

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 80  
House Committee Substitute Favorable 5/1/89

Short Title: Ombudsman Program.

(Public)

Sponsors:

Referred to:

January 31, 1989

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH A LONG-TERM CARE OMBUDSMAN PROGRAM.  
3 The General Assembly of North Carolina enacts:

4 Section 1. Article 3 of Chapter 143B of the General Statutes is amended by  
5 adding a new Part to read:

6 **“PART 4D. LONG-TERM CARE OMBUDSMAN PROGRAM.**  
7 **”§ 143B-181.15. Long-Term Care Ombudsman Program/Office; policy.**

8 The General Assembly finds that a significant number of older citizens of this State  
9 reside in long-term care facilities and are dependent on others to provide their care. It is  
10 the intent of the General Assembly to protect and improve the quality of care and life  
11 for residents through the establishment of a program to assist residents and providers in  
12 the resolution of complaints or common concerns, to promote community involvement  
13 and volunteerism in long-term care facilities, and to educate the public about the long-  
14 term care system. It is the further intent of the General Assembly that the Department  
15 of Human Resources, within available resources and pursuant to its duties under the  
16 Older Americans Act of 1965, as amended, 42 U.S.C. § 3001-3057g, ensure that the  
17 quality of care and life for these residents is maintained, that necessary reports are  
18 made, and that, when necessary, corrective action is taken at the Department level.

19 **”§ 143B-181.16. Long-Term Care Ombudsman Program/Office; definition.**

20 Unless the content clearly requires otherwise, as used in this Article:

- 21 (1) ‘Long-term care facility’ means any skilled nursing facility and  
22 intermediate care facility as defined in G.S. 131A-(4) or any  
23 domiciliary home as defined in G.S. 131D-20(2).

- 1           (2) 'Resident' means any person who is receiving treatment or care in any  
2 long-term care facility.
- 3           (3) 'State Ombudsman' means the State Ombudsman as defined by the  
4 Older Americans Act of 1965, as amended, who carries out the duties  
5 and functions established by this Article.
- 6           (4) 'Regional Ombudsman' means a person employed by an Area Agency  
7 on Aging to carry out the functions of the Regional Ombudsman  
8 Office established by this Article.

9 **"§ 143B-181.17. Office of State Long-Term Care Ombudsman Program/Office;**  
10 **establishment.**

11       The Secretary of Department of Human Resources shall establish and maintain the  
12 Office of State Long-Term Ombudsman in the Division of Aging. The Office shall  
13 carry out the functions and duties required by the Older Americans Act of 1965, as  
14 amended. This Office shall be headed by a State Ombudsman who is a person qualified  
15 by training and with experience in geriatrics and long-term care. The Attorney General  
16 shall provide legal staff and advice to this Office.

17 **"§ 143B-181.18. Office of State Long-Term Care Ombudsman Program/State**  
18 **Ombudsman duties.**

19       The State Ombudsman shall:

- 20           (1) Promote community involvement with long-term care provider and  
21 residents of long-term care facilities and serve as liaison between  
22 residents, residents' families, facility personnel, and facility  
23 administration;
- 24           (2) Supervise the Long-Term Care Program pursuant to rules adopted by  
25 the Secretary of the Department of Human Resources pursuant to G.S.  
26 143B-10;
- 27           (3) Certify regional ombudsmen. Certification requirements shall include  
28 an internship training in the aging process, complaint resolution, long-  
29 term care issues, mediation techniques, recruitment and training of  
30 volunteers, and relevant federal, State, and local laws, policies, and  
31 standards;
- 32           (4) Attempt to resolve complaints made by or on behalf of individuals  
33 who are residents of long-term care facilities, which complaints relate  
34 to administrative action that may adversely affect the health, safety, or  
35 welfare of residents;
- 36           (5) Provide training and technical assistance to regional ombudsmen;
- 37           (6) Establish procedures for appropriate access by regional ombudsmen to  
38 long-term care facilities and residents' records including procedures to  
39 protect the confidentiality of these records and to ensure that the  
40 identity of any complainant or resident will not be disclosed without  
41 the written consent of the complainant or resident or upon court order;
- 42           (7) Analyze data relating to complaints and conditions in long-term care  
43 facilities to identify significant problems and recommend solutions;

- 1           (8) Prepare an annual report containing data and findings regarding the  
2 types of problems experienced and complaints reported by residents as  
3 well as recommendations for resolutions of identified long-term care  
4 issues;  
5           (9) Prepare findings regarding public education and community  
6 involvement efforts and innovative programs being provided in long-  
7 term care facilities; and  
8           (10) Provide information to public agencies, and through the State  
9 Ombudsman, to legislators, and others regarding problems  
10 encountered by residents or providers as well as recommendations for  
11 resolution.

12 **"§ 143B-181.19. Office of Regional Long-Term Care Ombudsman; Regional**  
13 **Ombudsman; duties.**

14       (a) An Office of Regional Ombudsman Program shall be established in each of  
15 the Area Agencies on Aging, and shall be headed by a Regional Ombudsman who shall  
16 carry out the functions and duties of the Office. The Area Agency on Aging  
17 administration shall provide administrative supervision to each Regional Ombudsman.

