

Chapter 43.190 RCW
LONG-TERM CARE OMBUDS PROGRAM

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RCW 43.190.010 Findings. The legislature finds that in order to comply with the federal older Americans act and to effectively assist residents, patients, and clients of long-term care facilities in the assertion of their civil and human rights, a long-term care ombuds program should be instituted. [2013 c 23 s 88; 1983 c 290 s 1.]

RCW 43.190.020 "Long-term care facility" defined. As used in this chapter, "long-term care facility" means any of the following:

- (1) A facility which:
 - (a) Maintains and operates twenty-four hour skilled nursing services for the care and treatment of chronically ill or convalescent patients, including mental, emotional, or behavioral problems, intellectual disabilities, or alcoholism;
 - (b) Provides supportive, restorative, and preventive health services in conjunction with a socially oriented program to its residents, and which maintains and operates twenty-four hour services including board, room, personal care, and intermittent nursing care. "Long-term health care facility" includes nursing homes and nursing facilities, but does not include acute care hospital or other licensed facilities except for that distinct part of the hospital or facility which provides nursing facility services.
- (2) Any family home, group care facility, or similar facility determined by the secretary, for twenty-four hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.
- (3) Any swing bed in an acute care facility. [2010 c 94 s 13; 1995 1st sp.s. c 18 s 32; 1991 sp.s. c 8 s 3; 1983 c 290 s 2.]

Purpose—2010 c 94: See note following RCW 44.04.280.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

RCW 43.190.030 Office of state long-term care ombuds created—Powers and duties—Rules. There is created the office of the state long-term care ombuds. The department of commerce shall contract with a private nonprofit organization to provide long-term care ombuds services as specified under, and consistent with, the federal older Americans act as amended, federal mandates, the goals of the state, and the needs of its citizens. The department of commerce shall ensure that all program and staff support necessary to enable the ombuds to effectively protect the interests of residents, patients, and clients of all long-term care facilities is provided by the nonprofit organization that contracts to provide long-term care ombuds services. The department of commerce shall adopt rules to carry out this chapter and the long-term care ombuds provisions of the federal older Americans act, as amended, and applicable federal regulations. The long-term care ombuds program shall have the following powers and duties:

- (1) To provide services for coordinating the activities of long-term care ombuds throughout the state;
- (2) Carry out such other activities as the department of commerce deems appropriate;
- (3) Establish procedures consistent with RCW 43.190.110 for appropriate access by long-term care ombuds to long-term care facilities and patients' records, including procedures to protect the confidentiality of the records and ensure that the identity of any complainant or resident will not be disclosed without the written consent of the complainant or resident, or upon court order;
- (4) Establish 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, with provision for submission of such data to the department of social and health services and to the federal department of health and human services, or its successor agency, on a regular basis; and
- (5) Establish procedures to assure that any files maintained by ombuds programs shall be disclosed only at the discretion of the ombuds having authority over the disposition of such files, except that the identity of any complainant or resident of a long-term care facility shall not be disclosed by such ombuds unless:
 - (a) Such complainant or resident, or the complainant's or resident's legal representative, consents in writing to such disclosure; or
 - (b) Such disclosure is required by court order. [2013 c 23 s 89; 1997 c 194 s 1; 1995 c 399 s 105; 1988 c 119 s 2; 1983 c 290 s 3.]

Effective date—1988 c 119 s 2: "Section 2 of this act shall take effect July 1, 1989." [1988 c 119 s 5.]

Legislative findings—1988 c 119: "The legislature recognizes that the state long-term care ombudsman [ombuds] program and the

office of the state long-term care ombudsman [ombuds], located within the department of social and health services, have brought into serious question the ability of that office to serve as an effective mechanism on the state level for investigating and resolving complaints made by or on behalf of residents of long-term care facilities.

The legislature further finds it necessary to exercise its options under the federal older Americans act and identify an organization, outside of the department of social and health services and independent of any other state agency, to provide, through contract, long-term care ombudsman [ombuds] services." [1988 c 119 s 1.]

