

AMENDED IN ASSEMBLY APRIL 26, 2012
AMENDED IN SENATE JANUARY 12, 2012
AMENDED IN SENATE JANUARY 4, 2012
AMENDED IN SENATE APRIL 25, 2011
AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 345

Introduced by Senator Wolk
(Principal coauthor: Senator Alquist)
(Coauthor: Senator Strickland)

February 15, 2011

An act to amend Sections 9701, 9710.5, 9712, 9713, 9714, 9714.5, 9716, 9717, 9719, ~~9720~~, 9722, 9724, 9726, 9726.1, and 9740 of, ~~and~~ to add Sections ~~9716.10~~ 9712.5 and 9716.11 to, *and to repeal Section 9720 of*, the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

SB 345, as amended, Wolk. Office of the State Long-Term Care Ombudsman.

Existing law, as part of the Mello-Granlund Older Californians Act, establishes the Office of the State Long-Term Care Ombudsman, under the direction of the State Long-Term Care Ombudsman, in the California Department of Aging. Existing law provides for the Long-Term Care Ombudsman Program under which funds are allocated to local ombudsman programs to assist elderly persons in long-term health care facilities and residential care facilities by, among other things, investigating and seeking to resolve complaints against these facilities.

This bill would, among other things, require the office to submit an annual advocacy ~~plan report~~ to the Legislature, ~~which includes a prospective plan and results of advocacy efforts during the prior year,~~ would require the office to ~~comply and others in accordance~~ with specified provisions of federal law, *would require the office to perform specified duties relating to protecting the health, safety, welfare, and rights of residents in long-term care facilities,* and would require the office to maintain an Internet Web presence, as prescribed. This bill would also make *conforming changes and* technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 Long-Term Care Ombudsman Program Independence and
- 3 Improvement Act of 2012.
- 4 SEC. 2. The Legislature finds and declares all of the following:
- 5 (a) The protection of residents in California’s long-term care
- 6 facilities is of paramount importance to the citizens of California.
- 7 (b) The Office of the State Long-Term Care Ombudsman was
- 8 established pursuant to the federal Older Americans Act and the
- 9 Mello-Granlund Older Californians Act to *identify*, investigate,
- 10 and endeavor to resolve complaints made by, or on behalf of,
- 11 ~~individual~~ residents *in of* long-term care facilities.
- 12 (c) The Office of the State Long-Term Care Ombudsman is
- 13 operated by the California Department of Aging, a ~~division of~~
- 14 *department within* the California Health and Human Services
- 15 Agency.
- 16 (d) The vulnerable residents of long-term care facilities rely on
- 17 the State Long-Term Care Ombudsman to advocate on their behalf
- 18 in the long-term care system and at state and federal levels of
- 19 government.
- 20 (e) The federal Older Americans Act requires the State
- 21 Long-Term Care Ombudsman to represent the interests of
- 22 long-term care facility residents before governmental agencies,
- 23 and seek administrative, legal, and other remedies to protect the
- 24 health, safety, welfare, and rights of the residents.

1 SEC. 3. Section 9701 of the Welfare and Institutions Code is
2 amended to read:

3 9701. Unless the contrary is stated or clearly appears from the
4 context, the following definitions shall govern the interpretation
5 of this chapter:

6 (a) “Approved organization” means any public agency or other
7 appropriate organization that has been designated by the Office of
8 the State Long-Term Care Ombudsman to hear, investigate, and
9 resolve complaints made by or on behalf of patients,~~residents, or~~
10 ~~clients or residents~~ of long-term care facilities relating to matters
11 that may affect the health, safety, welfare, and rights of these
12 patients,~~residents, or clients~~ or *residents*.

13 (b) “Long-term care facility” means any of the following:

14 (1) Any nursing or skilled nursing facility, as defined in Section
15 1250 of the Health and Safety Code, including distinct parts of
16 facilities that are required to comply with licensure requirements
17 for skilled nursing facilities.

18 (2) Any residential care facility for the elderly as defined in
19 Section 1569.2 of the Health and Safety Code.

20 (c) “Office” means the Office of the State Long-Term Care
21 Ombudsman, including approved organizations.

