(2) Interviewing residents, family members and employees of long-term care facilities to ascertain the nature and facts of a complaint;

(3) Preparing reports for the regional long-term care ombudsman's review or approval relating to complaint interviews and the health, safety, welfare and rights of residents of long-term care facilities;

(4) Informing residents as to the availability of ombudsman services;

(5) Establishing and maintaining a cooperative working relationship with employees of long-term care facilities;

(6) Working to establish and maintain resident and family councils to encourage interaction among residents, their families and long term care facility staff; and

(7) Performing other duties as assigned by the regional long-term care ombudsman which are not contrary to this article, to any applicable federal law, or to rules promulgated by the state long-term care ombudsman and the state commission on aging.

(e) Notwithstanding the duties described above, no ombudsman volunteer may undertake or be assigned duties involving complaint investigation activities, as defined in section ten of this article, except for information gathering to ascertain the nature and facts of a complaint

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for the ombudsman's review. No ombudsman volunteer, during the course of his or her volunteer service, may initiate or pursue legal proceedings, actions or remedies on behalf of a resident or long-term care ombudsman program relating to a long-term care facility, its employees, or its residents.

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§16-5L-9. Long-term care ombudsman volunteer training and certification.

(a) The state long-term care ombudsman shall develop procedures for training and certification of long-term care ombudsman volunteers. The regional long-term care ombudsman shall implement certification training for all ombudsman volunteers in accordance with the procedures developed by the state long-term care ombudsman. No ombudsman volunteer shall perform any of the duties enumerated in section eight of this article prior to the completion of the training program, except as a supervised portion of that training program.

(b) Ombudsman volunteers who have satisfactorily completed the training and certification requirements shall be given identification cards valid for one year which shall be presented to employees of a long-term care facility upon request. Every year thereafter, the long-term care ombudsman volunteer shall complete at least seven hours of additional training before a new identification card is issued. Consistent with the provisions of this article and any rules and regulations promulgated pursuant to section twenty-one, certified long-term ombudsman volunteers shall be representatives of the state long-term care ombudsman program.

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§16-5L-10. Investigation of complaints.

(a) Upon receipt of a complaint filed on behalf of a resident, or on his or her own initiative, a state or regional long-term care ombudsman shall investigate any act, practice, policy or procedure of any long-term care facility or government agency which affects the health, safety, welfare or rights of any resident.

(b) Investigative activities of the state or regional long-term care ombudsman shall include, but shall not be limited to: Information gathering, mediation, negotiation, informing parties of the status of the investigation, notification to any aggrieved party of alternative processes, reporting of suspected violations to a licensing or certifying agency, and the reporting of suspected criminal violations to the appropriate authorities.

(c) The state or regional long-term care ombudsman need not investigate any complaint upon determining that:

(1) The complaint is trivial, frivolous, vexatious or not made in good faith;

(2) The complaint has been too long delayed to justify present investigation;

(3) The resources available, considering the established priorities, are insufficient for an adequate investigation;

(4) The matter complained of is not within the investigatory authority of the long-term care ombudsman program; or

(5) A real or apparent conflict of interest exists and no other ombudsman is available to investigate the complaint in an impartial manner.

If a determination is made by a regional long-term care ombudsman not to investigate any complaint, then the complaint shall be referred to the state long-term care ombudsman who shall make a final decision as to whether the matter warrants further investigation.

(d) State and regional long-term care ombudsmen may institute actions on behalf of residents to obtain injunctive and declaratory relief, but not damages. In order to enable ombudsman to bring such actions, the Director of the Office of Health Facility Licensure and Certification shall either:

(1) Establish an administrative hearing process under the procedures for contested cases defined at article five, chapter twenty-nine-a of this code to be available to any state or regional ombudsmen bringing an action on behalf of a resident against a long-term care facility or governmental agency; or

(2) Ensure that state and regional ombudsmen have sufficient access to legal counsel to bring actions on behalf of residents in civil court: *Provided*: That nothing in this subsection shall be construed to prevent a resident of a long-term care facility from filing directly, on

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his or her own behalf, a suit for relief of any sort in any state or federal court.

(e) The state commission on aging and other appropriate state governmental agencies shall establish and implement cooperative agreements for receiving, processing, responding to and resolving complaints involving state governmental agencies under the provisions of this section.

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§16-5L-11. Access to long-term care facilities.

