

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 903**

Introduced by Linehan, 39.

Read first time January 08, 2018

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to aging services; to amend sections 81-2225,  
2 81-2242, 81-2248, 81-2250, 81-2252, 81-2253, 81-2254, 81-2255,  
3 81-2258, 81-2260, and 81-2264, Reissue Revised Statutes of Nebraska;  
4 to change provisions relating to reimbursement; to change provisions  
5 relating to the Long-Term Care Ombudsman Act; to harmonize  
6 provisions; and to repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-2225, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 81-2225 To qualify for reimbursement by the department, as provided  
4 for in section 81-2224, a designated area agency on aging shall have a  
5 department-approved plan and budget and shall provide no less than  
6 twenty-five percent of such approved plan and budget from local sources.  
7 Local sources shall include, but shall not be limited to, local tax  
8 dollars and  ~~, donations, and fees,~~ and shall not include receipts from  
9 federal or state sources, except federal revenue-sharing trust funds.

10 Sec. 2. Section 81-2242, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

12 81-2242 Local long-term care ombudsman program shall mean an entity,  
13 either public or private and nonprofit, designated as a local long-term  
14 care ombudsman program by the office ~~department~~.

15 Sec. 3. Section 81-2248, Reissue Revised Statutes of Nebraska, is  
16 amended to read:

17 81-2248 State long-term care ombudsman shall mean the person ~~or~~  
18 ~~persons~~ appointed under section 81-2249 to fulfill the responsibilities  
19 of the office.

20 Sec. 4. Section 81-2250, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 81-2250 The department shall establish a long-term care ombudsman  
23 program consisting of the state long-term care ombudsman and any local  
24 long-term care ombudsman programs. The program, ~~as approved and~~  
25 ~~administered by the department,~~ shall:

26 (1) Investigate and resolve complaints ~~not reportable under the~~  
27 ~~Adult Protective Services Act~~ made by or on behalf of ~~elder~~ individuals  
28 who are patients, residents, or clients of long-term care facilities  
29 relating to action, inaction, or decisions of providers of long-term care  
30 services or their representatives, of public agencies, or of social  
31 service agencies which may adversely affect the health, safety, welfare,

1 or rights of such ~~elder~~ individuals. The office ~~department~~ shall  
2 implement ~~adopt and promulgate rules and regulations regarding the~~  
3 ~~handling of complaints received under this section, including procedures~~  
4 ~~for conducting investigations of complaints. The rules and regulations~~  
5 ~~shall include~~ procedures to ensure that no state long-term care ombudsman  
6 or ombudsman advocate investigates any complaint involving a provider  
7 with which the representative was once employed or associated;

8 (2) Provide for the training of the state long-term care ombudsman  
9 and ombudsman advocates and promote the development of citizen  
10 organizations to participate in the program, provide training to  
11 ombudsman advocates and staff of local long-term care ombudsman programs,  
12 issue certificates attesting to the successful completion of the  
13 prescribed training, and provide ongoing technical assistance to such  
14 local programs;

15 (3) Analyze and monitor the development and implementation of  
16 federal, state, and local laws, regulations, and policies with respect to  
17 long-term care facilities and services and recommend any changes in such  
18 laws, regulations, and policies deemed by the long-term care ombudsman  
19 program to be appropriate;

20 (4) Establish a statewide, uniform reporting system to collect and  
21 analyze data relating to complaints and conditions in long-term care  
22 facilities for the purpose of identifying and resolving significant  
23 problems. The data shall be submitted to the department at least on an  
24 annual basis;

25 (5) Prepare reports ~~as requested by the department~~ and provide  
26 policy, regulatory, and legislative recommendations to solve problems,  
27 resolve complaints, and improve the quality of care and life in long-term  
28 care facilities;

29 (6) Provide for public forums to discuss concerns and problems  
30 relating to action, inaction, or decisions that may adversely affect the  
31 health, safety, welfare, or civil rights of residents of long-term care

1 facilities and their representatives, public agencies and entities, and  
2 social service agencies; and

3 (7) Provide information to public agencies, legislators, and others,  
4 ~~as deemed necessary by the department,~~ regarding the problems and  
5 concerns, including recommendations related to such problems and  
6 concerns, of ~~elder~~ individuals residing in long-term care facilities.

7 Sec. 5. Section 81-2252, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9 81-2252 The office ~~department~~ may designate for two-year periods,  
10 within each planning-and-service area designated pursuant to section  
11 81-2213, local long-term care ombudsman programs ~~in accordance with rules~~  
12 ~~and regulations established by the department.~~ Such rules and regulations  
13 shall include specifications regarding the sites of the offices of the  
14 local long-term care ombudsman programs and requirements concerning  
15 staffing, levels of training required for ombudsman advocates and staff,  
16 standards of operation, and program review.