Survey—1988 c 119: "The committee on health care of the house of representatives shall conduct a survey and analysis of the appropriate placement outside of state government of the office of the state long-term care ombudsman [ombuds]. The survey shall ascertain how the contracted placement of the office will most effectively allow it to meet its responsibilities under chapter 43.190 RCW. A draft of the findings shall be submitted to the governor and the legislature before the first Friday in November 1988 and the final findings, conclusions, and recommendations shall be submitted in a report to the governor and the legislature no later than December 30, 1988.

The survey required shall include, but is not limited to, a complete assessment of how independently contracting the program outside state government will provide the office with an effective means for resolving complaints and building program accountability and integrity facilitating local involvement and contributing to long-term care policy development. The study shall also clearly identify and describe how this model for administering the duties and responsibilities of the ombudsman [ombuds] will affect the ability of the office to function as mandated under the federal older Americans act, and provide suggestions that will assist the office to coordinate information and assistance, to the fullest degree possible, with citizen groups, the general public, the nursing home industry, and local volunteer programs. The survey shall further specify the operational program details necessary for adopting the proposed independently contracted plan." [1988 c 119 s 3.]

Use of survey findings—1988 c 119: "The survey findings, together with any reports of legislative committees in response to such survey, shall be used by the department of community development in determining the best manner to contract for and provide long-term care ombudsman [ombuds] services." [1988 c 119 s 4.]

RCW 43.190.040 Long-term care ombuds. (1) Any long-term care ombuds authorized by this chapter or a local governmental authority shall have training or experience or both in the following areas:

- (a) Gerontology, long-term care, or other related social services programs.
- (b) The legal system.
- (c) Dispute or problem resolution techniques, including investigation, mediation, and negotiation.

(2) A long-term care ombuds shall not have been employed by or participated in the management of any long-term care facility within the past year.

(3) A long-term care ombuds shall not have been employed in a governmental position with direct involvement in the licensing, certification, or regulation of long-term care facilities within the past year.

(4) No long-term care ombuds or any member of his or her immediate family shall have, or have had within the past year, any significant ownership or investment interest in one or more long-term care facilities.

(5) A long-term care ombuds shall not be assigned to a long-term care facility in which a member of that ombuds's immediate family resides. [2013 c 23 s 90; 2002 c 100 s 1; 1983 c 290 s 4.]

**RCW 43.190.050 Posting of notice by long-term care facility—
Distribution of information to residents.** Every long-term care facility shall post in a conspicuous location a notice of the nursing home complaint toll-free number and the name, address, and phone number of the office of the appropriate long-term care ombuds and a brief description of the services provided by the office. The form of the notice shall be approved by the office and the organization responsible for maintaining the nursing home complaint toll-free number. This information shall also be distributed to the residents, family members, and legal guardians upon the resident's admission to the facility. [2013 c 23 s 91; 1983 c 290 s 5.]

RCW 43.190.060 Duties of ombuds. A long-term care ombuds shall:

- (1) Identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities relating to administrative action, inaction, or decisions which may adversely affect the health, safety, welfare, and rights of these individuals;
- (2) Monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies with respect to long-term care facilities in this state;
- (3) Provide information as appropriate to residents, resident representatives, and others regarding the rights of residents, and to public agencies regarding the problems of individuals residing in long-term care facilities; and
- (4) Provide for training volunteers and promoting the development of citizen organizations to participate in the ombuds program. A trained volunteer long-term care ombuds, in accordance with the policies and procedures established by the state long-term care ombuds program, shall inform residents, their representatives, and others about the rights of residents, and may identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities relating to action, inaction, or decisions, that may adversely affect the health, safety, welfare, and rights of these individuals.

Nothing in chapter 133, Laws of 1999 shall be construed to empower the state long-term care ombuds or any local long-term care ombuds with statutory or regulatory licensing or sanctioning authority. [2013 c 23 s 92; 1999 c 133 s 1; 1995 1st sp.s. c 18 s 33; 1987 c 158 s 3; 1983 c 290 s 6.]

