

## **BILL ANALYSIS**

C.S.H.B. 3564  
By: Klick  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that statutory provisions relating to the office of the state long-term care ombudsman and the ombudsman program require revision to reflect changes made to certain federal laws and regulations and to clarify the office's role. C.S.H.B. 3564 seeks to provide these revisions.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3564 amends the Human Resources Code to revise and update statutory provisions relating to the office of the state long-term care ombudsman and to specify that the office consists of the state long-term care ombudsman and representatives who are employed by the Health and Human Services Commission (HHSC). The bill requires the office to operate and subjects the office to HHSC oversight in accordance with federal and state statute and expands the regulatory agencies funded and mandated by federal law with which the office and the ombudsman program are required to cooperate by removing the specific reference to the federal Older Americans Act of 1965. The bill prohibits HHSC, or a public agency or private nonprofit organization operating the office under a contract or memorandum of agreement with HHSC, from implementing a policy that prohibits the office from performing its duties under provisions relating to the office. The bill includes among the agencies or organizations that HHSC may not use an agency or organization that has an ownership, operational, or investment interest in a long-term care facility or that is an association of long-term care facilities or of any other residential facility that serves persons with disabilities or that is an affiliate of such an association. The bill removes the specification that a long-term care facility, for purposes of the office and the ombudsman program, serves persons who are 60 years of age or older. The bill replaces references to the state ombudsman with the state long-term care ombudsman and clarifies the powers and duties of the ombudsman and the office. The bill establishes that the office acts independently of HHSC in the performance of its powers and duties and gives the state long-term care ombudsman the authority to designate a representative or a local ombudsman entity, defined by the bill as a distinct unit or entity, consisting of representatives, designated by the state long-term care ombudsman to carry out the ombudsman program in a service area of Texas, and the authority to suspend or revoke that designation.

C.S.H.B. 3564 requires the office to coordinate ombudsman services with state and local law

enforcement agencies and courts of competent jurisdiction. The bill establishes that the office is not authorized to compel those law enforcement agencies or courts to coordinate ombudsman services or other activities with the office. The bill specifies that the adequate legal advice and representation HHSC is required to ensure that the office receives is adequate legal advice and representation without conflict of interest as defined by the Texas Disciplinary Rules of Professional Conduct and clarifies the attorney general's duty to represent the state long-term care ombudsman and a representative under certain circumstances. The bill specifies that the requirement for the office to investigate and resolve complaints made by or on behalf of residents must be in accordance with HHSC rules and that the state long-term care ombudsman is the person required to ensure that each designated ombudsman who investigates complaints has received proper training and has been approved by the office as qualified to investigate complaints. The bill requires the office to investigate a grievance made against a representative in accordance with HHSC rules and inform the person who made the grievance of the outcome of the investigation when the investigation is concluded. The bill requires a long-term care facility to cooperate with an investigation conducted by the state long-term care ombudsman or a representative, including a designated ombudsman. The bill replaces references to a resident's legal guardian with references to a resident's legal representative for purposes of the state long-term care ombudsman's and a representative's access to a resident's patient care records and removes the specification that consent to disclose the identity of a complainant or any resident given by the person or the person's legal representative be written. The bill authorizes disclosure of files, records, and other information maintained as part of the ombudsman program only at the discretion of the state long-term care ombudsman. The bill clarifies that the entity to which the office is required to provide certain information relating to complaints and conditions in long-term care facilities maintained in a uniform reporting system is HHSC and requires the office to do so in accordance with federal law.

C.S.H.B. 3564 exempts the state long-term care ombudsman or a representative, to the extent necessary to perform any office duties, from Government Code provisions prohibiting legislative lobbying and Local Government Code provisions relating to certain employment restrictions, requires the office to make recommendations to public agencies, legislators, and other persons about the problems and concerns of residents, and removes the specification that the report required to be prepared by the office containing information, findings, and recommendations relating to the problems and concerns of residents is an annual report. The bill changes the conduct that constitutes an offense relating to interference with certain office duties from intentionally interfering with an ombudsman attempting to perform official duties or committing or attempting to commit an act of retaliation or reprisal against any resident or employee of a long-term care facility for filing a complaint or providing information to an ombudsman to wilfully, by act or omission, interfering with or attempting to interfere with the state long-term care ombudsman or a representative attempting to perform official duties or committing or attempting to commit an act of retaliation or reprisal against any resident or employee of a long-term care facility for filing a complaint or providing information to the state long-term care ombudsman or a representative.