(a) A state or regional long-term care ombudsman shall, with proper identification, have access to any long-term care facility for the purposes of investigations of a complaint filed pursuant to section ten of this article. The state or regional long-term care ombudsman may enter a facility at a time appropriate to the complaint. The visit may be announced in advance or be made unannounced as appropriate to the complaint under investigation. Upon entry of the facility, the state or regional long-term care ombudsman shall promptly and personally advise one of the following persons of his or her presence: (1) The administrator or acting administrator; (2) the residence director; or (3) another available supervisory agent of the facility. If entry is refused by the person in charge of said facility, the long-term care ombudsman may apply to the magistrate court of the county in which the facility is located for a warrant authorizing entry, and the court shall issue an appropriate warrant if it finds good cause therefor.

(b) For activities other than those specifically related to the investigation of a complaint, a state or regional long-term care ombudsman, upon proper identification, shall have access to any long-term care facility between the hours of 8:00 a.m. and 8:00 p.m. in order to:

(1) Visit, talk with, and make ombudsman and social services available to all residents;

(2) Inform residents of their rights and entitlements, and their corresponding obligations, under applicable federal and state laws by means of distribution of educational materials and discussion in groups and with individual residents;

(3) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance, and other public entitlements; and

(4) Supervise, direct or assist a long-term care ombudsman volunteer in the performance of his or her assigned duties.

Access to long-term care facilities under this section shall be deemed to include the right to private communication with residents.

(c) A state or regional long-term care ombudsman who has access to a facility under this section shall not enter the living area of a resident without identifying himself or herself to the resident. After identifying himself or herself, an ombudsman shall be permitted to enter the living area of a resident unless that resident communicates on that particular occasion the resident's desire to prevent the ombudsman from entering. A resident shall have the right to terminate, at any time, any visit by a representative of the ombudsman program who has access under this section or any other applicable section of this article.

(d) Access to a facility pursuant to subsection (a) or (b) of this section includes the right to tour the facility unescorted: Provided, That individual residents may terminate at any time any communication by an ombudsman having access under this section and that nothing in

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this section shall be construed as to grant a long-term care volunteer ombudsman the right of entry to the drug rooms and treatment rooms of a long-term care facility.

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§16-5L-12. Access to records.

(a) The long-term care ombudsman is allowed access to any resident's records, including medical records, reasonably necessary to any investigation carried out pursuant to the provisions of section ten of this article, under the following conditions:

(1) If the resident is competent and has the ability to write, access may only be obtained by the written consent of the resident;

(2) If the resident is competent but unable to write, oral consent may be given in the presence of a third party who shall witness the resident's consent in writing;

(3) If the resident is under a guardianship committee as set forth in article eleven, chapter twenty-seven of this code or has granted a medical power of attorney which is in effect as set forth in article thirty-a, chapter sixteen of this code, or granted any other power of attorney which is in effect, access may only be obtained by the written consent of the guardian or attorney in fact, unless the existence of guardianship, medical power of attorney or attorney in fact is unknown to the long-term care ombudsman upon investigation and to the long-term care facility, or unless the guardian or attorney in fact cannot be reached through normal communications channels within five working days;

(4) If the resident is unable to express written or oral consent and there is no guardian or attorney in fact or the notification of the guardian or attorney in fact is not achieved for the reasons set forth in subsection (3) of this section, or if the resident is deceased, inspection of records may be made by the ombudsman.

(b) The state or regional long-term care ombudsman is allowed access to all records of any long-term care facility that are reasonably necessary for the investigation of a complaint under section ten of this article, including, but not limited to, facility incident reports, dietary records, policies and procedures of the facility that the facility is required to maintain under federal or state law, admission agreements, staffing schedules, any document depicting the actual staffing pattern of the facility and resident council and grievance committee minutes.

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§16-5L-13. Subpoena powers.

(a) The state long-term care ombudsman, or the designee of the state long-term care ombudsman, may, in the course of any investigation carried out pursuant to section ten of this article:

(1) Apply to the circuit court of the appropriate county or the circuit court of the county of Kanawha for the issuance of a subpoena to compel at a specific time and place, by subpoena, the appearance, before a person authorized to administer oaths, the sworn testimony of any person whom the state or regional long-term care ombudsman reasonably believes may be able to give information relating to a matter under investigation; or

(2) Apply to the circuit court of the appropriate county or the circuit court of the county of Kanawha for the issuance of a subpoena duces tecum to compel any person to produce at a specific time and place, before a person authorized to administer oaths, any documents, books, records, papers, objects or other evidence which the state or regional long-term care ombudsman reasonably believes may relate to a matter under investigation.

