

Amendment No. 613

Assembly Amendment to Assembly Bill No. 228
(BDR 38-171)

Proposed by: Assembly Committee on Health and Human Services

Amendment Box: Replaces Amendment No. 222.

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



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.

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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~~ and prescribing a civil penalty for failure to comply with such regulations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the Office of 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. (NRS 427A.125) The Ombudsman is required to train advocates whom the Ombudsman appoints to perform certain duties, including: (1) receiving, investigating and attempting to resolve complaints by residents of facilities for long-term care; and (2) investigating acts, practices, policies or procedures of facilities for long-term care and governmental agencies which relate to such care. (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 ~~additionally authorize~~ expand the authority of the Ombudsman or an advocate to ~~engage in these actions with respect to the additional providers of~~ respond to complaints involving a recipient who receives services ~~included within the jurisdiction of the Ombudsman~~ 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 ~~in a prominent place inside each building operated by the facility or provider in which services are provided~~ instructions concerning the procedure for making a complaint to the Ombudsman or an advocate ~~[Sections 11 and 12 of this bill authorize disciplinary action against a facility licensed pursuant to chapter 449 of NRS or an administrator of a facility for long-term care for failing to post such information]~~; 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 ~~[, 3 and 4]~~ 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 identify problems affecting ~~their residents.~~ *recipients to whom they provide services.*

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

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

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

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

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

(e) Report annually to the Administrator.

3. The Ombudsman may:

(a) Analyze, provide comment on and monitor the development and implementation of any federal, state or local governmental action, activity or

program that relates to the protection of the health, safety, welfare and rights of ~~[residents of facilities for long-term care;]~~ *recipients*; and

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

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

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

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

(b) Make periodic visits to any facility for long-term care , *day care center, facility for long-term rehabilitation, facility maintained by a provider of living arrangement services or, with the consent of a recipient of living arrangement services, the residence of the recipient* to provide information to ~~[the residents of the facility]~~ *recipients* and to review generally any act, practice, policy, procedure or condition which may adversely affect the health, safety, welfare or civil or other rights of any ~~[resident of the facility,]~~ *recipient*.

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

(a) *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 area within ~~[the]~~ *such a* facility at reasonable times with or without prior notice and must be permitted access to ~~[residents]~~ *recipients of services from* the facility at all times. Upon arrival at the facility, the Ombudsman or advocate shall make his or her presence known to the staff of the facility and shall present appropriate identification.

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

~~3. [At least quarterly, the Ombudsman shall visit each facility maintained by a provider of living arrangement services to provide information to recipients and review the practices, policies, procedures and conditions of the facility.]~~

~~4.]~~ A person shall not willfully interfere with the Ombudsman or an advocate in the performance of any investigation or visitation pursuant to this section. If any person is found, after notice and a hearing, to have willfully violated any provision of this subsection, the Director, at the request of the Administrator, may refer the matter to the Division for the imposition of an administrative fine of not more than \$1,000 for each violation.

~~4. [5.]~~ Any money collected as a result of an administrative fine imposed pursuant to this section must be deposited in the State General Fund.

~~5. [6.]~~ Each ~~[resident]~~ *recipient* has the right to request, deny or terminate visits with the Ombudsman or an advocate. *Nothing in this subsection shall be construed to require the Ombudsman or an advocate to investigate a complaint made by or on behalf of a recipient.*

~~6. [7.]~~ The Ombudsman or an advocate is not liable civilly for the good faith performance of any investigation.

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

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

2. If any person is found, after notice and a hearing, to have violated any provision of subsection 1, the Director, at the request of the Administrator, may

refer the matter to the Division for the imposition of an administrative fine of not more than \$1,000 for each 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.

~~2. A facility for long-term care, day care center, facility for long-term rehabilitation or provider of living arrangement services shall post in a prominent place inside each building operated by the facility or provider where services are provided to recipients instructions on 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 any Internet website established for making such a complaint.~~

~~3. The Division shall notify each facility for long-term care, day care center, facility for long-term rehabilitation or provider of living arrangement services of the requirements of subsection 2.]~~

Sec. 11. ~~[NRS 449.160 is hereby amended to read as follows:~~

~~449.160 1. The Division may deny an application for a license or may suspend or revoke any license issued under the provisions of NRS 449.029 to 449.242, inclusive, upon any of the following grounds:~~

~~(a) Violation by the applicant or the licensee of any of the provisions of NRS 439B.410 or 449.029 to 449.245, inclusive, or of any other law of this State or of the standards, rules and regulations adopted thereunder;~~

~~(b) Aiding, abetting or permitting the commission of any illegal act;~~

~~(c) Conduct inimical to the public health, morals, welfare and safety of the people of the State of Nevada in the maintenance and operation of the premises for which a license is issued;~~

~~(d) Conduct or practice detrimental to the health or safety of the occupants or employees of the facility;~~

~~(e) Failure of the applicant to obtain written approval from the Director of the Department of Health and Human Services as required by NRS 439A.100 or as provided in any regulation adopted pursuant to NRS 449.001 to 449.430, inclusive, and 449.435 to 449.531, inclusive, and chapter 449A of NRS if such approval is required;~~

