

By: Clardy

H.B. No. 4220

A BILL TO BE ENTITLED

AN ACT

relating to the office of the state long-term care ombudsman.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 101A.251, Human Resources Code, is amended by adding Subdivision (3-b) to read as follows:

(3-b) "Patient care record" means a record related to a specific patient's direct care.

SECTION 2. Section 101A.257, Human Resources Code, is amended by adding Subsection (a-1) and amending Subsection (b) to read as follows:

(a-1) An investigation conducted under this section is for the sole purpose of gathering information necessary to resolve a resident's complaint or grievance to the resident's satisfaction. In an investigation conducted under this section, the state long-term care ombudsman or a representative, including an ombudsman designated under Section 101A.255, is not required to collect evidence to satisfy a burden of proof required in an investigation conducted by a licensing or regulatory agency or a law enforcement agency, and the results of the investigation do not need to include any determinations on whether a law or rule has been violated for purposes of civil or criminal enforcement.

(b) The state long-term care ombudsman shall ensure that each ombudsman designated under Section 101A.255 who investigates complaints has received proper training and has been approved by

1 the office as qualified to investigate complaints. The training
2 must include instruction regarding state laws and regulations
3 applicable to the institutional setting in which the ombudsman will
4 conduct the investigation.

5 SECTION 3. Section 101A.258, Human Resources Code, is
6 amended by amending Subsections (a) and (a-1) and adding Subsection
7 (a-2) to read as follows:

8 (a) The state long-term care ombudsman and representatives
9 shall, as provided by commission rules, have access to a resident's
10 patient care records and to a long-term care facility's
11 administrative records, policies, and other documents that
12 residents and the general public have access to in the normal course
13 of business [~~of residents as provided by commission rules~~]. For
14 purposes of this subsection, documents obtained through litigation
15 are not considered to have been obtained in the normal course of
16 business. Except as provided by Subsection (b), all records and
17 information created or obtained by the state long-term care
18 ombudsman or a representative remain confidential.

19 (a-1) The state long-term care ombudsman and
20 representatives shall have access to a resident's patient care
21 records [~~of a resident~~] if:

22 (1) the state long-term care ombudsman or
23 representative has obtained the resident's [~~resident~~] or the
24 resident's legal representative's informed consent [~~representative~~
25 ~~consents~~] to [~~the~~] access the records;

26 (2) the resident is unable to consent to the access and
27 the resident has no legal representative; or

1 (3) access to the records is necessary to investigate
2 a complaint and:

3 (A) a legal representative of the resident
4 refuses to consent to the access;

5 (B) the state long-term care ombudsman or
6 representative has reasonable cause to believe that the legal
7 representative of the resident is not acting in the best interests
8 of the resident; and

9 (C) the state long-term care ombudsman approves
10 the access.

11 (a-2) The office shall provide documentation to a long-term
12 care facility that is the subject of an investigation conducted
13 under Section 101A.257 evidencing that the state long-term care
14 ombudsman or a representative is entitled to access a resident's
15 patient care records by having satisfied the requirements of
16 Subsection (a-1)(1), (a-1)(2), or (a-1)(3), as applicable.

17 SECTION 4. Section 101A.261, Human Resources Code, is
18 amended to read as follows:

19 Sec. 101A.261. PUBLIC INFORMATION. (a) The office shall
20 provide information and make recommendations to public agencies,
21 legislators, and other persons about the problems and concerns of
22 residents.

23 (b) The office shall include on each of the office's
24 publications a disclosure statement explaining that:

25 (1) the office acts independently of the commission;

26 (2) the office does not regulate long-term care
27 facilities; and

1 (3) information the office publishes is for
2 educational purposes only.

3 SECTION 5. Section 101A.262(a), Human Resources Code, is
4 amended to read as follows:

5 (a) The office shall prepare a report that contains:

6 (1) information and findings relating to the problems
7 and concerns of residents; ~~and~~

8 (2) policy, regulatory, and legislative
9 recommendations to solve the problems, resolve the concerns, and
10 improve the quality of the residents' care and lives;

11 (3) a list of persons representing the office who
12 submitted a sworn statement to a committee of the legislature
13 indicating the office was present in favor of, in opposition to, or
14 without taking a position on legislation and a description of the
15 legislation, including the bill number, the position taken, and a
16 summary of the testimony given; and

17 (4) if the office submitted a public comment on a
18 proposed rule published in the Texas Register, a citation to the
19 volume and page numbers in the Texas Register that included the
20 proposed rule and a summary of the submitted comment.

21 SECTION 6. This Act takes effect September 1, 2023.