

BILL ANALYSIS

C.S.H.B. 4220
By: Clardy
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The state long-term care ombudsman is an advocate with a mandate to represent the interests of residents in nursing homes and assisted living facilities. The ombudsman's office is aided by more than 100 full-time staff and nearly 300 volunteer ombudsmen. Long-term care providers, such as nursing homes and assisted living facilities, are directed by state regulations to give the ombudsmen "immediate, private, and unimpeded access" to residents, all areas of the facility, and resident records. State statute does not follow the federal rules for the types of records the ombudsmen may request from providers, and this ambiguity causes confusion for both providers and the volunteer ombudsmen. Unlike other governmental agencies, the state long-term care ombudsman testifies for and against legislation and advocates for rules changes at the Health and Human Services Commission (HHSC). The ombudsman's office releases a yearly report detailing some of these activities, but the office does not currently summarize or keep a public record of which positions it has taken. C.S.H.B. 4220 seeks to reestablish the clear lines between HHSC's job as the state's enforcer of health and safety standards and the ombudsman's role as an advocate for residents; ensure that residents, families, and assisted living communities are able to rely on appropriate services from volunteer ombudsmen that are well trained; and allow families and residents to have a record of which ombudsman had access to the resident's sensitive information and that a responsible party gave informed consent.

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 rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 4220 amends the Human Resources Code to require the training for an ombudsman designated by the office of the state long-term care ombudsman who investigates complaints to include instruction regarding state laws and regulations applicable to the long-term care settings in which each such ombudsman will conduct investigations.

C.S.H.B. 4220 requires the state long-term care ombudsman and representatives, as provided by Health and Human Services Commission (HHSC) rules, to have access to a long-term care facility's administrative records, policies, and other documents that residents or the general public have access to in the normal course of business, in addition to their current access to a resident's patient care records. The bill establishes that documents obtained through litigation are not considered to have been obtained in the normal course of business. The bill specifies that the consent from a resident or the resident's legal representative that triggers the authorization

for the state long-term care ombudsman and representatives to have access to a resident's patient care records is informed consent and defines "patient care record" as a medical, social, or other record related to a resident. The bill requires the office, in accordance with HHSC rule, to provide documentation to a long-term care facility that is the subject of a complaint investigation evidencing that the state long-term care ombudsman or a representative is entitled to access a resident's patient care records by having satisfied the applicable requirements to access those records.

C.S.H.B. 4220 requires the office to include on each of its publications a statement explaining its role as an advocate for residents and that the points of view, opinions, positions, or policies of the ombudsmen do not necessarily represent the points of view, opinions, positions, or policies of HHSC. The bill authorizes the statement to be modified as necessary to reflect a publication's primary audience.

C.S.H.B. 4220 requires the office's biennial report to the governor and the presiding officer of each house of the legislature to include the following additional information:

- a list of persons representing the office who submitted a sworn statement to a committee of the legislature indicating the office was present in favor of, in opposition to, or without taking a position on legislation and a description of the legislation, including the bill number, the position taken, and a summary of the testimony given; and
- if the office submitted a public comment on a proposed rule published in the Texas Register, a citation to the volume and page numbers in the Texas Register that included the proposed rule and a summary of the submitted comment.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 4220 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute omits the provision from the introduced establishing that an investigation conducted by the office is for the sole purpose of gathering information necessary to resolve a long-term care facility resident's complaint or grievance to the resident's satisfaction. The bill also omits the provision from the introduced establishing that, in such an investigation, the state long-term care ombudsman or a representative, including an ombudsman designated by the office, 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 that 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.

The substitute changes the definition of "patient care record" from a record related to a specific patient's direct care, as in the introduced, to a medical, social, or other record related to a resident.

Whereas the introduced required the training for an ombudsman designated by the office of the state long-term care ombudsman who investigates complaints to include instruction regarding state laws and regulations applicable to the institutional setting in which the ombudsman will conduct the investigation, the substitute requires the training to include instruction regarding state laws and regulations applicable to the long-term care settings in which each ombudsman will conduct investigations.

While the introduced provided for the state long-term care ombudsman's and representatives' access to long-term care facility administrative records, policies, and other documents that both residents and the general public have access to in the normal course of business, the substitute provides for their access to such records, policies, and other documents that either residents or the general public have access to in the normal course of business.

The substitute revises the requirement in the introduced for the office to provide certain documentation to a long-term care facility that is the subject of an investigation to specify that the provision of the documentation is to be in accordance with HHSC rule, whereas the introduced did not specify the manner of providing the documentation.

The substitute revises the requirement in the introduced for the office to include on each of its publications a disclosure statement explaining that the office acts independently of HHSC and does not regulate long-term care facilities and that information the office publishes is for educational purposes only by requiring the statement instead to explain the office's role as an advocate for residents and that the points of view, opinions, positions, or policies of the ombudsmen do not necessarily represent the points of view, opinions, positions, or policies of HHSC. The substitute includes a provision absent from the introduced authorizing the statement to be modified as necessary to reflect a publication's primary audience.