22 (d) “Ombudsman coordinator” means the individual selected
23 by the governing board or executive director of the approved
24 organization to manage the day-to-day operation of the ombudsman
25 program, including the implementation of federal and state
26 requirements governing the office.

27 (e) ~~“Resident,” “patient,” or “client”~~ “*Resident*” or “*patient*”
28 means an individual ~~residing~~ *living* in a long-term care facility.

29 (f) “State Ombudsman” means the State Long-Term Care
30 Ombudsman.

31 SEC. 4. Section 9710.5 of the Welfare and Institutions Code
32 is amended to read:

33 9710.5. (a) The Legislature finds and declares as follows:

34 (1) The Office of the State Long-Term Care Ombudsman has
35 an extremely important role in protecting and advocating for the
36 rights and health and safety of long-term care facility residents,
37 and in providing leadership, direction, and support to local
38 long-term care ombudsman programs.

1 (2) The position of State Ombudsman is extremely important
2 to the successful coordination of ombudsman services at the local
3 level.

4 (3) The position of State Ombudsman requires both an extensive
5 background in social or health services programs, and an ability
6 to manage and motivate individuals and groups.

7 (4) Remuneration for the position of State Ombudsman should
8 be commensurate with the demands of the position.

9 (b) The Director of the California Department of Aging shall
10 do all of the following:

11 (1) Provide widespread notification of the availability of the
12 position of State Long-Term Care Ombudsman in order to reach
13 the greatest number of qualified candidates and hire the most
14 capable individual for the position.

15 (2) Within 10 days of the occurrence of a vacancy, publicly
16 announce the vacancy and solicit candidates for the position.

17 (3) Within 30 days of the occurrence of a vacancy, convene a
18 meeting with the advisory council established by the department
19 pursuant to Section 9740, for the purpose of obtaining the advice,
20 consultation, and recommendations of the council regarding the
21 selection of a candidate.

22 SEC. 5. Section 9712 of the Welfare and Institutions Code is
23 amended to read:

24 9712. (a) The office shall be headed by an individual, to be
25 known as the State Long-Term Care Ombudsman, who shall ~~be a~~
26 ~~certified ombudsman~~; meet the qualifications established by the
27 federal Older Americans Act (42 U.S.C. Sec. 3001 et seq.); and
28 be selected from among individuals with expertise and experience
29 in the fields of long-term care and advocacy. *Within the first year*
30 *of appointment, the State Ombudsman shall complete the training*
31 *described in subparagraph (B) of paragraph (1) of subdivision (a)*
32 *of Section 9719, and a 10-hour internship performing ombudsman*
33 *services in a long-term care facility.*

34 (b) The State Ombudsman shall be located in Sacramento. Other
35 staff employed by the office may be located elsewhere in the state.

36 (c) (1) The State Ombudsman shall possess at least a bachelor's
37 degree, and have a minimum of five years' professional experience
38 that shall include all of the following areas:

39 (A) Gerontology, long-term care, or other relevant social
40 services or health services programs.

- 1 (B) The legal system and the legislative process.
2 (C) Dispute or problem resolution techniques, including
3 investigation, mediation, and negotiation.
4 (D) Organizational management and program administration.
5 (2) The professional experience described in paragraph (1)
6 requires any reasonable combination of the fields described in
7 subparagraphs (A) to (D), inclusive, of that paragraph for a total
8 of five years, and does not require five years' experience in each
9 area. At the discretion of the director, a master's or doctoral degree
10 relevant to a field described in paragraph (1) may be substituted
11 for one or two years, respectively, of professional experience.
12 However, the applicant's professional experience and field of study
13 leading to the master's or doctoral degree shall, nevertheless,
14 include all of the fields described in paragraph (1).
15 (d) The State Ombudsman may not have been employed by any
16 long-term care facility within the three-year period immediately
17 preceding his or her appointment.
18 (e) Neither the State Ombudsman nor any member of his or her
19 immediate family may have, or have had within the past three
20 years, any pecuniary interest in long-term ~~health~~ care facilities.
21 *SEC. 6. Section 9712.5 is added to the Welfare and Institutions*
22 *Code, to read:*
23 *9712.5. The State Ombudsman shall, personally or through*
24 *representatives of the office, do all of the following:*
25 *(a) (1) Identify, investigate, and resolve complaints that are*
26 *made by, or on behalf of, residents of long-term care facilities that*
27 *relate to actions, inactions, or decisions that may adversely affect*
28 *the health, safety, welfare, or rights of residents, including, but*
29 *not limited to, the welfare and rights of residents with respect to*
30 *the appointment and activities of conservators and representative*
31 *payees. For purposes of this section, complaints include, but are*
32 *not limited to, complaints against providers, representatives of*
33 *providers, long-term care services, public agencies, or health and*
34 *social services agencies. Complaint investigation shall be done in*
35 *an objective manner to ascertain the pertinent facts.*
36 *(2) The requirement described in paragraph (1) shall not*
37 *preclude the referral of other individuals' complaints and concerns*
38 *that a representative becomes aware are occurring in the facility*
39 *to the appropriate governmental agency.*