17 The office may withdraw or provisionally maintain the designation of  
18 an entity as a local long-term care ombudsman program ~~if the entity fails~~  
19 ~~to meet the rules and regulations established by the department.~~ If the  
20 designation of a local long-term care ombudsman program is provisionally  
21 maintained, the office shall notify the program of the reasons for the  
22 provisional status, of the changes or corrections necessary for the  
23 removal of the provisional status, of the length of time permitted to  
24 make the changes or corrections, and that the office will withdraw the  
25 designation if the program does not comply with the requirements  
26 specified in the notice. If the designation of a local long-term care  
27 ombudsman program is withdrawn, the office may provide for the  
28 continuation of long-term care ombudsman services for that area.

29 Sec. 6. Section 81-2253, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 81-2253 (1) The state long-term care ombudsman shall ensure that the

1 staff of the office and of local long-term care ombudsman programs are  
2 trained in:

3 (a) Federal, state, and local laws, regulations, and policies with  
4 respect to long-term care facilities in the state;

5 (b) Investigative techniques;

6 (c) Management of long-term care facilities; and

7 (d) Such other matters as the office ~~department~~ deems appropriate.

8 (2) The state long-term care ombudsman shall develop procedures for  
9 the certification of ombudsman advocates.

10 (3) No ombudsman advocate shall investigate any complaint filed with  
11 the office unless such person is certified by the office.

12 Sec. 7. Section 81-2254, Reissue Revised Statutes of Nebraska, is  
13 amended to read:

14 81-2254 The office shall investigate and seek to resolve complaints  
15 and concerns ~~not reportable under the Adult Protective Services Act~~  
16 communicated by or on behalf of an ~~elder~~ individual who is a patient,  
17 resident, or client of any long-term care facility. The office may  
18 initiate investigations based on its observations of the conditions in a  
19 long-term care facility. If the office does not investigate a complaint,  
20 the complainant shall be notified of the decision not to investigate and  
21 the reasons for the decision.

22 Sec. 8. Section 81-2255, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24 81-2255 (1) Notwithstanding any other provision of law related to  
25 reporting, when ~~when~~ abuse, neglect, or exploitation of an ~~elder~~  
26 individual who is a resident patient, resident, or client of a long-term  
27 care facility is suspected, the long-term care ombudsman program, with  
28 the resident's permission, shall make an immediate referral to adult  
29 protective services of the department or the appropriate law enforcement  
30 agency. ~~The long-term care ombudsman program shall coordinate with adult~~  
31 ~~protective services or the appropriate law enforcement agency, if~~

1 ~~requested, pursuant to any investigation of such abuse, neglect, or~~  
2 ~~exploitation.~~

3 (2) Any state agency or board which responds to a complaint against  
4 a long-term care facility or an individual employed by a long-term care  
5 facility that was referred to the state agency or board by the office  
6 shall forward to the office copies of related inspection reports, plans  
7 of correction, and notice of any citations and sanctions levied against  
8 the long-term care facility or the individual.

9 Sec. 9. Section 81-2258, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11 81-2258 (1) ~~The In order for the office to carry out its~~  
12 ~~responsibilities under the Long-Term Care Ombudsman Act, the office shall~~  
13 have access to the medical and personal records of an ~~elder~~ individual  
14 who is a patient, resident, or client of a long-term care facility which  
15 are retained by the facility. If the ~~elder~~ individual:

16 (a) Has the ability to consent in writing or through the use of  
17 auxiliary aids and services, access may only be obtained by the written  
18 consent of the ~~elder~~ individual;

19 (b) Is unable to consent in writing or through the use of auxiliary  
20 aids and services, oral consent may be given ~~in the presence of a third~~  
21 ~~party as witness before access is given~~;

22 (c) Is under guardianship or conservatorship that provides the  
23 guardian or conservator with the authority to approve review of records,  
24 the office shall obtain the permission of the guardian or conservator for  
25 review of the records unless (i) the existence of the guardianship or  
26 conservatorship is unknown to the office or the facility, (ii) the  
27 guardian or conservator cannot be reached within five working days, (iii)  
28 the subject of the complaint is the guardian or the conservator, or (iv)  
29 in case of an emergency; and

30 (d) Is unable to express written or oral consent and there is no  
31 guardian or conservator or the notification of the guardian or

1 conservator is not applicable for reasons set forth in subdivision (c) of  
2 this subsection or the ~~older~~ individual is deceased, inspection of  
3 records may be made by the state long-term care ombudsman or  
4 representatives of the office. For purposes of this section,  
5 representative of the office means an employee or volunteer designated by  
6 the state long-term care ombudsman to fulfill the duties of the office,  
7 whether personnel supervision is provided by the state long-term care  
8 ombudsman or his or her designee or by an agency hosting a local long-  
9 term care ombudsman designated by the state long-term care ombudsman.