Severability—1999 c 133: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 133 s 3.]

Effective date—1999 c 133: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 28, 1999]." [1999 c 133 s 4.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Definitions: See RCW 74.39.007.

RCW 43.190.065 Local and state long-term care ombuds—Duties and authority in federal older Americans act. A local long-term care ombuds, including a trained volunteer long-term care ombuds, shall have the duties and authority set forth in the federal older Americans act (42 U.S.C. Sec. 3058 et seq.) for local ombuds. The state long-term care ombuds and representatives of the office of the state long-term care ombuds, shall have the duties and authority set forth in the federal older Americans act for the state long-term care ombuds and representatives of the office of the state long-term care ombuds. [2013 c 23 s 93; 1999 c 133 s 2.]

Severability—Effective date—1999 c 133: See notes following RCW 43.190.060.

RCW 43.190.070 Referral procedures—Action on complaints. (1) The office of the state long-term care ombuds shall develop referral procedures for all long-term care ombuds programs to refer any complaint to any appropriate state or local government agency. The department of social and health services shall act as quickly as possible on any complaint referred to them by a long-term care ombuds.

(2) The department of social and health services shall respond to any complaint against a long-term care facility which was referred to it by a long-term care ombuds and shall forward to that ombuds a summary of the results of the investigation and action proposed or taken. [2013 c 23 s 94; 1983 c 290 s 7.]

RCW 43.190.080 Development of procedures on right of entry to facilities—Access to residents—Preservation of rights. (1) The office of the state long-term care ombuds shall develop procedures governing the right of entry of all long-term care ombuds to long-term care facilities and shall have access to residents with provisions made for privacy for the purpose of hearing, investigating, and resolving complaints of, and rendering advice to, individuals who are patients or residents of the facilities at any time deemed necessary and reasonable by the state ombuds to effectively carry out the provisions of this chapter.

(2) Nothing in this chapter restricts, limits, or increases any existing right of any organizations or individuals not described in

subsection (1) of this section to enter or provide assistance to patients or residents of long-term care facilities.

(3) Nothing in this chapter restricts any right or privilege of any patient or resident of a long-term care facility to receive visitors of his or her choice. [2013 c 23 s 95; 1983 c 290 s 8.]

RCW 43.190.090 Liability of ombuds—Discriminatory, disciplinary, or retaliatory actions—Communications privileged—Testimony. (1) No long-term care ombuds is liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against any employee of a facility or agency, any patient, resident, or client of a long-term care facility, or any volunteer, for any communication made, or information given or disclosed, to aid the long-term care ombuds in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith. This subsection is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(3) All communications by a long-term care ombuds, if reasonably related to the requirements of that individual's responsibilities under this chapter and done in good faith, are privileged and that privilege shall serve as a defense to any action in libel or slander.

(4) A representative of the office is exempt from being required to testify in court as to any confidential matters except as the court may deem necessary to enforce this chapter. [2013 c 23 s 96; 1983 c 290 s 9.]

RCW 43.190.110 Confidentiality of records and files—Disclosures prohibited—Exception. All records and files of long-term care ombuds relating to any complaint or investigation made pursuant to carrying out their duties and the identities of complainants, witnesses, patients, or residents shall remain confidential unless disclosure is authorized by the patient or resident or his or her guardian or legal representative. No disclosures may be made outside the office without the consent of any named witnesses, resident, patient, client, or complainant unless the disclosure is made without the identity of any of these individuals being disclosed. [2013 c 23 s 97; 1983 c 290 s 11.]

RCW 43.190.120 Expenditure of funds on long-term care ombuds program. It is the intent that federal requirements be complied with and the department annually expend at least one percent of the state's allotment of social services funds from Title III B of the older Americans act of 1965, as it exists as of July 24, 1983, or twenty thousand dollars, whichever is greater to establish the state long-term care ombuds program established by this chapter if funds are appropriated by the legislature. [2013 c 23 s 98; 1983 c 290 s 12.]