

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 7-218

"D.C. Long-Term Care Ombudsman Program Act of 1988".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 7-334 on first and second readings, November 29, 1988, and December 13, 1988, respectively. Following the signature of the Mayor on January 6, 1989, this legislation was assigned Act No. 7-293, published in the January 20, 1989, edition of the D.C. Register, (Vol. 36 page 534) and transmitted to Congress on January 23, 1989 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 7-218, effective March 16, 1989.

DAVID A. CLARKE
Chairman to the Council

Dates Counted During the 30-day Congressional Review Period:

January	24,25,26,27,30,31
February	1,2,3,6,7,8,9,21,22,23,24,27,28
March	1,2,3,6,7,8,9,10,13,14,15

EFFECTIVE DATE MAR 16 1988

Codification,
New Chapter 33 of title 6
District of Columbia Code
(1989 Supp.)

AN ACT

D.C. ACT 7 - 293

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JAN 06 1989

To establish a Long-Term Care Ombudsman Program, within the Office on Aging, for the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Long-Term Care Ombudsman Program Act of 1988".

TITLE I - DEFINITIONS.

New, Subchapter
I
New, Section
6-3301

Sec. 101. Definitions.

For the purposes of this act, the term:

(a) "Administrator" means the person who is responsible for the day-to-day operation and management of a long-term care facility, including, in the case of a community residence facility, the residence director.

(b) "Court" means the Superior Court of the District of Columbia.

(c) "Department of Consumer and Regulatory Affairs" means the District of Columbia Department of Consumer and Regulatory Affairs established pursuant to Reorganization Plan No. 1 of 1983, effective March 31, 1983 (D.C. Code, Vol. I).

(d) "Department of Human Services" means the District of Columbia Department of Human Services established pursuant to Reorganization Plan No. 2 of 1979, effective February 21, 1980 (D.C. Code, Vol. I), and Reorganization Plan No. 3 of 1986, effective March 31, 1983 (D.C. Code, Vol. I).

(e) "Designee" means a person who:

(1) Has received a minimum of 15 hours of certified training in accordance with section 204(a)(15); and

(2) Is an employee of the program established pursuant to section 201 or has written authorization to act on behalf of the ombudsman pursuant to section 204(a)(3).

(f) "Director" means the Executive Director of the District of Columbia Office on Aging established by section 302 of the District of Columbia Act on the Aging, effective October 29, 1975 (D.C. Law 1-24; D.C. Code, sec. 6-2212).

(g) "Long-term care facility" means:

(1) A "community residence facility" as defined in section 2(a)(4) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Code, sec. 32-1301(a)(4)); or

(2) A "nursing home" as defined in section 2(a)(3) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Code, sec. 32-1301(a)(3)).

(h) "Ombudsman" means the District of Columbia Long-Term Care Ombudsman established by section 202(a) and designated under section 307(a)(12) of the Older Americans Act of 1965, approved October 18, 1978 (92 Stat. 1525; 42 U.S.C. 3027(a)(12)), to perform the mandated functions of the Long-Term Care Ombudsman Program.

(i) "Office on Aging" means the District of Columbia Office on Aging established by section 301 of the District of Columbia Act on the Aging, effective October 29, 1975 (D.C. Law 1-24; D.C. Code, sec. 6-2211).

(j) "Person" means an individual, an agent, a corporation, a partnership, or any other organizational entity.

(k) "Program" means the District of Columbia Long-Term Care Ombudsman Program established by section 201.

(l) "Record" means:

(1) Medical, social, personal, or financial information maintained by a health-care facility covered by the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Code, sec. 32-1301 et seq.), or by a District of Columbia ("District") government agency that has responsibility for the care and maintenance of a resident in a long-term care facility; and

(2) An administrative record, cost or incident report, or a report of a civil infraction, inspection, or deficiency maintained by a long-term care facility or a District government agency.

(m) "Resident" means a resident of a long-term care facility.

