

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

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To amend the District of Columbia Long-Term Care Ombudsman Program Act of 1988 to update the language of the act, to include a volunteer as a designee of the District of Columbia Long-Term Care Ombudsman, to grant the District of Columbia Long-Term Care Ombudsman 24 hour access to long-term care facilities, to strengthen confidentiality protections, to prohibit discriminatory and retaliatory actions against persons filing complaints, to increase civil and punitive damages, and to comply with federal mandates.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Long-Term Care Ombudsman Program Amendment Act of 2010”.

Sec. 2. The District of Columbia Long-Term Care Ombudsman Program Act of 1988, effective March 16, 1989 (D.C. Law 7-218; D.C. Official Code § 7-701.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 7-701.01) is amended as follows:

(1) A new paragraph (3A) is added to read as follows:

“(3A) “Department of Health, Health Regulations and Licensing Administration”

means the administrative office established in January 17, 2007 under the Department of Health.”.

(2) A new paragraph (4A) is added to read as follows:

“(4A) “Department of Mental Health” means the Department of Mental Health established as a separate cabinet-level agency pursuant to section 103 of the Department of Mental Health Establishment Amendment Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code § 7-1131.03).”.

(3) Paragraph (5)(B) is amended by striking the phrase “Is an employee” and inserting the phrase “Is an employee or volunteer” in its place.

(4) Paragraph (7) is amended as follows:

(A) Subparagraph (A) is amended by striking the word “or”.

Amend
§ 7-701.01

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(B) Subparagraph (B) is amended by striking the period and inserting the phrase “; or” in its place.

(C) A new subparagraph (C) is added to read as follows:

“(C) An “assisted living residence” as defined in section 102(4) of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code § 44-101.01(4)).”.

(b) Section 204(a) (D.C. Official Code § 7-702.04 (a)) is amended as follows:

**Amend
§ 7-702.04**

(1) Paragraph (1) is amended to read as follows:

“(1) Investigate and resolve complaints or concerns made by or on behalf of residents;”.

(2) Paragraph (4) is amended to read as follows:

“(4) Submit to the Office on Aging for submission to the Council and the Mayor annual reports that document complaints received and resolved and recommend policy, regulatory, or legislative changes;”.

(3) Paragraph (6) is amended to read as follows:

“(6) Establish and implement program policies and procedures to elicit, receive, investigate, verify, refer, and resolve residents’ complaints;”.

(4) Paragraph (10) is repealed.

(5) Paragraph (11) is amended by striking the phrase “Establish a system for coordinating a uniform District-wide system to record data on complaints and conditions in long-term care facilities;” and inserting the phrase “Establish a uniform system to record data on complaints and conditions relating to long-term care services;” in its place.

(6) Paragraph (13) is amended by striking the phrase “conditions which adversely affect the health, safety, welfare, or rights of a resident exist within the long-term care facility;” and inserting the phrase “conditions exist that adversely affect residents’ health, safety, welfare, or rights;” in its place.

(c) Section 206 (D.C. Official Code § 7-702.06) is amended as follows:

**Amend
§ 7-702.06**

(1) Subsection (a) is amended by striking the word “records” and inserting the phrase “records (electronic or hard copy)” in its place.

(2) Subsection (b) is amended by striking the word “records” and inserting the phrase “records (electronic or hard copy)” in its place.

(3) Subsection (c) is amended by striking the phrase “the program” and inserting the phrase “Except as provided in subsection (d) of this section, the program” in its place.

(4) New subsections (d) and (e) are added to read as follows:

“(d) A court may order the disclosure of information made confidential under this act if it determines that the disclosure is necessary to enforce this act.

“(e) A communication between a resident and a person who has access under section 301 shall be confidential, unless the resident authorizes the release of the communication or unless disclosure is authorized under section 204(a)(1) or subsection (d) of this section.”.

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(d) Section 207 (D.C. Official Code § 7-702.07) is amended as follows:

**Amend
§ 7-702.07**

(1) Subsections (b) and (d) are repealed.

(2) Subsection (c) is amended by striking the phrase “for libel or slander”.

(e) The title to Title III is amended by striking the phrase “ACCESS TO LONG-TERM CARE FACILITIES AND TO RECORDS” and inserting the phrase “ACCESS FOR THE LONG-TERM CARE OMBUDSMAN AND DESIGNEES” in its place.

(f) Section 301 (D.C. Official Code § 7-703.01) is amended as follows:

**Amend
§ 7-703.01**

(1) Subsection (b) is amended by striking the phrase “between the hours of 8:00 a.m. and 8:00 p.m. daily, unless the nature of the complaint requires investigation at other times.” and inserting the phrase “to the ombudsman or his or her designee 24 hours a day, 7 days a week.” in its place.

(2) Subsection (f) is repealed.

(g) Section 302 (D.C. Official Code § 7-703.02) is amended by adding a new subsection (e) to read as follows:

**Amend
§ 7-703.02**

“(e) An owner, employee, or agent of a long-term care facility subject to 45 CFR §§164.500 through 164.534 (the Health Insurance Portability and Accountability Act privacy regulation), shall release records to the program as an exempt health oversight agency.”

(h) Section 401 (D.C. Official Code § 7-704.01) is amended by adding new subsections (d) and (e) to read as follows:

**Amend
§ 7-704.01**

“(d) No person shall take discriminatory, disciplinary, or retaliatory action against an employee of a long-term care facility or agency, resident, or resident representative for filing in good faith a complaint with, or providing information to, the ombudsman or his designees. A person who violates this provision, or who aids, abets, invites, compels, or coerces another to do so, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed \$1,000, imprisonment not to exceed 180 days, or both. This subsection shall not infringe upon the rights of an employer to supervise, discipline, or to terminate an employee for other reasons.

“(e) A person who knowingly denies access to the ombudsman or his or her designee in violation of Title III, or aids, abets, invites, compels, or coerces another to do so, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed \$1,000, imprisonment not to exceed 180 days, or both.”

(i) Section 501 (D.C. Official Code § 7-705.01) is amended by striking the phrase “Corporation Counsel” and inserting the phrase “Attorney General” in its place.

**Amend
§ 7-705.01**

(j) Section 502 (D.C. Official Code § 7-705.02) is amended as follows:

**Amend
§ 7-705.02**

(1) Subsection (a) is amended by striking the phrase “\$100, whichever is greater, and may be awarded punitive damages of up to \$5,000.” and inserting the phrase “\$1000, whichever is greater, and may be awarded punitive damages not to exceed \$10,000.” in its place.

(2) Subsection (b) is amended by striking the phrase “\$3,000” and inserting the phrase “\$7,000” in its place.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia