

(Reprinted with amendments adopted on April 22, 2019)

FIRST REPRINT

A.B. 228

ASSEMBLY BILL NO. 228—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE LEGISLATIVE COMMITTEE ON SENIOR
CITIZENS, VETERANS AND ADULTS WITH SPECIAL NEEDS)

FEBRUARY 27, 2019

Referred to Committee on Health and Human Services

SUMMARY—Expands the jurisdiction of the Office of the State
Long-Term Care Ombudsman to protect persons
receiving services from certain additional entities.
(BDR 38-171)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to services to aging and disabled persons;
expanding the jurisdiction of the State Long-Term Care
Ombudsman to perform certain actions to protect the
health, safety, welfare and civil rights of certain persons
receiving services from certain entities other than long-
term care facilities; revising the duties of the Ombudsman;
requiring the Aging and Disability Services Division of the
Department of Health and Human Services to adopt
regulations requiring certain such facilities and providers
of services to post information relating to the procedure for
making a complaint to the Ombudsman and prescribing a
civil penalty for failure to comply with such regulations;
and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law establishes the Office of the State Long-Term Care Ombudsman to
2 advocate for the protection of the health, safety, welfare and rights of residents of
3 facilities for long-term care. (NRS 427A.125) The Ombudsman is required to train
4 advocates whom the Ombudsman appoints to perform certain duties, including: (1)
5 receiving, investigating and attempting to resolve complaints by residents of facilities
6 for long-term care; and (2) investigating acts, practices, policies or procedures of
7 facilities for long-term care and governmental agencies which relate to such care.



* A B 2 2 8 R 1 *

(NRS 427A.125, 427A.127) **Section 6** of this bill expands the jurisdiction of the Ombudsman to include advocating for recipients of services from day care centers for adults, facilities for long-term rehabilitation and living arrangement services. **Section 2** of this bill defines the term "facility for long-term rehabilitation" to mean a facility that provides residential services for rehabilitation from an acute illness or injury in which a recipient may reside for longer than 1 month. **Section 3** of this bill defines the term "living arrangement services" to include certain services provided in the home of a person with a mental illness, a person with an intellectual disability or a person with a related condition.

Existing law authorizes the Ombudsman or an advocate to enter onto the premises of a facility for long-term care to investigate or review any act, practice, policy, procedure or condition that may adversely affect the health, safety, welfare or civil rights of a resident of the facility. Such investigations may be conducted periodically or pursuant to a complaint. (NRS 427A.125, 427A.135) In conducting such an investigation or review, the Ombudsman or advocate may: (1) inspect the facility and its records; (2) interview officers, directors, employees and residents of the facility as well as legal guardians and families of residents and persons designated as responsible for decisions concerning the care of residents; and (3) obtain assistance and information from any agency of this State. (NRS 427A.145) A person who interferes with such an investigation or review is subject to an administrative fine of not more than \$1,000 for each violation. (NRS 427A.135) **Section 4.5** of this bill authorizes the Administrator of the Aging and Disability Services Division of the Department of Health and Human Services to direct the Ombudsman or an advocate to investigate a complaint involving a recipient who receives services from a facility for long-term care, day care center for adults, facility for long-term rehabilitation or provider of living arrangement services. **Sections 6, 7 and 9** of this bill expand the authority of the Ombudsman or an advocate to respond to complaints involving a recipient who receives services from a day care center for adults, facility for long-term rehabilitation or provider of living arrangement services.

Section 8 of this bill prohibits retaliation against any person who files a complaint with, or provides information to, the Ombudsman or an advocate. A person who violates this prohibition is subject to an administrative fine of not more than \$1,000 for each violation. **Section 10** of this bill requires the Division to adopt regulations: (1) requiring a facility for long-term care, adult day care center, facility for long-term rehabilitation or provider of living arrangement services to post instructions concerning the procedure for making a complaint to the Ombudsman or an advocate; and (2) prescribing a penalty for failure to comply with this requirement.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 427A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 4.5, inclusive, of this act.

Sec. 2. *"Facility for long-term rehabilitation" means a facility that provides residential services for rehabilitation from an acute illness or injury in which a recipient may reside for longer than 1 month.*

Sec. 3. *"Living arrangement services" means:*

1. Community-based living arrangement services, as defined in NRS 433.605, that include:



(a) *Intensive services and overnight supervision of recipients who require training concerning behavioral skills, self-care and management of medications; or*

(b) *Services in the home for recipients with chronic medical conditions and severe mental illness who require habilitation or rehabilitation services, or both; and*

2. *Supported living arrangement services, as defined in NRS 435.3315, that include 24-hour care.*

Sec. 4. *"Recipient" means a person who receives:*

1. *Services from a facility for long-term care, a day care center or a facility for long-term rehabilitation; or*

2. *Living arrangement services.*

Sec. 4.5. 1. *The Administrator may direct the Ombudsman or an advocate to investigate a complaint involving a recipient.*

2. *If the Administrator directs an investigation pursuant to subsection 1, the Ombudsman or an advocate shall conduct an investigation of the complaint.*

Sec. 5. NRS 427A.020 is hereby amended to read as follows:

427A.020 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 427A.021 to 427A.0295, inclusive, *and sections 2, 3 and 4 of this act* have the meanings ascribed to them in those sections.