1 (3) *At the conclusion of any investigation of a complaint, the*
2 *findings shall be reported to the complainant. If the office does*
3 *not investigate a complaint, the complainant shall be notified in*
4 *writing of the decision not to investigate and the reasons for the*
5 *decision.*

6 **(b)** *Provide services to assist residents in the protection of their*
7 *health, safety, welfare, and rights.*

8 **(c)** *Inform residents about the means of obtaining services*
9 *delivered by the providers or agencies described in paragraph (1)*
10 *of subdivision (a) or services described in subdivision (b).*

11 **(d)** *Ensure that residents have regular and timely access to the*
12 *services provided through the office and that the residents or other*
13 *complainants receive timely responses from representatives of the*
14 *office to complaints.*

15 **(e)** *Represent the interests of the residents before governmental*
16 *agencies and seek administrative, legal, and other remedies to*
17 *protect the health, safety, welfare, and rights of the residents.*

18 **(f)** *Provide administrative and technical assistance to entities*
19 *designated as local ombudsman programs, to assist the entities in*
20 *participating in the program.*

21 **(g)** *Analyze, comment on, and monitor the development and*
22 *implementation of federal, state, and local laws, regulations, and*
23 *other governmental policies and actions that pertain to the health,*
24 *safety, welfare, and rights of the residents, with respect to the*
25 *adequacy of long-term care facilities and services in the state,*
26 *without interference from the office of the Governor, any state*
27 *agency, or other entity.*

28 **(h)** *Facilitate public comment on relevant laws, regulations,*
29 *policies, and actions.*

30 **(i)** *Recommend changes to relevant laws, regulations, policies,*
31 *or actions that the office determines to be appropriate.*

32 **(j)** *Provide information that the office determines to be necessary*
33 *to public and private agencies, legislators, and other persons,*
34 *regarding the problems and concerns of residents of long-term*
35 *care facilities and recommendations relating to resolving these*
36 *problems and concerns.*

37 **(k)** *Provide for training representatives of the office.*

38 **(l)** *Promote the development of citizen organizations to*
39 *participate in the program.*

1 ~~SEC. 6.~~

2 *SEC. 7.* Section 9713 of the Welfare and Institutions Code is
3 amended to read:

4 9713. (a) Upon request of the office, the Attorney General
5 shall represent the office or the department and the state in
6 litigation concerning affairs of the office, unless the Attorney
7 General represents another state agency, in which case the agency
8 or the office shall employ other counsel.

9 (b) The State Ombudsman may employ technical experts and
10 other employees that, in his or her judgment, are necessary for the
11 conduct of the business of the office.

12 ~~SEC. 7.~~

13 *SEC. 8.* Section 9714 of the Welfare and Institutions Code is
14 amended to read:

15 9714. The office shall solicit and receive funds, gifts, and
16 contributions to support the operations and programs of the office.
17 The office may form a foundation eligible to receive tax-deductible
18 contributions to support the operations and programs of the office
19 *and the operations of the foundation.* The office shall not solicit
20 or receive any funds, gifts, or contributions where the solicitation
21 or receipt would jeopardize the independence and objectivity of
22 the office.

