

By: Clardy

H.B. No. 4220

Substitute the following for H.B. No. 4220:

By: Frank

C.S.H.B. No. 4220

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

6 (3-b) "Patient care record" means a medical, social,  
7 or other record related to a resident.

8 SECTION 2. Section 101A.257(b), Human Resources Code, is  
9 amended to read as follows:

10 (b) The state long-term care ombudsman shall ensure that  
11 each ombudsman designated under Section 101A.255 who investigates  
12 complaints has received proper training and has been approved by  
13 the office as qualified to investigate complaints. The training  
14 must include instruction regarding state laws and regulations  
15 applicable to the long-term care settings in which each ombudsman  
16 will conduct investigations.

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

20 (a) The state long-term care ombudsman and representatives  
21 shall, as provided by commission rules, have access to a resident's  
22 patient care records and to a long-term care facility's  
23 administrative records, policies, and other documents that  
24 residents or the general public have access to in the normal course

1 of business [~~of residents as provided by commission rules~~]. For  
2 purposes of this subsection, documents obtained through litigation  
3 are not considered to have been obtained in the normal course of  
4 business. Except as provided by Subsection (b), all records and  
5 information created or obtained by the state long-term care  
6 ombudsman or a representative remain confidential.

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

10 (1) the state long-term care ombudsman or  
11 representative has obtained the resident's [~~resident~~] or the  
12 resident's legal representative's informed consent [~~representative~~  
13 ~~consents~~] to [~~the~~] access the records;

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

16 (3) access to the records is necessary to investigate  
17 a complaint and:

18 (A) a legal representative of the resident  
19 refuses to consent to the access;

20 (B) the state long-term care ombudsman or  
21 representative has reasonable cause to believe that the legal  
22 representative of the resident is not acting in the best interests  
23 of the resident; and

24 (C) the state long-term care ombudsman approves  
25 the access.

26 (a-2) The office shall, in accordance with commission rule,  
27 provide documentation to a long-term care facility that is the

1 subject of an investigation conducted under Section 101A.257  
2 evidencing that the state long-term care ombudsman or a  
3 representative is entitled to access a resident's patient care  
4 records by having satisfied the requirements of Subsection  
5 (a-1)(1), (a-1)(2), or (a-1)(3), as applicable.

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

8 Sec. 101A.261. PUBLIC INFORMATION. (a) The office shall  
9 provide information and make recommendations to public agencies,  
10 legislators, and other persons about the problems and concerns of  
11 residents.

12 (b) The office shall include on each of the office's  
13 publications a statement explaining:

14 (1) the office's role as an advocate for residents; and

15 (2) that the points of view, opinions, positions, or  
16 policies of the ombudsmen do not necessarily represent the points  
17 of view, opinions, positions, or policies of the commission.

18 (c) The statement required under Subsection (b) may be  
19 modified as necessary to reflect a publication's primary audience.

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

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

23 (1) information and findings relating to the problems  
24 and concerns of residents; ~~and~~

25 (2) policy, regulatory, and legislative  
26 recommendations to solve the problems, resolve the concerns, and  
27 improve the quality of the residents' care and lives;

1           (3) a list of persons representing the office who  
2 submitted a sworn statement to a committee of the legislature  
3 indicating the office was present in favor of, in opposition to, or  
4 without taking a position on legislation and a description of the  
5 legislation, including the bill number, the position taken, and a  
6 summary of the testimony given; and

7           (4) if the office submitted a public comment on a  
8 proposed rule published in the Texas Register, a citation to the  
9 volume and page numbers in the Texas Register that included the  
10 proposed rule and a summary of the submitted comment.

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