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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 4102

(By Delegates Compton, Hutchins, Caputo,
Fleischauer, Manuel, Rowe and Leach)



Passed March 12, 1998

In Effect Ninety Days from Passage

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H. B. 4102

(BY DELEGATES COMPTON, HUTCHINS, CAPUTO,
FLEISCHAUER, MANUEL, ROWE AND LEACH)

[Passed March 12, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact sections three and seven, article five-1, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to long-term care ombudsmen; regional long-term care ombudsmen; qualifications; duties; training; certification; definitions; defining a pecuniary interest in the provision of long-term care; modifying the prohibition against certain prior employment in the field of long-term care of regional long-term care ombudsmen; and expanding the qualifications for regional long-term care ombudsmen.

Be it enacted by the Legislature of West Virginia:

That sections three and seven, article five-1, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5L. LONG-TERM CARE OMBUDSMAN PROGRAM.

§16-5L-3. Definitions.

- 1 As used in this article, unless a different meaning
- 2 appears from the context:
- 3 (a) "Government agency" means any department,
- 4 division, office, bureau, board, commission, council,
- 5 authority, or any other agency or instrumentality created

6 by the state or political subdivision thereof or to which the
7 state is a party or by any county or municipality which is
8 responsible for the regulation, visitation, inspection, or
9 supervision of long-term care facilities or which provides
10 services to residents or long-term care facilities;

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

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

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

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

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

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

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

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

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

1 (a) Each regional long-term care ombudsman
2 program shall employ one or more regional long-term
3 care ombudsmen to effect the purposes of this article.
4 The regional long-term care ombudsman shall have either:
5 (1) At least a four-year degree in gerontology, social
6 work, health, or a related field and demonstrated
7 experience in one of the following areas: (A) The field of
8 aging; (B) health care or social service programs; (C)
9 community programs; or (D) long-term care issues; or (2)
10 at least a four-year degree in any field and at least three
11 years of experience in gerontology, social work, health or

12 a-related field. Persons employed in a designated regional
13 long-term care ombudsman program on the date of
14 enactment of this article may be given a waiver from these
15 requirements provided that within one year from the date
16 of enactment of this article they enter into a program
17 leading to a degree in gerontology, social work, health or
18 a related field or complete fifty hours of continuing
19 education units in gerontology, social work, health or a
20 related field every two calendar year periods. The
21 regional long-term care ombudsman shall participate in
22 ongoing training programs related to his or her duties or
23 responsibilities. The regional long-term care ombudsman
24 may not have been employed within the past two years
25 prior to the date of his or her employment under this
26 section by any association of long-term care facilities. If a
27 regional long-term care ombudsman has been employed
28 within the past two years prior to the date of his or her
29 employment under this section by a long-term care
30 facility, or by any organization or corporation that
31 directly or indirectly regulates, owns or operates a long-
32 term care facility, that ombudsman may not act with the
33 authority of a regional long-term care ombudsman in the
34 facility of prior employment or in any other facility
35 regulated, owned or operated by the same ownership as
36 the facility of prior employment.

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

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

49 (1) Regularly monitoring long-term care facilities and
50 investigating complaints filed on behalf of a resident, or
51 filed on the regional long-term care ombudsman's own

52 initiative, relating to the health, safety, welfare and rights
53 of such residents, in accordance with complaint
54 investigation procedures developed by the state long-term
55 ombudsman care program: *Provided*, That nothing in this
56 section shall be construed as to grant a regional long-term
57 care ombudsman the right of entry to a long-term care
58 facility's drug rooms or to treatment rooms occupied by a
59 resident unless prior consent has been obtained from the
60 resident;

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

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

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

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

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

77 (d) The state long-term care ombudsman shall develop
78 and implement procedures for training and certification of
79 regional long-term care ombudsmen. Regional long-term
80 care ombudsmen who satisfactorily complete the training
81 requirements shall be certified by the state commission on
82 aging and shall be given identification cards which shall
83 be presented to employees of a long-term care facility
84 upon request. No regional long-term care ombudsman
85 may investigate any complaint filed with the West Virginia
86 long-term care ombudsman program unless such person
87 has been certified by the state commission on aging.
88 Consistent with the provisions of this article and any rules
89 and regulations promulgated pursuant to section

90 twenty-one, certified regional long-term ombudsmen
91 shall be representatives of the state long-term care
92 ombudsman program.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Ray Schooner
Chairman Senate Committee

Nick Fantasia
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Carroll E. Estess
Clerk of the Senate

Bruce M. Bay
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within approved this the 27th
day of March, 1998.

[Signature]
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/98

Time 4:01 pm