23 ~~SEC. 8.~~

24 *SEC. 9.* Section 9714.5 of the Welfare and Institutions Code
25 is amended to read:

26 9714.5. (a) The foundation formed pursuant to Section 9714
27 shall be under the direction and management of a five-member
28 board of directors. One member shall be appointed by the Speaker
29 of the Assembly, one member shall be appointed by the Senate
30 Committee on Rules, and three members shall be appointed by the
31 Governor. The members of the board shall each be experienced
32 in the management, promotion, and funding of nonprofit charitable
33 organizations.

34 (b) The board shall select from among its members a chair, a
35 vice chair, and any other officers as it deems necessary.

36 (c) The members of the board shall serve without compensation,
37 but shall be reimbursed for all necessary expenses actually incurred
38 in the performance of their duties as directors.

39 (d) Three members of the board shall constitute a quorum for
40 the purpose of conducting the board's business.

1 (e) By ~~July 1~~ *March 1* of each year, the board shall determine
 2 the amount of funds to be appropriated from the foundation to the
 3 office for the support of ~~its~~ *the* operations and programs *of the*
 4 *office and the operations of the foundation*. Foundation funds may
 5 only be appropriated for the support of the operations and programs
 6 of the office *and the operations of the foundation*.

7 (f) The members of the board shall be free from conflicts of
 8 interest and shall be subject to the same conflict of interest
 9 provisions that apply to the State Ombudsman under Section
 10 3058g(f)(3) of Title 42 of the United States Code.

11 ~~SEC. 9.~~

12 *SEC. 10.* Section 9716 of the Welfare and Institutions Code is
 13 amended to read:

14 9716. (a) The office shall be responsible for activities that
 15 promote the development, coordination, and utilization of resources
 16 to meet the long-term care needs of older individuals, consistent
 17 with its mission. These responsibilities shall include establishing
 18 a statewide uniform reporting system to collect and analyze data
 19 relative to complaints and conditions in long-term care facilities
 20 for the purpose of identifying and resolving significant problems.
 21 The office shall submit the data to the state agency responsible for
 22 licensing or certifying long-term care facilities and to the federal
 23 ~~agency on aging~~ *Administration on Aging*.

24 (b) ~~(1)~~ Notwithstanding Section 10231.5 of the Government
 25 Code, beginning ~~July 1, 2013,~~ *September 30, 2013,* and ~~no later~~
 26 ~~than July 1~~ annually thereafter, the office shall *prepare and* submit
 27 an annual advocacy ~~plan to the appropriate policy and fiscal~~
 28 ~~committees of the Legislature. This report shall include a~~
 29 ~~prospective plan, as well as the results of advocacy efforts during~~
 30 ~~the prior year. The report shall provide evidence of completed~~
 31 ~~activities and results.~~ *report in accordance with Section*
 32 *3058g(h)(1) of Title 42 of the United States Code. The annual*
 33 *advocacy report shall do all of the following:*

34 ~~(2) The office shall develop the advocacy plan in coordination~~
 35 ~~with the local ombudsman programs and shall include measurable,~~
 36 ~~achievable outcomes that shall benefit long-term care facility~~
 37 ~~residents and local ombudsman programs.~~

38 ~~(3) The office shall also provide the advocacy plan to the local~~
 39 ~~ombudsman programs.~~

1 (1) Describe the activities carried out by the office in the year
2 for which the report is prepared, including, but not limited to,
3 actions taken to carry out the advocacy duties of the office
4 described in Sections 9712.5 and 9726.1 and prescribed by the
5 federal Older Americans Act in Section 3058g(a)(3)(E) and (G)
6 of Title 42 of the United States Code.

7 (2) Contain and analyze the data collected pursuant to Section
8 3058g(c) of Title 42 of the United States Code.

9 (3) Evaluate the problems experienced by, and the complaints
10 made by or on behalf of, residents.

11 (4) Contain recommendations for both of the following:

12 (A) Improving quality of the care and life of residents.

13 (B) Protecting the health, safety, welfare, and rights of residents.

14 (5) (A) Analyze the success of the ombudsman program,
15 including success in providing services to residents of long-term
16 care facilities and other similar adult care facilities.

17 (B) Identify barriers that prevent the optimal operation of the
18 program.

19 (6) Provide policy, regulatory, and legislative recommendations
20 to solve identified problems, to resolve complaints, to improve the
21 quality of care and life of residents, to protect the health, safety,
22 welfare, and rights of residents, and to remove the barriers
23 identified in subparagraph (B) of paragraph (5).

24 (c) The office shall promptly post the annual advocacy report
25 on its Internet Web site and shall submit it to the Assistant
26 Secretary of the federal Administration on Aging, the Governor,
27 the Legislature, the State Department of Public Health, the State
28 Department of Social Services, local ombudsman programs, and
29 other appropriate governmental entities.

30 (e)

31 (d) Prior to submitting the report, the office shall solicit
32 comments on the report from the local ombudsman programs and
33 shall include local ombudsman program comments as an addendum
34 to the final report.

35 ~~SEC. 10. Section 9716.10 is added to the Welfare and~~
36 ~~Institutions Code, to read:~~

37 ~~9716.10. The office shall comply with Section 3058g of Title~~
38 ~~42 of the United States Code, which, in part, requires the State~~
39 ~~Ombudsman, directly or through the representatives of the office,~~
40 ~~to represent the interests of long-term care facility residents before~~

1 ~~governmental agencies and seek administrative, legal, and other~~
 2 ~~remedies to protect the health, safety, welfare, or rights of those~~
 3 ~~residents. This representation shall be done without interference~~
 4 ~~by the department or any other state departments or programs.~~

5 SEC. 11. Section 9716.11 is added to the Welfare and
 6 Institutions Code, to read:

7 9716.11. (a) The Office of the State Long-Term Care
 8 Ombudsman shall maintain an Internet Web presence.

9 (b) The Internet Web site shall be easily found and prominent
 10 on the department's homepage. The Legislature finds and declares
 11 that resources currently exist for this purpose.

12 (c) The Internet Web site shall be consumer driven and shall
 13 include, but not be limited to, current long-term care trends and
 14 issues ~~and~~, links to local ombudsman programs, *the annual*
 15 *advocacy report described in Section 9716*, and other information
 16 relevant to long-term care facility residents and consumers.

17 SEC. 12. Section 9717 of the Welfare and Institutions Code is
 18 amended to read:

19 9717. (a) All advocacy programs and any programs similar in
 20 nature to the Long-Term Care Ombudsman Program that receive
 21 funding or official designation from the state shall cooperate with
 22 the office, where appropriate. These programs include, but are not
 23 limited to, ~~the Patients' Rights Advocacy Program~~ *Office of Human*
 24 *Rights* within the State Department of Mental Health, *the Office*
 25 *of Patient Rights*, Disability Rights California, and *the* Department
 26 of Rehabilitation Client Assistance Program.

27 (b) The office shall maintain a close working relationship with
 28 the Legal Services Development Program for the Elderly within
 29 the department.

30 (c) In order to ensure the provision of counsel for patients, *and*
 31 ~~residents, and clients~~ of long-term care facilities, the office shall
 32 seek to establish effective coordination with programs that provide
 33 legal services for the elderly, including, but not limited to,
 34 programs that are funded by the federal Legal Services Corporation
 35 or under the federal Older Americans Act (42 U.S.C. Sec. 3001 et
 36 seq.), as amended.

37 (d) The department and other state departments and programs
 38 that have roles in funding, regulating, monitoring, or serving
 39 long-term care facility residents, including law enforcement
 40 agencies, shall cooperate with and meet with the office periodically

1 and as needed to address concerns or questions involving the care,
2 quality of life, safety, rights, health, and well-being of long-term
3 care facility residents.

4 SEC. 13. Section 9719 of the Welfare and Institutions Code is
5 amended to read:

6 9719. (a) (1) The office shall sponsor a training of
7 representatives of approved organizations at least twice each year.
8 The office shall provide training to these representatives as
9 appropriate. Prior to the certification of an ombudsman by the
10 office, individuals shall meet both of the following requirements:

11 (A) Have a criminal offender record clearance conducted by
12 the State Department of Social Services. A clearance pursuant to
13 Section 1569.17 of the Health and Safety Code shall constitute
14 clearances for the purpose of entry to any long-term care facility.

15 (B) Have received a minimum of 36 hours of certification
16 training *that is approved by the office and offered by an approved*
17 *organization.*

18 (2) Upon receipt of an applicant's criminal record clearance and
19 acceptance by the office, the office shall issue a card identifying
20 the bearer as a certified ombudsman. Each ombudsman shall
21 receive a minimum of 12 hours of additional training annually.

22 (b) (1) The department shall contract with the State Department
23 of Social Services to conduct a criminal offender record
24 information search, pursuant to Section 1569.17 of the Health and
25 Safety Code, for each applicant seeking certification as an
26 ombudsman. The State Department of Social Services shall notify
27 the individual and the office of the individual's clearance or denial.

28 (2) An applicant for certification as an ombudsman shall not be
29 responsible for any costs associated with transmitting the
30 fingerprint images and related information or conducting criminal
31 record clearances.

32 (c) Nothing in this section shall be construed to prohibit the
33 Department of Justice from assessing a fee pursuant to Section
34 11105 of the Penal Code to cover the cost of searching for or
35 furnishing summary criminal offender record information.

36 ~~SEC. 14. Section 9720 of the Welfare and Institutions Code is~~
37 ~~amended to read:~~

38 ~~9720. (a) The office shall identify, investigate, and seek to~~
39 ~~resolve complaints and concerns communicated by, or on behalf~~
40 ~~of, patients, residents, or clients of any long-term care facility.~~

1 This requirement shall not preclude the referral of other
2 individuals' complaints and concerns that a representative becomes
3 aware are occurring in the facility to the appropriate governmental
4 agency. Complaint investigation shall be done in an objective
5 manner to ascertain the pertinent facts.

6 (b) At the conclusion of any investigation of a complaint, the
7 findings shall be reported to the complainant. If the office does
8 not investigate a complaint, the complainant shall be notified in
9 writing of the decision not to investigate and the reasons for the
10 decision.

11 SEC. 14. Section 9720 of the Welfare and Institutions Code is
12 repealed.

13 9720. (a) The office shall investigate and seek to resolve
14 complaints and concerns communicated by, or on behalf of,
15 patients, residents, or clients of any long-term care facility. This
16 requirement shall not preclude the referral of other individuals'
17 complaints and concerns that a representative becomes aware are
18 occurring in the facility to the appropriate governmental agency.
19 Complaint investigation shall be done in an objective manner to
20 ascertain the pertinent facts.

21 (b) At the conclusion of any investigation of a complaint, the
22 findings shall be reported to the complainant. If the office does
23 not investigate a complaint, the complainant shall be notified in
24 writing of the decision not to investigate and the reasons for the
25 decision.

26 SEC. 15. Section 9722 of the Welfare and Institutions Code is
27 amended to read:

28 9722. (a) Representatives of the office shall have the right of
29 entry to enter long-term care facilities and to unescorted,
30 unhindered movement within them for the purpose purposes of
31 monitoring, identifying, hearing, investigating, and resolving
32 complaints by, or on behalf of, and rendering advice to, individuals
33 who are patients or residents of the facilities at any time deemed
34 necessary and reasonable by the State Ombudsman to effectively
35 carry out this chapter., observing and monitoring conditions of
36 residents and facilities, speaking confidentially with residents, and
37 providing services to assist residents in protecting their health,
38 safety, welfare, and rights. Entry shall be provided at any time
39 deemed necessary and reasonable by the State Ombudsman to

1 *effectively carry out this chapter, for any of the purposes described*
2 *in this subdivision.*

3 (b) Nothing in this chapter shall be construed to restrict, limit,
4 or increase any existing right of any organizations or individuals
5 not described in subdivision (a) to enter, or provide assistance to
6 patients or residents of, long-term care facilities.

7 (c) Nothing in this chapter shall restrict any right or privilege
8 of any patient or resident of a long-term care facility to receive
9 visitors of his or her choice.