(n) "Representative of a resident" means:

(1) A person who is knowledgeable about the circumstances of a resident and has been designated by that resident to represent him or her; or

(2) A person, other than a facility, who has been appointed by a court to administer the financial or personal affairs of a resident or to protect and advocate for the rights of a resident; or

(3) The ombudsman or his or her designee, if no person has been designated or appointed in accordance with paragraph (1) or (2) of this subsection.

TITLE II - THE ESTABLISHMENT OF A LONG-TERM CARE OMBUDSMAN PROGRAM.

New, Subchapter II

Sec. 201. There is established a Long-Term Care Ombudsman Program for the District of Columbia within the Office on Aging. The program shall provide a comprehensive continuum of advocacy services for older persons and other persons who are residents in the District, which shall include:

New, Section 33-3311

(1) Advocating for the rights of older persons and other persons who are residents;

(2) Investigating and resolving any complaint made by or on behalf of an older person or other person who is a resident; and

(3) Monitoring the quality of care, services provided, and quality of life experienced by older persons and residents to ensure that the care and services are in accordance with applicable District and federal laws.

Sec. 202. Long-Term Care Ombudsman; appointment; vacancy.

New, Section 33-3312

(a) The program shall be administered by a full-time ombudsman and shall be under the Director of the Office on Aging ("Director") or his or her designee. The Director shall appoint the ombudsman for a term of 2 years and approve of the designee of the ombudsman. The ombudsman shall be a resident of the District.

(b) The Director may contract with a nonprofit provider, other than the District government, to operate the program. The provider shall have experience advocating for the rights of older persons and residents. The ombudsman shall be an employee of the nonprofit provider.

(c) The Director shall ensure that the following are provided to the ombudsman or his or her designee to implement the provisions of this act:

(1) Legal counsel for advice and consultation;
(2) Legal representation, if legal action is taken to implement the provisions of this act; and
(3) Clerical and administrative support staff and materials.

(d) The primary responsibility of the ombudsman or his or her designee shall be the investigation and resolution of any complaint made by or on behalf of a resident.

Sec. 203. Long-Term Care Ombudsman; training and experience.

New, Section
6-3312

(a) The ombudsman shall have training and experience in the following areas:

- (1) Gerontology, long-term care, health care, or relevant social services programs;
- (2) The legal system;
- (3) Dispute resolution techniques, including investigation, mediation, or negotiation; and
- (4) Long-term care advocacy.

(b) No person who has been employed by a long-term care facility or a corporation that directly or indirectly owned or operated a long-term care facility within the past 2 years shall be an ombudsman.

(c) Neither the ombudsman nor any member of his or her immediate family shall have any pecuniary interest in a long-term care facility.

Sec. 204. Powers and Duties of the Long-Term Care Ombudsman.

New, Section
6-3314

(a) The ombudsman shall:

- (1) Investigate and resolve complaints and concerns made by or on behalf of older persons and other residents in the District;
- (2) Promote the well-being and quality of life of each resident;
- (3) Encourage the development and the expansion of the activities of the program in all wards of the District, sufficient to serve the residents in those wards;
- (4) Submit annually, to the Office on Aging for submission to the Council and the Mayor, a written report documenting the complaints received and resolved, and recommending policy, regulatory, or legislative changes;
- (5) Enter into, on behalf of the Office on Aging and with the approval of the Director, written agreements of understanding, cooperation, and collaboration with any District government agency that provides funding, oversight, or inspection of, or operates a long-term care facility;
- (6) Establish and implement program policies and procedures for eliciting, receiving, investigating, verifying, referring, and resolving complaints of residents;
- (7) Develop an on-going program for publicizing the program;
- (8) Identify, document, and address solutions to problems affecting residents;

(9) Serve as the legal representative for residents, pursuant to sections 302(e), 303(a)(1), and 307(a) and (b) of the Nursing Home and Community Residence Facility Residents' Protections Act of 1985, effective April 18, 1986 (D.C. Law 6-108; D.C. Code, secs. 32-1432(e), 32-1433(a)(1), and 32-1437(a) and (b));

