

# VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

## CHAPTER 460

*An Act to amend and reenact §§ 51.5-140, 51.5-141, and 51.5-142 of the Code of Virginia, relating to the Office of the State Long-Term Care Ombudsman.*

[H 1946]

Approved March 13, 2017

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 51.5-140, 51.5-141, and 51.5-142 of the Code of Virginia are amended and reenacted as follows:**

**§ 51.5-140. Access to clients, patients, individuals, providers, and records by Office of the State Long-Term Care Ombudsman; interference, retaliation, and reprisals against complainants.**

A. The entity designated by the Department to operate the programs of the Office of the State Long-Term Care Ombudsman pursuant to the Older Americans Act (42 U.S.C. § 3001 et seq.) shall, in the investigation of complaints referred to the program *performance of its functions, responsibilities, and duties*, have access to the facilities providing services; the clients, patients, and individuals receiving services; and the records of such clients, patients, and individuals in (i) licensed assisted living facilities and adult day care centers as those terms are defined in § 63.2-100; (ii) home care organizations as defined in § 32.1-162.7; (iii) hospice facilities as defined in § 32.1-162.1; (iv) certified nursing facilities and nursing homes as those terms are defined in § 32.1-123; (v) providers as defined in § 37.2-403; (vi) state hospitals operated by the Department of Behavioral Health and Developmental Services; and (vii) providers of services by an area agency on aging or any private nonprofit or proprietary agency providing services; *the clients, patients, and individuals receiving services; and the records of such clients, patients, and individuals* whenever the entity Office of the State Long-Term Care Ombudsman has the consent of the client, patient, or individual receiving services or his legal representative. However, if a client, patient, or individual receiving services is unable to consent to the review of his medical and social records and has no legal representative and access to the records is necessary to investigate a complaint, access shall be granted to the extent necessary to conduct the investigation. Further, access shall be granted to the entity Office of the State Long-Term Care Ombudsman if a legal representative of the client, patient, or individual receiving services refuses to give consent and the entity Office of the State Long-Term Care Ombudsman has reasonable cause to believe that the legal representative is not acting in the best interests of the client, patient, or individual receiving services. Notwithstanding the provisions of § 32.1-125.1, the entity designated by the Department to operate the programs of the Office of the State Long-Term Care Ombudsman shall have access to state hospitals in accordance with this section. Access to patients, residents, and individuals receiving services and their records and to facilities and state hospitals providers shall be available during normal working hours except in emergency situations at any time during a provider's regular business or visiting hours and at any other time when access is required by the circumstances to be investigated. Records that are confidential under federal or state law shall be maintained as confidential by the entity Office of the State Long-Term Care Ombudsman and shall not be further disclosed, except as permitted by law. However, notwithstanding the provisions of this section, there shall be no right of access to privileged communications pursuant to § 8.01-581.17.

B. No provider, entity, or person may interfere with, retaliate against, or subject to reprisals a person who in good faith complains or provides information to, or otherwise cooperates with, the Office of the State Long-Term Care Ombudsman or any of its representatives or designees. The Commissioner shall promulgate regulations regarding the investigation of allegations of interference, retaliation, or reprisals and the implementation of sanctions with respect to such interference, retaliation, or reprisals as required under the Older Americans Act (42 U.S.C. § 3001 et seq.).

**§ 51.5-141. Confidentiality of records of Office of the State Long-Term Care Ombudsman.**

All documentary and other evidence received or maintained by the Office of the State Long-Term Care Ombudsman, the Department, or its agents in connection with specific complaints or investigations under any program of the Office of the State Long-Term Care Ombudsman conducted by or under the Commissioner shall be confidential and not subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that such information may be released on a confidential basis in compliance with regulations adopted by the Department and consistent with provisions of subdivision 4 of § 2.2-601 and with the requirements of the Older Americans Act (42 U.S.C. § 3001 et seq.).

The Commissioner Office of the State Long-Term Care Ombudsman shall release information concerning completed investigations of complaints made under the programs of the Office of the State Long-Term Care Ombudsman but shall in no event release the identity of any complainant or resident of individual receiving services from a long-term care facility provider that was the subject of a complaint

unless (i) the complainant ~~or resident~~, or if the complainant is not the individual receiving services, the individual receiving services or his legal representative ~~and the complainant~~, consents ~~in writing~~ to disclosure or (ii) disclosure is required by court order. The ~~Commissioner~~ Office of the State Long-Term Care Ombudsman shall establish procedures to notify long-term care facilities providers of the nature of complaints and ~~their~~ its findings.

**§ 51.5-142. Protection for representatives of the Office of the State Long-Term Care Ombudsman; interference, retaliation, and reprisals.**

A. Any designated representative of the Office of the State Long-Term Care Ombudsman who in good faith with reasonable cause and without malice performs the official duties of ombudsman, including acting to report, investigate, or cause any investigation to be made regarding a long-term care provider, shall be immune from any civil liability that might otherwise be incurred or imposed as the result of making the report or investigation.

B. No provider, entity, or person may interfere with, retaliate against, or subject to reprisals the Office of the State Long-Term Care Ombudsman or any of its representatives or designees for actions taken in fulfillment of its functions, responsibilities, or duties. The Commissioner shall promulgate regulations regarding the investigation of allegations of interference, retaliation, or reprisals and the implementation of sanctions with respect to such interference, retaliation, or reprisals as required under the Older Americans Act (42 U.S.C. § 3001 et seq.).

C. The Department shall put in place mechanisms to ensure that the Office of the State Long-Term Care Ombudsman may (i) analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and policies and actions related to long-term care services and providers or to the health, safety, welfare, and rights of individuals receiving long-term care services; (ii) recommend changes to such laws, regulations, and policies; and (iii) provide information, recommendations, and the position of the Office of the State Long-Term Care Ombudsman to public and private agencies, legislators, media, and other persons regarding concerns of individuals receiving long-term care services. Any comments, determinations, recommendations, and positions of the Office of the State Long-Term Care Ombudsman shall be clearly labeled as those of the Office of the State Long-Term Care Ombudsman and shall not be binding on the Department.