10 (2) Copies of records may be reproduced by the office.

11 (3) Upon request by the office, a long-term care facility shall  
12 provide to the office the name, address, and telephone number of the  
13 guardian, conservator, attorney in fact, legal representative, or next of  
14 kin of any patient, resident, or client.

15 (4) The long-term care facility and personnel who disclose records  
16 pursuant to this section shall not be liable for the disclosure.

17 (5) The office shall establish procedures to protect the  
18 confidentiality of records obtained pursuant to this section.

19 Sec. 10. Section 81-2260, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21 81-2260 (1) Information relating to any complaints or investigation  
22 made pursuant to the Long-Term Care Ombudsman Act that discloses the  
23 identities of complainants, patients, residents, or clients shall remain  
24 confidential except:

25 (a) When disclosure is authorized in writing by the complainant,  
26 patient, resident, or resident client ~~or the older individual's guardian~~  
27 ~~or legal representative;~~

28 (b) When disclosure is necessary to an investigation of abuse,  
29 neglect, or exploitation and the disclosure is made to the Attorney  
30 General, the county attorney, or the department;

31 (c) When disclosure is necessary for the provision of services to

1 the patient, resident, or client and the patient, resident, or client is  
2 unable to express written or oral consent; or

3 (d) Upon court order.

4 (2) Access to the records and files of the office relating to any  
5 complaint or investigation made pursuant to the Long-Term Care Ombudsman  
6 Act shall be permitted only at the discretion of the state long-term care  
7 ombudsman, except that the identity of any complainant, witness, patient,  
8 resident, or client shall not be disclosed by such ombudsman except:

9 (a) When disclosure is authorized in writing by such complainant,  
10 witness, patient, resident, or resident client ~~or the older individual's~~  
11 ~~guardian or legal~~ representative; or

12 (b) Upon court order. ~~;~~ ~~or~~

13 ~~(c) Pursuant to subsection (3) of this section.~~

14 ~~(3) The records and files of the office shall be released to adult~~  
15 ~~protective services of the department if it so requests for purposes of~~  
16 ~~the Adult Protective Services Act.~~

17 ~~(4) The department shall have access to the records and files of the~~  
18 ~~office to verify the effectiveness and quality of the long-term care~~  
19 ~~ombudsman program.~~

20 Sec. 11. Section 81-2264, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 81-2264 (1) No person shall willfully interfere with the lawful  
23 actions of the office, including the request for immediate entry into a  
24 long-term care facility by an individual certified pursuant to section  
25 81-2253 who identifies himself or herself and presents his or her  
26 credentials to the individual in charge of the long-term care facility.

27 (2) No person shall institute discriminatory, disciplinary, or  
28 retaliatory action against any officer or employee of a long-term care  
29 facility or governmental agency or against any patient, resident, or  
30 client of a long-term care facility or guardian or family member thereof  
31 for any communications by him or her with the office or for any



1 information given or disclosed by him or her in good faith to aid the  
2 office in carrying out its duties and responsibilities.

3 (3) The department shall implement mechanisms to prohibit, and  
4 investigate allegations of, interference, retaliation, and reprisals:

5 (a) By a long-term care facility, other entity, or an individual  
6 with respect to any resident, employee, or other person for filing a  
7 complaint with, providing information to, or otherwise cooperating with  
8 any representative of the office. For purposes of this section,  
9 representative of the office means an employee or volunteer designated by  
10 the state long-term care ombudsman to fulfill the duties of the office,  
11 whether personnel supervision is provided by the state long-term care  
12 ombudsman or his or her designee or by an agency hosting a local long-  
13 term care ombudsman designated by the state long-term care ombudsman; or

14 (b) By a long-term care facility, other entity, or an individual  
15 against the ombudsman or representatives of their office for fulfillment  
16 of their functions, responsibilities, or duties.

17 (4) The department shall provide for appropriate sanctions with  
18 respect to interference, retaliation, and reprisals.

19 Sec. 12. Original sections 81-2225, 81-2242, 81-2248, 81-2250,  
20 81-2252, 81-2253, 81-2254, 81-2255, 81-2258, 81-2260, and 81-2264,  
21 Reissue Revised Statutes of Nebraska, are repealed.