#### **EFFECTIVE DATE**

September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3564 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter F, Chapter 101A, Human Resources Code, is amended to read as follows:

SUBCHAPTER F. OFFICE OF STATE LONG-TERM CARE OMBUDSMAN

Sec. 101A.251. DEFINITIONS. In this subchapter:

(1) "Commission" means the Health and Human Services Commission [~~"Elderly resident" means a resident of a long-term care facility who is 60 years of age or older~~].

(1-a) "Local ombudsman entity" means a local entity, consisting of representatives, designated by the state long-term care ombudsman to carry out the ombudsman program in a service area of the state.

(2) "Long-term care facility" means a facility that [~~serves persons who are 60 years of age or older and that~~] is licensed or regulated or that is required to be licensed or regulated by the commission [~~department~~] under Chapter 242 or 247, Health and Safety Code.

(3) "Office" means the office of the state long-term care ombudsman, consisting of the state long-term care ombudsman and representatives who are employed by the commission.

(3-a) "Ombudsman program" means the program through which the functions and duties of the office are carried out, consisting of the office and all representatives.

(4) "Representative" means an employee or volunteer specifically designated by the office as a representative of the office.

(4-a) "Resident" means a resident of a long-term care facility.

(5) "State long-term care ombudsman" means the chief administrator of the office.

Sec. 101A.252. OPERATION OF OFFICE.

(a) The office [~~department~~] shall operate in accordance with federal and state statute [~~the office of the state long-term care ombudsman~~].

(b) The commission [~~department~~] may operate the office directly or by contract or memorandum of agreement with a public agency or other appropriate private nonprofit organization. The commission,

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter F, Chapter 101A, Human Resources Code, is amended to read as follows:

SUBCHAPTER F. OFFICE OF STATE LONG-TERM CARE OMBUDSMAN

Sec. 101A.251. DEFINITIONS. In this subchapter:

(1) "Commission" means the Health and Human Services Commission [~~"Elderly resident" means a resident of a long-term care facility who is 60 years of age or older~~].

(1-a) "Local ombudsman entity" means a distinct unit or entity, consisting of representatives, designated by the state long-term care ombudsman to carry out the ombudsman program in a service area of the state.

(2) "Long-term care facility" means a facility that [~~serves persons who are 60 years of age or older and that~~] is licensed or regulated or that is required to be licensed or regulated by the commission [~~department~~] under Chapter 242 or 247, Health and Safety Code.

(3) "Office" means the office of the state long-term care ombudsman, consisting of the state long-term care ombudsman and representatives who are employed by the commission.

(3-a) "Ombudsman program" means the program through which the functions and duties of the office are carried out, consisting of the office and all representatives.

(4) "Representative" means an employee or volunteer specifically designated by the office as a representative of the office.

(4-a) "Resident" means a resident of a long-term care facility.

(5) "State long-term care ombudsman" means the chief administrator of the office.

Sec. 101A.252. OPERATION OF OFFICE.

(a) The office [~~department~~] shall operate and is subject to the commission's oversight in accordance with federal and state statute [~~the office of the state long-term care ombudsman~~].

(b) The commission [~~department~~] may operate the office directly or by contract or memorandum of agreement with a public agency or other appropriate private nonprofit organization. The commission,

agency, or organization may not adopt a policy that interferes with the role, powers, and duties of the office. The commission [~~department~~] may not use an agency or organization that [~~is~~]:

(1) is responsible for licensing or certifying long-term care services; [~~or~~]

(2) is an association of long-term care facilities or of any other residential facility that serves persons with disabilities or who are 60 years of age or older, or that is an affiliate of such an association; or

(3) has an ownership, operational, or investment interest in a long-term care facility.

(c) The commission [~~department~~] shall consider the views of residents [~~elderly persons~~], provider organizations, advocacy groups, and area agencies on aging in planning and operating the office.

(d) The commission [~~department~~] shall ensure that a person involved in designating the state long-term care ombudsman or in designating a [~~an employee or~~] representative [~~of the office~~] does not have a conflict of interest.

Sec. 101A.253. ROLE OF OFFICE. The office and the ombudsman program shall operate in cooperation with any regulatory agency funded and mandated by federal [~~the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.)~~] and state statute.

Sec. 101A.254. POWERS AND DUTIES OF STATE LONG-TERM CARE OMBUDSMAN AND OFFICE. (a) The [~~state ombudsman and the~~] office has [~~have~~] the powers and duties authorized and required by state and federal law.

(b) The office may use appropriate administrative, legal, and other remedies to assist [~~elderly~~] residents as provided by commission [~~department~~] rules.