10 (d) *Notwithstanding any other provision of law, a long-term*
11 *care facility, upon request by a representative of the office, shall*
12 *provide a register, roster, census, or other list of the names and*
13 *room numbers or room locations of all current residents or patients*
14 *residing in the facility.*

15 SEC. 16. Section 9724 of the Welfare and Institutions Code is
16 amended to read:

17 9724. Notwithstanding Section 56 of the Civil Code, in order
18 for the office to carry out its responsibilities under this chapter,
19 the office shall have access to the medical or personal records of
20 a patient or resident of a long-term care facility that are retained
21 by the facility, under the following conditions:

22 (a) If the patient or resident has the ability to write, access may
23 only be obtained by the written consent of the patient or resident.

24 (b) If the patient or resident is unable to write, oral consent may
25 be given in the presence of a third party as witness.

26 (c) If the patient or resident is under a California guardianship
27 or conservatorship of the person that provides the guardian or
28 conservator with the authority to approve review of records, the
29 office shall obtain the permission of the guardian or conservator
30 for review of the records, unless any of the following apply:

31 (1) The existence of the guardianship or conservatorship is
32 unknown to the office or the facility.

33 (2) The guardian or conservator cannot be reached within three
34 working days.

35 (3) The office has reason to believe the guardian or conservator
36 is not acting in the best interests of the ward or the conservatee.

37 (d) If the patient or resident is unable to express written or oral
38 consent and there is no guardian, conservator, or legal
39 representative, or the notification of the guardian, conservator, or
40 legal representative is not applicable for reasons set forth in

1 subdivision (c), inspection of records may be made by ombudsmen
2 when there is sufficient cause for the inspection. The licensee may,
3 at his or her discretion, permit other representatives of the office
4 to inspect records in the performance of their official duties. Copies
5 may be reproduced by the office. The licensee and facility
6 personnel who disclose records pursuant to this subdivision shall
7 not be liable for the disclosure. If investigation of records is sought
8 pursuant to this subdivision, the ombudsman shall, upon request,
9 produce a statement signed by the ombudsman coordinator
10 authorizing the ombudsman to review the records.

11 (e) Facilities providing copies of records pursuant to this section
12 may charge the actual copying cost for each page copied.

13 (f) Upon request by the office, a long-term care facility shall
14 provide to the office, within 24 hours, the name, address, and
15 telephone number of the conservator, legal representative, or
16 next-of-kin of any patient or resident.

17 SEC. 17. Section 9726 of the Welfare and Institutions Code is
18 amended to read:

19 9726. (a) The office shall establish a toll-free telephone hotline
20 to receive telephone calls concerning any crises discovered by any
21 person in a long-term care facility, as defined in subdivision (b)
22 of Section 9701. The telephone hotline established under this
23 section shall be operated to include at least all of the following:

24 (1) The telephone hotline shall be available 24 hours a day,
25 seven days a week.

26 (2) The operator shall respond to a crisis call by contacting the
27 appropriate office, agency, or individual in the local community
28 in which the crisis occurred.

29 (3) The toll-free telephone hotline number shall be posted
30 conspicuously in either the facility foyer, lobby, residents' activity
31 room, or other conspicuous location easily accessible to residents
32 in each licensed facility by the licensee. The office shall issue, in
33 conjunction with the State Department of Social Services and the
34 State Department of Public Health, guidelines concerning the
35 posting of the toll-free telephone hotline number. The posting
36 shall, at a minimum, include the purpose of the toll-free telephone
37 hotline number.

38 (b) The office shall respond to ~~hotline~~ telephone *hotline* calls.

39 (c) The toll-free telephone hotline shall be staffed in a manner
40 consistent with available resources in the office. The office may

1 contract for the services of ~~individuals~~ *organizations* to staff the
2 telephone hotline. The office shall seek to provide opportunities
3 for older individuals to be employed to staff the hotline. The State
4 Department of Public Health and the State Department of Social
5 Services, and other appropriate departments, shall make available
6 to the department and the office training and technical assistance
7 as needed.