(10) Report any instance of suspected abuse, neglect, or exploitation of a resident to the Office of Adult Protective Services, within the Department of Human Services, and the Service Facility Regulation Administration, within the Department of Consumer and Regulatory Affairs, within 24 hours of receipt of a complaint or information concerning suspected abuse, neglect, or exploitation;

(11) Establish a system for coordinating a uniform District-wide system to record data on complaints and conditions in long-term care facilities;

(12) Monitor the development and implementation of District and federal laws, rules, regulations, and policies that affect residents;

(13) Make specific recommendations, through the Office on Aging, to the operator or agent of the operator of any long-term care facility, whenever the ombudsman believes that conditions which adversely affect the health, safety, welfare, or rights of a resident exist within the long-term care facility;

(14) Report to the appropriate enforcement agency any act of an operator of a long-term care facility that the ombudsman believes to be a violation of an applicable federal or District law, regulation, or rule;

(15) Establish and conduct a training program for persons employed by or associated with the program, which shall include, training in the following areas:

(A) The review of medical records;

(B) Regulatory requirements for long-term care facilities;

(C) Confidentiality of records;

(D) Techniques of complaint investigation;

(E) The effects of institutionalization; and

(F) The special needs of the elderly.

(16) Assist in the formation, development, and use by residents, their families, and friends of forums that permit residents, their families, and friends to discuss and communicate, on a regular and continuing basis, their views on the strengths and weaknesses of the operation of the facility, the quality of care provided, and the quality of life fostered in long-term care facilities;

(17) Establish and maintain procedures to protect the confidentiality of the records of residents and

long-term care facilities where access is authorized pursuant to section 302;

(18) Prohibit any employee, designee, or representative of the program from investigating any complaint or representing the ombudsman, unless that person has received training in accordance with paragraph (15) of this subsection; and

(19) Designate local ombudsman programs to act on behalf of the ombudsman within specific geographical areas.

(b) No person, agency, or long-term care facility shall obstruct the ombudsman or his or her designee from the lawful performance of any duty or the exercise of any power.

Sec. 205. Complaint investigation.

(a) The ombudsman and his or her designee shall have access to any record that is necessary to carry out his or her responsibilities under this act.

(b) The ombudsman or his or her designee may initiate an investigation of a long-term care facility independent of the receipt of a specific complaint.

New, Section
6-3315

Sec. 206. Confidentiality of records and identities of residents.

(a) The program shall protect the confidentiality of the records of the residents and employees.

(b) No information or records maintained by the program shall be disclosed to the public.

(c) The program shall not disclose the identity of any complainant, resident involved in a complaint, witness, or representative of a resident, unless the complainant, resident, or representative of a resident authorizes the disclosure.

New, Section
6-3316

Sec. 207. Immunity from liability.

(a) No employee, designee, or representative of the program shall be held liable for the good faith performance of responsibilities under this act, except that no immunity shall extend to criminal acts.

(b) No discriminatory, disciplinary, or retaliatory action shall be taken against an employee of a long-term care facility or agency, resident, or representative of the program, for any communication made to aid the program in carrying out its duties and responsibilities, unless the communication was made maliciously or in bad faith. This subsection shall not be construed to infringe upon the rights of an employer to supervise, discipline, or terminate an employee for other reasons.

(c) No communication made by the ombudsman or his or her designee, if reasonably related to the requirements of

New, Section
6-3317

his or her responsibilities, shall be subject to civil action for libel or slander.

(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.

TITLE III - ACCESS TO LONG-TERM CARE FACILITIES AND TO RECORDS. New, Subchapter II

Sec. 301. Access to Long-Term Care Facilities.

(a) The operator of a long-term care facility shall permit the ombudsman or his or her designee access to the facility to:

New, Section
6-3321

(1) Visit, talk with, or make personal, social, or legal services available to all residents, or investigate complaints;

(2) Inform residents of their rights or entitlements, and corresponding obligations under applicable federal and District law by means of distribution of educational materials or discussion in groups and with individual residents;

(3) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance, social security benefits, or other matters in which residents are aggrieved; and

(4) Inspect all areas of the facility, except the living area of a resident who protests inspection.