(c) The office acts independently of the commission in the performance of its powers and duties under this subchapter.

(d) The state long-term care ombudsman has the authority to designate, suspend, or remove a local ombudsman entity or representative.

Sec. 101A.255. OMBUDSMEN. (a) The office shall recruit volunteers and citizen organizations to participate in the ombudsman program. A paid staff member of an area agency on aging network or a nonprofit social service agency may be an

agency, or organization may not implement a policy that prohibits the office from performing its duties under this subchapter. The commission [~~department~~] may not use an agency or organization that [~~is~~]:

(1) is responsible for licensing or certifying long-term care services; [~~or~~]

(2) is an association of long-term care facilities or of any other residential facility that serves persons with disabilities or who are 60 years of age or older, or that is an affiliate of such an association; or

(3) has an ownership, operational, or investment interest in a long-term care facility.

(c) The commission [~~department~~] shall consider the views of residents [~~elderly persons~~], provider organizations, advocacy groups, and area agencies on aging in planning and operating the office.

(d) The commission [~~department~~] shall ensure that a person involved in designating the state long-term care ombudsman or in designating a [~~an employee or~~] representative [~~of the office~~] does not have a conflict of interest.

Sec. 101A.253. ROLE OF OFFICE. The office and the ombudsman program shall operate in cooperation with any regulatory agency funded and mandated by federal [~~the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.)~~] and state statute.

Sec. 101A.254. POWERS AND DUTIES OF STATE LONG-TERM CARE OMBUDSMAN AND OFFICE. (a) The [~~state ombudsman and the~~] office has [~~have~~] the powers and duties authorized and required by state and federal law.

(b) The office may use appropriate administrative, legal, and other remedies to assist [~~elderly~~] residents as provided by commission [~~department~~] rules.

(c) The office acts independently of the commission in the performance of its powers and duties under this subchapter.

(d) The state long-term care ombudsman has the authority to designate a local ombudsman entity or representative and to suspend or revoke that designation.

Sec. 101A.255. OMBUDSMEN. (a) The office shall recruit volunteers and citizen organizations to participate in the ombudsman program. A paid staff member of an area agency on aging network or a nonprofit social service agency may be an

ombudsman. An ombudsman is a representative ~~[of the office]~~.

(b) The office shall provide training to ombudsmen as required by this subchapter and federal law.

(c) The office shall coordinate ombudsman services with the protection and advocacy systems that exist for persons with developmental disabilities or mental illness.

(d) The office shall coordinate ombudsman services with state and local law enforcement agencies and courts of competent jurisdiction.

Sec. 101A.256. LEGAL COUNSEL ~~[ASSISTANCE]~~. The commission ~~[department]~~ shall ensure that the office receives adequate legal advice and representation without conflict of interest as defined by the Texas Disciplinary Rules of Professional Conduct. The attorney general shall represent the state long-term care ombudsman and ~~[or]~~ a representative if a suit or other legal action is brought or threatened to be brought against that person in connection with the person's performance of the official duties of the ombudsman program ~~[office]~~.

Sec. 101A.257. INVESTIGATIONS. (a) The office shall have access to ~~[elderly]~~ residents and shall investigate and resolve complaints made by or on behalf of ~~[elderly]~~ residents.

(b) The state long-term care ombudsman ~~[department]~~ shall ensure that each ombudsman designated under Section 101A.255 who investigates complaints has received proper training and has been approved by the office as qualified to investigate complaints.

(c) The office shall investigate a grievance made against a representative.

(d) A long-term care facility shall cooperate with an investigation conducted by the state long-term care ombudsman or a representative, including an ombudsman designated under Section 101A.255.

Sec. 101A.258. ACCESS TO RECORDS

ombudsman. An ombudsman is a representative ~~[of the office]~~.

(b) The office shall provide training to ombudsmen as required by this subchapter and federal law.

(c) The office shall coordinate ombudsman services with the protection and advocacy systems that exist for persons with developmental disabilities or mental illness.

(d) The office shall coordinate ombudsman services with state and local law enforcement agencies and courts of competent jurisdiction. The office is not authorized to compel those law enforcement agencies or courts to coordinate ombudsman services or other activities with the office.

Sec. 101A.256. LEGAL COUNSEL ~~[ASSISTANCE]~~. The commission ~~[department]~~ shall ensure that the office receives adequate legal advice and representation without conflict of interest as defined by the Texas Disciplinary Rules of Professional Conduct. The attorney general shall represent the state long-term care ombudsman and ~~[or]~~ a representative if a suit or other legal action is brought or threatened to be brought against that person in connection with the person's performance of the official duties of the ombudsman program ~~[office]~~.