18       (b) Pursuant to policies and procedures established by the State Office of Long-  
19 Term Care Ombudsman, the Regional Ombudsman shall:

- 20           (1) Promote community involvement with long-term care facilities and  
21 residents of long-term care facilities and serve as a liaison between  
22 residents, residents' families, facility personnel, and facility  
23 administration;  
24           (2) Receive and attempt to resolve complaints made by or on behalf of  
25 residents in long-term care facilities;  
26           (3) Collect data about the number and types of complaints handled;  
27           (4) Work with long-term care providers to resolve issues of common  
28 concern;  
29           (5) Work with long-term care providers to promote increased community  
30 involvement;  
31           (6) Offer assistance to long-term care providers in staff training regarding  
32 residents' rights;  
33           (7) Report regularly to the office of State Ombudsman about the data  
34 collected and about the activities of the Regional Ombudsman;  
35           (8) Provide training and technical assistance to the community advisory  
36 committees; and  
37           (9) Provide information to the general public on long-term care issues.

38 **"§ 143B-181.20. State/Regional Long-Term Care Ombudsman; authority to enter;**  
39 **cooperation of government agencies; communication with residents.**

40       (a) The State and Regional Ombudsman may enter any long-term care facility  
41 and may have reasonable access to any resident in the reasonable pursuit of his function.  
42 Upon entering the facility, the Ombudsman shall notify the administration or the person  
43 in charge of the facility before speaking to the resident. The Ombudsman may  
44 communicate privately and confidentially with residents of the facility individually or in

1 groups. The Ombudsman shall have access to the patient records of any resident, under  
2 procedures established by the State Ombudsman pursuant to G.S.143B-181.18(6),  
3 provided that the medical and personal financial records pertaining to an individual  
4 resident may be inspected only with the permission of the resident or his legally  
5 appointed guardian, if any. Entry shall be conducted in a manner that will not  
6 significantly disrupt the provision of nursing or other care to residents. Any State or  
7 Regional Ombudsman who discloses any information obtained from the patient's  
8 medical or personal financial records without a court order or without authorization in  
9 writing from the resident, or his legal representative, is guilty of a general misdemeanor.

10 (b) The State or Regional Ombudsman shall identify himself as such to the  
11 resident, and the resident has the right to refuse to communicate with the Ombudsman.

12 (c) The resident has the right to participate in planning any course of action to be  
13 taken on his behalf by the State or Regional Ombudsman, and the resident has the right  
14 to approve or disapprove any proposed action to be taken on his behalf by the  
15 Ombudsman.

16 (d) The State or Regional Ombudsman shall meet with the facility administrator  
17 or person in charge before any action is taken to allow the facility the opportunity to  
18 respond, provide additional information, or take appropriate action to resolve the  
19 concern.

20 (e) The State and Regional Ombudsman may obtain from any government  
21 agency, and this agency shall provide, that cooperation, assistance, services, data, and  
22 access to files and records that will enable the Ombudsman to properly perform his  
23 duties and exercise his powers, provided this information is not privileged by law.

24 (f) If the subject of the complaint involves suspected abuse, neglect, or  
25 exploitation, the State or Regional Ombudsman shall notify the county department of  
26 social services' Adult Protection Services section of the county department of social  
27 services, pursuant to Article 6 of Chapter 108A of the General Statutes.

28 **§ 143B-181.21. State/Regional Long-Term Care Ombudsman; resolution of**  
29 **complaints.**

30 (a) Following receipt of a complaint, the State or Regional Ombudsman shall  
31 attempt to resolve the complaint using, whenever possible, informal technique of  
32 mediation, conciliation, and persuasion.

33 (b) Complaints or conditions adversely affecting residents of long-term care  
34 facilities that cannot be resolved in the manner described in subsection (a) of this  
35 section shall be referred by the State or Regional Ombudsman to the appropriate  
36 licensure agency pursuant to G.S. 131E-100 through 110 and G.S.131D-2.

37 **§ 143B-181.22. State/Regional Long-Term Care Ombudsman; confidentiality.**

38 The identity of any complainant, resident on whose behalf a complaint is made, or  
39 individual providing information on behalf of the resident or complainant relevant to the  
40 attempted resolution of a complaint is confidential and may be disclosed only with the  
41 express permission of the person. The information produced by the process of  
42 complaint resolution may be disclosed by the State Ombudsman or Regional  
43 Ombudsman only if the identity of any such person is not disclosed by name or  
44 inference. If the identity of any such person is disclosed by name or inference in such

1 information, the information may be disclosed only with his express permission. If the  
2 complaint becomes the subject of a judicial proceeding, the investigative information  
3 may be disclosed for the purpose of the proceeding.

4 **"§ 143B-181.23. State/Regional Long-Term Care Ombudsman; prohibition of**  
5 **retaliation.**

6 No person shall discriminate or retaliate in any manner against any resident or  
7 relative or guardian of a resident, any employee of a long-term care facility, or any other  
8 person because of the making of a complaint or providing of information in good faith  
9 to the State Ombudsman or Regional Ombudsman.

10 **"§ 143B-181.24. Office of State/Regional Long-Term Care Ombudsman; immunity**  
11 **from liability.**

12 No representative of the Office shall be liable for good faith performance of official  
13 duties.

14 **"§ 143B-181.25. Office of State/Regional Long-Term Care Ombudsman; penalty**  
15 **for willful interference.**

16 Willful or unnecessary obstruction with the State or Regional Long-Term Care  
17 Ombudsman in the performance of his official duties is a general misdemeanor."

18 Sec. 2. This act is effective upon ratification.