(b) Access under this section shall be permitted between the hours of 8:00 a.m. and 8:00 p.m. daily, unless the nature of a complaint requires investigation at other times.

(c) Upon entering a long-term care facility in accordance with this section, the ombudsman or his or her designee shall promptly advise 1 of the following persons of his or her presence:

(1) The administrator or acting administrator;

(2) The residence director; or

(3) Another available supervisory agent of the facility.

(d) A person who has access under this section shall not enter the living area of a resident without identifying him or herself to the resident and receiving the permission of the resident to enter.

(e) A resident shall have the right to terminate, at any time, any visit by a person or representative of the program who has access under this section.

(f) A communication between a resident and a person who has access under this section shall be confidential, unless the resident authorizes the release of the communication.

(g) No resident shall be punished or harrassed by the operator of a facility or an agent or employee of the operator of the facility because of efforts of the resident to avail himself or herself of his or her rights pursuant to this act.

(h) A written notice, prescribed by the ombudsman, that describes the rights of a resident pursuant to this act and the telephone number of the ombudsman shall be posted in a conspicuous place at or near the entrance to the long-term care facility and on each floor of the facility.

(i) The operator of a long-term care facility shall provide each resident a personal written copy of the notice required under subsection (h). Each new resident shall be provided a written copy of the notice upon admission.

(j) If a resident cannot read the notice required under subsection (h), the contents of the notice shall be communicated to that resident orally and in writing.

(k) The written notice required under subsection (h) shall be provided in the appropriate language to those residents who do not speak or understand English.

(l) A notation that personal notice, as required by subsection (i), has been provided shall be entered in the clinical record of each resident.

(m) Nothing in this section shall be construed to restrict any right or privilege of a resident to receive a visitor who is not a representative of a community organization, legal services program, or the program.

Sec. 302. Access to records.

(a) Each District agency shall provide cooperation, assistance, data, and the access to records necessary to enable the ombudsman to perform his or her duties under this act and other applicable federal and District law. This section shall not be construed to supercede the laws or rules governing access to unexpugated arrest records maintained by the Metropolitan Police Department or interfere with ongoing criminal investigations.

(b) The ombudsman or his or her designee shall have the same access that is provided to the Mayor to review, inspect, or photocopy the records of a resident of a facility covered by the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Code, sec. 32-1301 et seq.), or the Nursing Home and Community Residence Facility Resident's Protections Act of 1985, effective April 18, 1986 (D.C. Law 6-108; D.C. Code, sec. 32-1401 et seq.), to carry out the provisions of this act.

(c) The ombudsman or his or her designee may request a subpoena pursuant to the Independent Personnel Systems Implementation Act of 1980, effective September 26, 1980

New, Section
6-3322

(D.C. Law 3-109; D.C. Code, sec. 1-338), to obtain access to records covered by this section.

(d) An owner, employee, or agent of a long-term care facility who lawfully discloses information or permits access to records pursuant to this section shall not be liable for civil penalties or criminal prosecution.

TITLE IV - ENFORCEMENT; PENALTIES; JUDICIAL REVIEW.

New, Subchapter IV

Sec. 401. Enforcement; penalties.

New, Section
6-3331

(a) Civil fines, penalties, or related costs may be imposed against any long-term care facility, owner, executive officer, administrator, employee, or agent, for the violation of any provision of this act or any rule issued pursuant to this act.

(b) Procedures for adjudication and enforcement and applicable civil fines, penalties, or costs shall be those prescribed for a Class 2 civil infraction, pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code, sec. 6-2701 et seq.).

(c) If the ombudsman or his or her designee knowingly violates section 206 by releasing a confidential document, record, or other information obtained pursuant to section 302(b), the ombudsman or his or her designee may be prosecuted for a misdemeanor and, upon conviction, subject to a fine of not more than \$1,500, imprisonment for not more than 30 days, or both.

TITLE V - PRIVATE RIGHTS OF ACTION.

New, Subchapter V

Sec. 501. Injunctive relief.

