

BILL ANALYSIS

Senate Research Center
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H.B. 3564
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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.

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 Texas 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.

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.

H.B. 3564 amends current law relating to the office of the state long-term care ombudsman and affects the prosecution of a criminal offense.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is rescinded in SECTION 1 (Section 101A.258, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter F, Chapter 101A, Human Resources Code, as follows:

SUBCHAPTER F. OFFICE OF STATE LONG-TERM CARE OMBUDSMAN

Sec. 101A.251. DEFINITIONS. Defines "commission," "local ombudsman entity," "ombudsman program," "resident," and "state long-term care ombudsman," rather than "state ombudsman." Redefines "long-term care facility" and "office" and deletes the existing definition of "elderly resident."

Sec. 101A.252. OPERATION OF OFFICE. (a) Requires the office of the state long-term care ombudsman (office) to operate and provides that it is subject to the Health and Human Services Commission's (HHSC's) oversight in accordance with federal and state statute, rather than requires the Department of Aging and Disability Services (DADS) to operate the office.

(b) Authorizes HHSC, rather than DADS, to operate the office directly or by contract or memorandum of agreement with certain agencies or organization. Prohibits HHSC, the agency, or the organization from implementing a policy that prohibits the office from performing its duties under this subchapter. Prohibits HHSC, rather than DADS, from using an agency or organization that:

(1) makes a nonsubstantive change;

(2) is an association of certain facilities that serves persons with disabilities or who are 60 years of age or older, rather than persons who are 60 years of age or older, or that is an affiliate of such an association. Makes nonsubstantive changes;

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

(c) Requires HHSC, rather than DADS, to consider the views of certain persons or organizations, including residents, rather than elderly persons, in planning and operating the office.

(d) Requires HHSC, rather than DADS, to ensure that a person involved in designating the state long-term care ombudsman, rather than the state ombudsman, or in designating a representative, rather than designating an employee or representative of the office, does not have a conflict of interest.

Sec. 101A.253. **ROLE OF OFFICE.** Requires the office and the ombudsman program to operate in cooperation with any regulatory agency funded and mandated by federal and state statute, rather than by the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and state statute.

Sec. 101A.254. **New heading: POWERS AND DUTIES OF STATE LONG-TERM CARE OMBUDSMAN AND OFFICE.** (a) Provides that the office, rather than the state ombudsman and the office, has the powers and duties authorized and required, rather than the powers and duties required, by state and federal law. Makes a nonsubstantive change.

(b) Authorizes the office to use appropriate administrative, legal, and other remedies to assist residents, rather than elderly residents, as provided by HHSC, rather than DADS, rules.

(c) Provides that the office acts independently of HHSC in the performance of its powers and duties under this subchapter.

(d) Provides that 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) Provides that an ombudsman is a representative, rather than a representative of the office.

(b) and (c) Makes no changes to these subsections.

(d) Requires the office to coordinate ombudsman services with state and local law enforcement agencies and courts of competent jurisdiction. Provides that 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. **New heading: LEGAL COUNSEL.** Requires HHSC, rather than DADS, to ensure that the office receives adequate legal advice and representation without conflict of interest as defined by the Texas Disciplinary Rules of Professional Conduct, rather than receives adequate legal advice and representation. Requires the Texas attorney general to represent the state long-term care ombudsman and a representative, rather than represent the ombudsman or a representative, if a suit or other legal action is brought or threatened to be brought against the person in connection with the person's performance of the official duties of the ombudsman program, rather than of the office.

Sec. 101A.257. **INVESTIGATIONS.** (a) Requires the office to have access to residents, rather than to elderly residents, and, to, in accordance with HHSC rules, investigate and resolve complaints made by or on behalf of residents, rather than elderly residents.

(b) Requires the state long-term care ombudsman, rather than DADS, to ensure that each ombudsman designated under Section 101A.255, rather than each ombudsman, who investigates complaints has received proper training and has been approved by the office as qualified to investigate complaints.

(c) 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.

(d) Requires a long-term care facility to 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) Requires that the state long-term care ombudsman and representatives, rather than the state ombudsman or the state ombudsman's designee, specifically identified by the commissioner of DADS (commissioner), have access to patient care records of residents as provided by HHSC rules, rather than patient care records of elderly residents of long-term care facilities as provided by Subsection (a-1). Provides that, except as provided by Subsection (b), all records and information created or obtained by, rather than to which, the state long-term care ombudsman or a representative, rather than the state ombudsman or the state ombudsman's designee obtains access, remain confidential. Deletes existing text requiring the executive commissioner of HHSC (executive commissioner) by rule to establish certain procedures.

(a-1) Requires that the state long-term care ombudsman and representatives, rather than the state ombudsman or the state ombudsman's designee, specifically identified by the commissioner, have access to patient care records of a resident, rather than of elderly residents of long-term care facilities, if:

(1) and (2) makes no changes to these subdivisions;

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

(A) a legal representative, rather than legal guardian, of the resident refuses to consent to the access;

(B) the state long-term care ombudsman or representative, rather than the state ombudsman or the state ombudsman's designee, has reasonable cause to believe that the legal representative of the resident, rather than the guardian, is not acting in the best interests of the resident; and

(C) makes a conforming change.

(b) Requires the office to ensure that the identity of a complainant or any resident, rather than any facility resident, may be disclosed only with the consent, rather than the written consent, of the person or the person's legal representative or on court order.

(c) Authorizes files, records, and other information maintained as part of the ombudsman program to be disclosed only at the discretion of the state long-term care ombudsman. Deletes existing text authorizing the information in files maintained by the office to be disclosed only by the ombudsman who has authority over the disposition of the files.

Sec. 101A.259. REPORTING SYSTEM. Requires the office to provide the required information to HHSC in accordance with federal law, rather than to DADS and HHSC.

Sec. 101A.260. ANALYSIS OF LAWS. (a) Creates this subsection from existing text and makes no further changes to this subsection.

(b) Provides that, to the extent necessary to perform any duties under this subchapter, Section 556.006(a) (relating to prohibiting a state agency from using appropriated money to attempt to influence legislation), Government Code, and Section 391.0116 (Restrictions on Employment), Local Government Code, do not apply to the state long-term care ombudsman or a representative.

Sec. 101A.261. PUBLIC INFORMATION. Requires the office to provide information and make recommendations to public agencies, legislators, and other persons about, rather than provide information to public agencies, legislators, and others that relates to, the problems and concerns of residents, rather than elderly residents.

Sec. 101A.262. New heading: REPORT. (a) Requires the office to prepare a report, rather than an annual report, that contains:

(1) information and findings relating to the problems and concerns of residents, rather than the problems and complaints of elderly residents; and

(2) makes conforming changes.

(b) Makes no changes to this subsection.

Sec. 101A.263. LIMITATION OF LIABILITY. Makes conforming changes.

Sec. 101A.264. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person:

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

(2) makes conforming changes.

(b) Makes no changes to this subsection.

(c) Requires HHSC to ensure, rather than DADS to assure, that criminal sanctions will be initiated only after all administrative procedures are exhausted.

SECTION 2. Makes application of Section 101A.264, Human Resources Code, as amended by this Act, prospective.

SECTION 3. Effective date: September 1, 2017.