(b) No subpoena or subpoena duces tecum applied for by the state ombudsman or designee pursuant to subsection (a) of this section shall be issued until a circuit court judge in term or vacation thereof has personally reviewed the application and accompanying affidavits and approved, by a signed order entered by the judge, the issuance of the subpoena or subpoena duces tecum. Subpoenas or subpoenas duces tecum applied for pursuant to this section may be issued on an ex parte basis following review and approval of the application by the judge in term or vacation thereof.

(c) The Attorney General shall, upon request, provide legal counsel and services to the long-term care ombudsman program in all administrative proceedings and in all proceedings in any circuit court and the West Virginia Supreme Court of Appeals. The prosecuting attorney of any county shall provide without compensation legal counsel and services in criminal actions to the long-term care ombudsman program in circuit court proceedings in that county.

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§16-5L-14. Cooperation among government departments or agencies.

(a) The state or regional long-term care ombudsman shall have access to publicly disclosable records of any state government department, agency, or office reasonably necessary to any investigation carried out pursuant to section ten of this article. The regional long-term care ombudsman shall be notified of and be allowed to observe any survey conducted by a government agency affecting the health, safety, welfare or rights of residents of a long-term facility.

(b) The state long-term care ombudsman shall develop referral procedures to refer any complaint to any appropriate state government department, agency or office. The agency shall acknowledge receipt and disposition within thirty calendar days on any complaint referred to it by a state or regional long-term care ombudsman.

(c) When abuse, neglect or exploitation of a resident of a long-term care facility is suspected, the state or regional long-term care ombudsman shall make a referral to the office of adult protective services and to the office of health facility licensure and certification. The state or regional long-term care ombudsman shall coordinate with the office of adult protective services and the office of health facility licensure and certification on any investigation of suspected abuse, neglect or exploitation undertaken by those offices under the provisions of this subsection.

(d) Any state government department, agency, or office which responds to a complaint referred to it by a state or regional long-term care ombudsman shall forward to the long-term care ombudsman copies of publicly disclosable inspection reports and plans of correction, and notices of any citations and sanctions levied against the long-term care facility identified in the complaint.

(e) The state or regional long-term care ombudsman shall seek to establish coordination with programs which provide legal services for the elderly, including, but not limited to, programs funded by the federal legal services corporation or under the Older Americans Act of 1965, as amended.

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§16-5L-15. Confidentiality of investigations.

(a) Information relating to any investigation of a complaint pursuant to section ten of this article that contains the identity of the complainant or resident shall remain confidential except:

(1) Where disclosure is authorized in writing by the complainant, or resident or the guardian, committee, attorney in fact or representative of the resident;

(2) Where disclosure is necessary to the office of adult protective services in order for such office to determine the appropriateness of initiating an investigation regarding potential abuse, neglect or emergency circumstances as defined in article six, chapter nine of this code;

(3) Where disclosure is necessary to the office of health facility licensure and certification in order for such office to determine the appropriateness of initiating an investigation to determine facility compliance with applicable rules of licensure and/or certification; or

(4) Upon order of any appropriate county circuit court after the judge in term or vacation thereof has conducted a hearing following adequate notice to all parties and rendered a determination as the interests of justice may require.

(b) Notwithstanding any other section within this article, all information, records and reports received by or developed by a state or regional long-term care ombudsman which relate to a resident of a facility, including written material identifying a resident, are confidential and are not subject to the provisions of chapter twenty-nine-b of this code, and shall not be disclosed or released by the long-term care ombudsman, except under the circumstances enumerated in this section.

(c) Nothing in subsection (a) or (b) of this section shall be construed to prohibit the preparation and submission by any state or regional long-term ombudsman of statistical data and reports, as required to implement the provisions of this article or any applicable federal law, exclusive of any material that identifies any resident or complainant.

(d) The executive director of the state commission on aging shall have access to the records and files of the long-term care ombudsman program to verify its effectiveness and quality where the identity of any complainant or resident is not disclosed.

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§16-5L-16. Limitations on liability.

(a) An ombudsman participating in an investigation carried out pursuant to section ten of this article and long-term care ombudsman volunteers who are performing their duties pursuant to section eight of this article shall be immune from any civil liability that otherwise might result by reason of his or her participation in the investigation as long as such participation is not violative of any applicable law, rule or regulation, done within the scope of their employment and done in good faith.

(b) If an act or omission by any long-term care ombudsman, or by any facility employee acting in good faith at the direction of a long-term care ombudsman pursuant to a specific resident complaint, causes a resident's rights to be violated, no long-term care facility, its owners, administrators, officers, director, agents, consultants, employees or any member of management shall be held civilly liable as a result of said act or omission.