Sec. 6. NRS 427A.125 is hereby amended to read as follows:

427A.125 1. The Office of the State Long-Term Care Ombudsman is hereby created within the Division.

2. The Administrator shall appoint the State Long-Term Care Ombudsman to advocate for the protection of the health, safety, welfare and rights of ~~residents of facilities for long-term care.~~ *recipients.* The Ombudsman is in the classified service of the State. The Ombudsman shall, under direction of the Administrator:

(a) Train advocates to:

(1) Receive, investigate and attempt to resolve complaints made by or on behalf of ~~residents of facilities for long-term care.~~ *recipients.*

(2) Investigate acts, practices, policies or procedures of any facility for long-term care, *day care center, facility for long-term rehabilitation or provider of living arrangement services* or any governmental agency which relates to such care *or services* and may adversely affect the health, safety, welfare or civil rights of ~~residents of such facilities.~~ *recipients* and report the results of the investigations to the Ombudsman and the Administrator.

(3) Record and analyze information and complaints about facilities for long-term care, *day care centers, facilities for long-term rehabilitation and providers of living arrangement services* to



1 identify problems affecting ~~[their residents.]~~ *recipients to whom they*
2 *provide services.*

3 (4) Provide for the support and development of ~~[resident]~~
4 *recipient* and family councils to protect the well-being and rights of
5 ~~[residents of facilities for long-term care.]~~ *recipients.*

6 (5) Assist facilities for long-term care , *day care centers,*
7 *facilities for long-term rehabilitation and providers of living*
8 *arrangement services* to provide services to ~~[residents]~~ *recipients* in
9 the manner set forth in paragraph (b).

10 (b) Develop a course of training to be made available to officers,
11 directors and employees of a facility for long-term care , *a day care*
12 *center, a facility for long-term rehabilitation or a provider of living*
13 *arrangement services* to encourage such facilities *and providers* to
14 provide services to ~~[their residents]~~ *recipients* in a manner that allows
15 the ~~[residents]~~ *recipients* to follow their own routine and make their
16 own decisions concerning the daily activities in which to participate.
17 The course must also provide information concerning how to provide
18 services in that manner.

19 (c) Coordinate services within the Department which may affect
20 ~~[residents]~~ *recipients* and prospective ~~[residents of facilities for long-~~
21 ~~term care]~~ *recipients* to ensure that such services are made available
22 to eligible persons.

23 (d) Provide information to interested persons and to the general
24 public concerning the functions and activities of the Ombudsman.

25 (e) Report annually to the Administrator.

26 3. The Ombudsman may:

27 (a) Analyze, provide comment on and monitor the development
28 and implementation of any federal, state or local governmental action,
29 activity or program that relates to the protection of the health, safety,
30 welfare and rights of ~~[residents of facilities for long-term care;]~~
31 *recipients;* and

32 (b) Recommend changes to any federal, state or local
33 governmental action, activity or program described in paragraph (a)
34 without the prior approval of the Administrator.

35 **Sec. 7.** NRS 427A.135 is hereby amended to read as follows:

36 427A.135 1. The Ombudsman or an advocate may:

37 (a) Upon a complaint by or on behalf of a ~~[resident.]~~ *recipient,*
38 investigate any act or policy which the Ombudsman or advocate has
39 reason to believe may adversely affect the health, safety, welfare or
40 civil rights of any ~~[resident of a facility for long-term care.]~~ *recipient;*
41 and

42 (b) Make periodic visits to any facility for long-term care , *day*
43 *care center, facility for long-term rehabilitation, facility maintained*
44 *by a provider of living arrangement services or, with the consent of*
45 *a recipient of living arrangement services, the residence of the*



1 *recipient* to provide information to ~~[(the residents of the facility)]~~
2 *recipients* and to review generally any act, practice, policy, procedure
3 or condition which may adversely affect the health, safety, welfare or
4 civil or other rights of any ~~[resident of the facility.]~~ *recipient*.

5 2. The Ombudsman or an advocate may enter ~~[any]~~ :

6 (a) *Any* facility for long-term care , *day care center, facility for*
7 *long-term rehabilitation or facility maintained by a provider of*
8 *living arrangement services* and any area within ~~[the]~~ *such a* facility
9 at reasonable times with or without prior notice and must be permitted
10 access to ~~[residents]~~ *recipients* of *services from* the facility at all
11 times. Upon arrival at the facility, the Ombudsman or advocate shall
12 make his or her presence known to the staff of the facility and shall
13 present appropriate identification.