8 SEC. 18. Section 9726.1 of the Welfare and Institutions Code
9 is amended to read:

10 ~~9726.1. (a) The office and approved organizations shall carry~~
11 ~~out all of the duties prescribed by the federal Older Americans Act~~
12 ~~in Section 3058g of Title 42 of the United States Code, including,~~
13 ~~but not limited to, all of the following:~~

14 (1) ~~Represent the interests of long-term care facility residents~~
15 ~~before governmental agencies and seek administrative, legal, and~~
16 ~~other remedies to protect the health, safety, welfare, and rights of~~
17 ~~the residents.~~

18 (2) (A) ~~Analyze, comment on, and monitor the development~~
19 ~~and implementation of federal, state, and local laws, regulations,~~
20 ~~and other governmental policies and actions, that pertain to the~~
21 ~~health, safety, welfare, and rights of the residents, with respect to~~
22 ~~the adequacy of long-term care facilities and services in the state.~~

23 (B) ~~Recommend any changes in the applicable laws, regulations,~~
24 ~~policies, and governmental actions as the office determines to be~~
25 ~~appropriate.~~

26 (C) ~~Facilitate public comment on the applicable laws,~~
27 ~~regulations, policies, and governmental actions.~~

28 (b) ~~—~~

29 ~~9726.1. (a) The office and approved organizations may do~~
30 ~~any of the following:~~

31 (1) ~~Advise the public of any inspection report, statements of~~
32 ~~deficiency, and plans of correction, for any long-term health care~~
33 ~~facilities within its service area.~~

34 (2) ~~Promote visitation programs to long-term health care~~
35 ~~facilities within its service area.~~

36 (3) ~~Establish and assist in the development of resident, family,~~
37 ~~and friends' councils.~~

38 (4) ~~Sponsor other community involvement in long-term health~~
39 ~~care facilities.~~

1 (5) Present community education and training programs to
 2 long-term health care facilities, human service workers, families,
 3 and the general public, about long-term care and residents' rights
 4 issues.

5 (6)

6 (b) Those programs created under this section that are held in
 7 a facility shall be developed in consultation with the facility. If the
 8 facility and the ombudsman cannot agree on these programs, the
 9 State Ombudsman may assist in resolving the dispute.

10 SEC. 19. Section 9740 of the Welfare and Institutions Code is
 11 amended to read:

12 ~~9740. (a) The department shall establish an 11-member~~
 13 ~~advisory council for the office no later than June 30, 2013.~~
 14 ~~Members of the council shall be appointed by the director, and~~
 15 ~~shall consist of representatives of community organizations, area~~
 16 ~~agencies on aging, two long-term care providers, federal Older~~
 17 ~~Americans Act funded direct services providers, the commission,~~
 18 ~~a minimum of two local ombudsman program representatives~~
 19 ~~appointed in consultation with the California Long-Term Care~~
 20 ~~Ombudsman Association, county government, and other~~
 21 ~~appropriate governmental agencies. The director shall make the~~
 22 ~~appointments from lists of no less than five names submitted by~~
 23 ~~each of the designated entities.~~

24 *9740. (a) The department shall establish an advisory council*
 25 *for the office of no less than seven and no more than 11 members*
 26 *on or before June 30, 2013. Members of the council shall be*
 27 *appointed by the director and shall include representatives of*
 28 *service agencies within the aging network, community*
 29 *organizations, consumers, and two local long-term care*
 30 *ombudsman programs. The representatives of the two local*
 31 *long-term care ombudsman programs shall be appointed in*
 32 *consultation with the California Long Term Care Ombudsman*
 33 *Association.*

34 (b) The advisory council shall provide advice and consultation
 35 to the State Long-Term Care Ombudsman Program and the director
 36 on issues affecting the provision of ombudsman services, including
 37 the review of proposed policy changes to the operation of the
 38 program, and may make recommendations, within 30 days, as
 39 appropriate. The advisory council shall provide advice and
 40 consultation on operation of the ombudsman program and on issues

1 of concern to long-term care facility residents and local long-term
2 care ombudsman programs. *The issues of concern shall be*
3 *identified by residents, patients, the State Ombudsman, and local*
4 *long-term care ombudsman programs.* The advisory council shall
5 meet at least three times annually. Representatives on the advisory
6 council shall receive their actual and necessary travel and other
7 expenses incurred in participation on the advisory council.
8 Participation on the advisory council shall be voluntary and
9 members of the advisory council shall serve without compensation.

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