Sec. 101A.257. INVESTIGATIONS. (a) The office shall have access to ~~[elderly]~~ residents and shall, in accordance with commission rules, investigate and resolve complaints made by or on behalf of ~~[elderly]~~ residents.

(b) The state long-term care ombudsman ~~[department]~~ shall ensure that each ombudsman designated under Section 101A.255 who investigates complaints has received proper training and has been approved by the office as qualified to investigate complaints.

(c) The office shall investigate a grievance made against a representative in accordance with commission rules and inform the person who made the grievance of the outcome of the investigation when the investigation is concluded.

(d) A long-term care facility shall cooperate with an investigation conducted by the state long-term care ombudsman or a representative, including an ombudsman designated under Section 101A.255.

Sec. 101A.258. ACCESS TO RECORDS

AND CONFIDENTIALITY. (a) The state long-term care ombudsman or representative [~~the state ombudsman's designee, specifically identified by the commissioner,~~] shall have access to patient care records of [~~elderly~~] residents as provided by commission rules [~~of long-term care facilities as provided by Subsection (a-1). The executive commissioner by rule shall establish procedures for obtaining access to the records]. All records and information created or obtained by [to which] the state long-term care ombudsman or a representative [~~the state ombudsman's designee obtains access]~~ remain confidential.~~

(a-1) The state long-term care ombudsman or representative [~~the state ombudsman's designee, specifically identified by the commissioner,~~] shall have access to patient care records of a resident [~~elderly residents of long-term care facilities]~~ if:

- (1) the resident or the resident's legal representative consents to the access;
- (2) the resident is unable to consent to the access and the resident has no legal representative; or
- (3) access to the records is necessary to investigate a complaint and:
  - (A) a legal representative [guardian] of the resident refuses to consent to the access;
  - (B) the state long-term care ombudsman or representative [~~the state ombudsman's designee~~] has reasonable cause to believe that the legal representative of the resident [guardian] is not acting in the best interests of the resident; and
  - (C) the state long-term care ombudsman approves the access.

(b) The office shall ensure that the identity of a complainant or any [~~facility~~] resident may be disclosed only with the [~~written~~] consent of the person or the person's legal representative or on court order.

(b-1) Files, records, and other information maintained as part of the ombudsman program may be disclosed only at the discretion of the state long-term care ombudsman.

~~[(c) The information in files maintained by the office may be disclosed only by the ombudsman who has authority over the~~

AND CONFIDENTIALITY. (a) The state long-term care ombudsman and representatives [~~or the state ombudsman's designee, specifically identified by the commissioner,~~] shall have access to patient care records of [~~elderly~~] residents as provided by commission rules. Except as provided by Subsection (b), all [~~of long-term care facilities as provided by Subsection (a-1). The executive commissioner by rule shall establish procedures for obtaining access to the records. All] records and information created or obtained by [to which] the state long-term care ombudsman or a representative [~~the state ombudsman's designee obtains access]~~ remain confidential.~~

(a-1) The state long-term care ombudsman and representatives [~~or the state ombudsman's designee, specifically identified by the commissioner,~~] shall have access to patient care records of a resident [~~elderly residents of long-term care facilities]~~ if:

- (1) the resident or the resident's legal representative consents to the access;
- (2) the resident is unable to consent to the access and the resident has no legal representative; or
- (3) access to the records is necessary to investigate a complaint and:
  - (A) a legal representative [guardian] of the resident refuses to consent to the access;
  - (B) the state long-term care ombudsman or representative [~~the state ombudsman's designee~~] has reasonable cause to believe that the legal representative of the resident [guardian] is not acting in the best interests of the resident; and
  - (C) the state long-term care ombudsman approves the access.

(b) The office shall ensure that the identity of a complainant or any [~~facility~~] resident may be disclosed only with the [~~written~~] consent of the person or the person's legal representative or on court order.

(c) Files, records, and other information maintained as part of the ombudsman program may be disclosed only at the discretion of the state long-term care ombudsman. [~~The information in files maintained by the office may be disclosed only by the ombudsman who has authority over the disposition of the files.]~~

~~disposition of the files.]~~

Sec. 101A.259. REPORTING SYSTEM. The office shall maintain a statewide ombudsman uniform reporting system to collect and analyze information relating to complaints and conditions in long-term care facilities as long as such system does not duplicate other state reporting systems. The office shall provide the information to the executive commissioner, subject to Section 101A.258 ~~[department and the Health and Human Services Commission]~~.