14 (b) *With the consent of a recipient of living arrangement*
15 *services, the residence of the recipient.*

16 3. A person shall not willfully interfere with the Ombudsman or
17 an advocate in the performance of any investigation or visitation
18 pursuant to this section. If any person is found, after notice and a
19 hearing, to have willfully violated any provision of this subsection,
20 the Director, at the request of the Administrator, may refer the matter
21 to the Division for the imposition of an administrative fine of not
22 more than \$1,000 for each violation.

23 4. Any money collected as a result of an administrative fine
24 imposed pursuant to this section must be deposited in the State
25 General Fund.

26 5. Each ~~[resident]~~ *recipient* has the right to request, deny or
27 terminate visits with the Ombudsman or an advocate. *Nothing in this*
28 *subsection shall be construed to require the Ombudsman or an*
29 *advocate to investigate a complaint made by or on behalf of a*
30 *recipient.*

31 6. The Ombudsman or an advocate is not liable civilly for the
32 good faith performance of any investigation.

33 **Sec. 8.** NRS 427A.138 is hereby amended to read as follows:

34 427A.138 1. An officer, director or employee of a facility for
35 long-term care , *day care center, facility for long-term rehabilitation*
36 *or provider of living arrangement services* shall not retaliate against
37 any person for having filed a complaint with, or provided information
38 to, the Ombudsman or an advocate.

39 2. If any person is found, after notice and a hearing, to have
40 violated any provision of subsection 1, the Director, at the request of
41 the Administrator, may refer the matter to the Division for the
42 imposition of an administrative fine of not more than \$1,000 for each
43 violation.



3. Any money collected as a result of an administrative fine imposed pursuant to this section must be deposited in the State General Fund.

Sec. 9. NRS 427A.145 is hereby amended to read as follows:

427A.145 In conducting an investigation, the Ombudsman or an advocate may:

1. Inspect any facility for long-term care , *day care center, facility for long-term rehabilitation or facility maintained by a provider of living arrangement services* and any records maintained by the facility. Except as otherwise provided in this subsection, ~~the~~ medical and personal financial records may be inspected only with the informed consent of the ~~resident,~~ *recipient*, the legal guardian of the ~~resident,~~ *recipient* or the person or persons designated as responsible for decisions regarding the ~~resident,~~ *recipient*. Such consent must be obtained in accordance with the provisions of 45 C.F.R. § 1324.11(e)(2) and may be obtained orally, visually, in writing or through the use of auxiliary aids and services, as long as such consent is documented by the Ombudsman or the advocate. If the provisions of 45 C.F.R. § 1324.11(e)(2) authorize records to be inspected without the consent of the ~~resident,~~ *recipient*, the legal guardian of the ~~resident,~~ *recipient* or the person or persons designated as responsible for decisions regarding the ~~resident,~~ *recipient*, the inspection may be conducted without consent.

2. *With the consent of a recipient of living arrangement services, inspect the residence of the recipient.*

3. Interview:

(a) Officers, directors and employees of any facility for long-term care, *day care center, facility for long-term rehabilitation or provider of living arrangement services*, including any licensed provider of health care as defined in NRS 629.031, who renders services to the facility or ~~its residents,~~ *provider or recipients of services from the facility or provider.*

(b) Any ~~resident of the facility,~~ *recipient* and the legal guardian of the ~~resident,~~ *recipient*, if any, and the family of the ~~resident,~~ *recipient* or the person or persons designated as responsible for decisions regarding his or her care if the ~~resident,~~ *recipient* consents to the interview.

~~[3-]~~ 4. Obtain such assistance and information from any agency of the State or its political subdivisions as is necessary properly to perform the investigation.

Sec. 10. NRS 427A.165 is hereby amended to read as follows:

427A.165 1. *The Division shall adopt regulations:*

(a) *Requiring a facility for long-term care, day care center, facility for long-term rehabilitation or provider of living arrangement services to post instructions concerning the procedure*



for making a complaint to the Ombudsman or an advocate. Such instructions must include, without limitation, any telephone number, electronic mail address or Internet website established for making such a complaint.

(b) Prescribing a civil penalty not to exceed \$500 for failure to comply with the regulations adopted pursuant to paragraph (a).

2. The Division may adopt regulations regarding the requirement, contents, posting and distribution of a notice which describes the purpose of the Ombudsman and an advocate and sets forth the procedure for making a complaint to the Ombudsman or an advocate.

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

Sec. 13. (Deleted by amendment.)

Sec. 14. This act becomes effective upon passage and approval for the purposes of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act and on January 1, 2020, for all other purposes.