~~(f) Failure to comply with the provisions of NRS 449.248;~~

~~(g) Failure to comply with the provisions of subsection 2 of NRS 427A.165.~~

~~2. In addition to the provisions of subsection 1, the Division may revoke a license to operate a facility for the dependent if, with respect to that facility, the licensee that operates the facility, or an agent or employee of the licensee:~~

~~(a) Is convicted of violating any of the provisions of NRS 202.470;~~

~~(b) Is ordered to but fails to abate a nuisance pursuant to NRS 244.360, 244.3603 or 268.4124; or~~

~~(c) Is ordered by the appropriate governmental agency to correct a violation of a building, safety or health code or regulation but fails to correct the violation.~~

~~3. The Division shall maintain a log of any complaints that it receives relating to activities for which the Division may revoke the license to operate a facility for the dependent pursuant to subsection 2. The Division shall provide to a facility for the care of adults during the day:~~

~~(a) A summary of a complaint against the facility if the investigation of the complaint by the Division either substantiates the complaint or is inconclusive;~~

~~(b) A report of any investigation conducted with respect to the complaint; and~~

~~(c) A report of any disciplinary action taken against the facility.~~

~~The facility shall make the information available to the public pursuant to NRS 449.248.~~

~~4. On or before February 1 of each odd numbered year, the Division shall submit to the Director of the Legislative Counsel Bureau a written report setting forth, for the previous biennium:~~

~~(a) Any complaints included in the log maintained by the Division pursuant to subsection 3; and~~

~~(b) Any disciplinary actions taken by the Division pursuant to subsection 2.]~~

(Deleted by amendment.)

Sec. 12. ~~[NRS 654.190 is hereby amended to read as follows:~~

~~654.190 1. The Board may, after notice and an opportunity for a hearing as required by law, impose an administrative fine of not more than \$10,000 for each violation on, recover reasonable investigative fees and costs incurred from, suspend, revoke, deny the issuance or renewal of or place conditions on the license of, and place on probation or impose any combination of the foregoing on any licensee who:~~

~~(a) Is convicted of a felony relating to the practice of administering a nursing facility or residential facility or of any offense involving moral turpitude;~~

~~(b) Has obtained his or her license by the use of fraud or deceit;~~

~~(c) Violates any of the provisions of this chapter;~~

~~(d) Aids or abets any person in the violation of any of the provisions of NRS 449.029 to 449.2428, inclusive, as those provisions pertain to a facility for skilled nursing, facility for intermediate care or residential facility for groups;~~

~~(e) Violates any regulation of the Board prescribing additional standards of conduct for licensees, including, without limitation, a code of ethics;~~

~~(f) Engages in conduct that violates the trust of a patient or resident or exploits the relationship between the licensee and the patient or resident for the financial or other gain of the licensee;~~

~~(g) Fails to ensure that a facility for skilled nursing, facility for intermediate care or residential facility for groups complies with the provisions of subsection 2 of NRS 427A.165.~~

~~2. If a licensee requests a hearing pursuant to subsection 1, the Board shall give the licensee written notice of a hearing pursuant to NRS 233B.121 and 241.034. A licensee may waive, in writing, his or her right to attend the hearing.~~

~~3. The Board may compel the attendance of witnesses or the production of documents or objects by subpoena. The Board may adopt regulations that set forth a procedure pursuant to which the Chair of the Board may issue subpoenas on behalf of the Board. Any person who is subpoenaed pursuant to this subsection may request the Board to modify the terms of the subpoena or grant additional time for compliance.~~

~~4. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.~~

~~5. The expiration of a license by operation of law or by order or decision of the Board or a court, or the voluntary surrender of a license, does not deprive the Board of jurisdiction to proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.] (Deleted by amendment.)~~

Sec. 13. ~~[1. On and after July 1, 2019, any regulations adopted by the Aging and Disability Services Division of the Department of Health and Human Services or the Administrator of the Division before July 1, 2019, to carry out the provisions of NRS 427A.125 to 427A.165, inclusive, apply to day care centers, facilities for long term rehabilitation and providers of living arrangement services over which the Office of the State Long Term Care Ombudsman has authority to regulate pursuant to the amendatory provisions of sections 6 to 10, inclusive, of this act, in the same manner and to the same extent as other facilities to which those regulations have applied before July 1, 2019.~~

~~2. The Legislative Council shall, in preparing supplements to the Nevada Administrative Code, add a reference to day care centers, facilities for long term rehabilitation and providers of living arrangement services to any provision of the Nevada Administrative Code described in subsection 1 which references a facility for long term care.~~

~~3. As used in this section:~~

~~(a) "Day care center" has the meaning ascribed to it in NRS 427A.024.~~
~~(b) "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.~~
~~(c) "Living arrangement services" means:~~
~~(1) Community-based living arrangement services, as defined in NRS 433.605, that include:~~
~~(I) Intensive services and overnight supervision of recipients who require training concerning behavioral skills, self-care and management of medications; or~~
~~(II) 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.] (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 ~~July~~ January 1, ~~2019~~ 2020, for all other purposes.