Sec. 101A.260. ANALYSIS OF LAWS. (a) The office shall analyze and monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies relating to long-term care facilities and services and shall recommend any changes the office considers necessary. (b) Section 556.006(a), Government Code, does not apply to the state long-term care ombudsman or a representative.

Sec. 101A.261. PUBLIC INFORMATION. The office shall provide information and make recommendations to public agencies, legislators, and other persons about ~~[others that relates to]~~ the problems and concerns of ~~[elderly]~~ residents.

Sec. 101A.262. ~~[ANNUAL]~~ REPORT. (a) The office shall prepare a [an annual] report that contains:

- (1) information and findings relating to the problems and concerns ~~[complaints]~~ of ~~[elderly]~~ residents; and
- (2) policy, regulatory, and legislative recommendations to solve the problems, resolve the concerns ~~[complaints]~~, and improve the quality of the ~~[elderly]~~ residents' care and lives.

(b) The report must be submitted to the governor and the presiding officer of each house of the legislature not later than November 1 of each even-numbered year.

Sec. 101A.263. LIMITATION OF LIABILITY. The state long-term care ~~[An]~~ ombudsman or a representative is not liable for civil damages or subject to criminal prosecution for performing official duties unless the state long-term care ombudsman or representative acts in bad faith or with a malicious purpose.

Sec. 101A.264. CRIMINAL PENALTY.

Sec. 101A.259. REPORTING SYSTEM. The office shall maintain a statewide ombudsman uniform reporting system to collect and analyze information relating to complaints and conditions in long-term care facilities as long as such system does not duplicate other state reporting systems. The office shall provide the information to the commission in accordance with federal law ~~[department and the Health and Human Services Commission]~~.

Sec. 101A.260. ANALYSIS OF LAWS. (a) The office shall analyze and monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies relating to long-term care facilities and services and shall recommend any changes the office considers necessary.

(b) To the extent necessary to perform any duties under this subchapter, Section 556.006(a), Government Code, and Section 391.0116, Local Government Code, do not apply to the state long-term care ombudsman or a representative.

Sec. 101A.261. PUBLIC INFORMATION. The office shall provide information and make recommendations to public agencies, legislators, and other persons about ~~[others that relates to]~~ the problems and concerns of ~~[elderly]~~ residents.

Sec. 101A.262. ~~[ANNUAL]~~ REPORT. (a) The office shall prepare a [an annual] report that contains:

- (1) information and findings relating to the problems and concerns ~~[complaints]~~ of ~~[elderly]~~ residents; and
- (2) policy, regulatory, and legislative recommendations to solve the problems, resolve the concerns ~~[complaints]~~, and improve the quality of the ~~[elderly]~~ residents' care and lives.

(b) The report must be submitted to the governor and the presiding officer of each house of the legislature not later than November 1 of each even-numbered year.

Sec. 101A.263. LIMITATION OF LIABILITY. The state long-term care ~~[An]~~ ombudsman or a representative is not liable for civil damages or subject to criminal prosecution for performing official duties unless the state long-term care ombudsman or representative acts in bad faith or with a malicious purpose.

Sec. 101A.264. CRIMINAL PENALTY.

(a) A person commits an offense if the person:

(1) by act or omission, wilfully [~~intentionally~~] interferes or attempts to interfere with the state long-term care [~~an~~] ombudsman or a representative attempting to perform official duties; or

(2) commits or attempts to commit an act of retaliation or reprisal against any resident or employee of a long-term care facility for filing a complaint or providing information to the state long-term care [~~an~~] ombudsman or a representative.

(b) An offense under this section is a Class B misdemeanor.

(c) The commission [~~department~~] shall ensure [~~assure~~] that criminal sanctions will be initiated only after all administrative procedures are exhausted.

SECTION 2. Section 101A.264, Human Resources Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 3. This Act takes effect September 1, 2017.

(a) A person commits an offense if the person:

(1) by act or omission, wilfully [~~intentionally~~] interferes or attempts to interfere with the state long-term care [~~an~~] ombudsman or a representative attempting to perform official duties; or

(2) commits or attempts to commit an act of retaliation or reprisal against any resident or employee of a long-term care facility for filing a complaint or providing information to the state long-term care [~~an~~] ombudsman or a representative.

(b) An offense under this section is a Class B misdemeanor.

(c) The commission [~~department~~] shall ensure [~~assure~~] that criminal sanctions will be initiated only after all administrative procedures are exhausted.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.