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§16-5L-17. Availability of legal counsel.

The state commission on aging shall establish and maintain procedures to ensure that:

(a) Adequate legal counsel is available to the long-term care ombudsman program for advice, consultation and representation as necessary for any state or regional long-term care ombudsman or ombudsman volunteer in connection with the performance of the ombudsman's or ombudsman volunteer's official duties; and

(b) The long-term care ombudsman program has the ability to pursue administrative, legal and other appropriate remedies on behalf of residents of long-term care facilities.

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§16-5L-18. Willful interference; retaliation; penalties.

(a) Any individual who willfully interferes with or impedes a state or regional long-term care ombudsman or ombudsman volunteer in the performance of his or her official duties shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $100 or imprisoned in the county jail for not more than ninety days, or both fined and imprisoned.

(b) Any individual who institutes or commits a discriminatory, disciplinary, retaliatory or reprisal action against any officer or employee of a long-term care facility or government department or agency, against any resident of a long-term care facility or against any guardian, attorney in fact or against any family member of any resident of a long-term care facility for having filed a complaint with or provided information in good faith to a state or regional long-term ombudsman or ombudsman volunteer to aid the long-term care ombudsman or ombudsman volunteer in carrying out the duties pursuant to this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $100, or imprisoned in the county jail for not more than ninety days, or both fined and imprisoned.

(c) Any individual violating the provisions of subsection (a) or (b) of this section shall, for the second or any subsequent offense under either of these subsections, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $250, or imprisoned in the county jail for not more than ninety days, or both fined and imprisoned. Each day of a continuing violation after conviction shall be considered a separate offense.

(d) There shall be a rebuttable presumption in any civil action that any reprisal action, as defined below, within ninety days of the incident, is discriminatory, disciplinary or retaliatory in violation of the public policy of this state. For the purpose of this section, the term "reprisal action" refers to action taken by the entity involved in a complaint or report against the person making the complaint or report, or the person with respect to whom the complaint or report was made because of the complaint or report, and includes, but is not limited to, the following:

(1) Discharge or transfer from a long-term care facility;

(2) Termination of service;

(3) Restriction or prohibition of access to the long-term care facility or its residents;

(4) Discharge from or termination of employment;

(5) Demotion or reduction in remuneration for services;

(6) Any restriction of rights affecting the person's ability to perform his or her employment duties or responsibilities or affecting the person's health, safety or welfare; or

(7) Any restriction against a state or regional long-term care ombudsman or ombudsman volunteer which impedes the carrying out of duties pursuant to this article.

WV Legislature

(e) Nothing in this section shall be construed as to infringe upon the rights of an employer to supervise, discipline or terminate an employee for other reasons.

WV Legislature

§16-5L-19. Facility posting of long-term care ombudsman program information.

Every long-term care facility in this state shall provide each resident with a copy and shall post in a conspicuous location in at least ten-point type a notice of information on the long-term care ombudsman program. Such notice shall include: (1) The name, address and telephone number of the designated long-term care ombudsman program serving the region in which the facility is located; (2) a brief description of the services provided by the long-term care ombudsman program; and (3) a statement as to the penalties for willful interference and retaliation as provided in section eighteen of this article. The form and wording of the notice shall be approved by the state long-term care ombudsman program.

WV Legislature

§16-5L-20. Funding for long-term care ombudsman programs.

The state long-term care ombudsman program shall receive such funds as are appropriated pursuant to the Older Americans Act of 1965, as amended, for the operation of the state long-term care ombudsman program, and shall receive such funds as are appropriated by the Legislature for the operation of the program.

The regional long-term care ombudsman program shall receive such funds as are appropriated by the area agencies on aging pursuant to the Older Americans Act of 1965, as amended.

Any long-term care ombudsman program may solicit and receive funds, gifts and contributions to support the operation of the program. No program shall solicit or receive any funds, gifts or contributions where the solicitation or receipt would jeopardize the independence and objectivity of the program.

WV Legislature

§16-5L-21. Promulgation of rules.

Pursuant to chapter twenty-nine-a of this code, the state long-term care ombudsman and the state commission on aging shall promulgate rules to effectuate the purposes and provisions of this article.

WV Legislature

§16-5L-22. Severability.

If any provision of this article, or the application thereof to any provision or circumstance, shall be held unconstitutional or otherwise invalid, such invalidity or unconstitutionality shall not affect the provisions or application of this article which can be given effect without the unconstitutional or invalid provisions of application, and to this end the provisions of this article are declared to be severable.

WV Legislature