New, Section
6-3341

A resident, a representative of a resident, the ombudsman, or the Corporation Counsel may bring an action in court for a temporary restraining order, preliminary injunction, or permanent injunction to enjoin a long-term care facility from violating a provision of title II or III or any rule issued by the Mayor pursuant to this act.

Sec. 502. Civil action for damages.

New, Section
6-3342

(a) A resident, a representative of a resident, or the ombudsman, on behalf of a resident, may bring an action in court to recover actual and punitive damages for an injury that results from a violation of title II or III, or any rule issued by the Mayor pursuant to this act. Upon proof of a violation, the resident shall be awarded 3 times the actual damages or \$100, whichever is greater, and may be awarded punitive damages of up to \$5,000.

(b) The first \$3,000 of a damage award recovered by a resident in an action brought under this section shall be

excluded from consideration when determining the eligibility of the resident for Medicaid, the amount of assistance the resident is entitled to under Medicaid, or the assets of the resident that the District may subject to a lien, set-off, or other legal process for the purpose of satisfying indebtedness created by the receipt of Medicaid or other public assistance payments.

Sec. 503. Court costs and attorney's fees.

New, Section
6-3343

The court shall award costs and reasonable attorney's fees to a resident who prevails in an action brought under section 501 or 502.

TITLE VI - MISCELLANEOUS.

New, Subchapter
VI
New, Section
6-3351

Sec. 601. Rules.

Within 90 days of the effective date of this act, the Mayor shall, pursuant to title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1203; D.C. Code, sec. 1-1501 et seq.), issue proposed rules to implement the provisions of this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

Sec. 602. Amendments.

The Nursing Home and Community Residence Facility Residents' Protections Act of 1985, effective April 18, 1986 (D.C. Law 6-108; D.C. Code, sec. 32-1401 et seq.), is amended as follows:

(a) Section 101(11)(B) (D.C. Code, sec. 32-1401(11)(B)) is amended by inserting the phrase "other than a facility" immediately following the phrase "Any person" and by striking the phrase "or government agency".

Section
32-1401

(b) Section 302(e) (D.C. Code, sec. 32-1432(e)) is amended by striking the "." and inserting the following phrase ", and the Long-Term Care Ombudsman." in its place.

Section
32-1432

(c) Section 303(a)(1) (D.C. Code, sec. 32-1433(a)(1)) is amended by striking the phrase "that resident or his or her representative" and inserting the phrase "that resident, his or her representative, or the Long-Term Care Ombudsman" in its place.

Section
32-1433

(d) Section 307(a) and (b) (D.C. Code, sec. 32-1437(a) and (b)) is amended by striking the phrase "the resident and the resident's representative" and inserting the phrase "the resident, the representative of a resident, and the Long-Term Care Ombudsman" in its place.

Section
32-1437

(e) Section 404 (D.C. Code, sec. 32-1454) is amended by striking the word "subchapter" and by inserting the word "act" in its place.

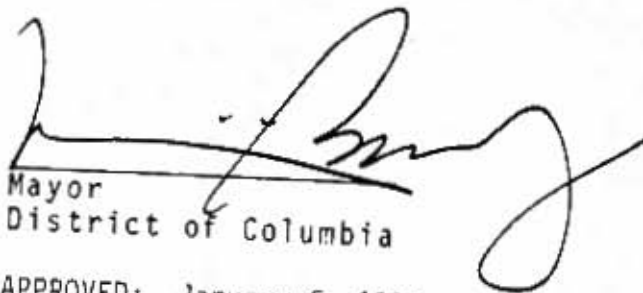
Section
32-1454

Sec. 603. Effective date.

This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia override the veto), as provided by section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec 1-233(c)(1)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED: January 6, 1989



COUNCIL OF THE DISTRICT OF COLUMBIA
Council Period Seven

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: B7-334

Item on Consent Calendar

ACTION & DATE: Adopted First Reading, 11-29-88

VOICE VOTE: Approved

Recorded vote on request

Absent: Rolark

ROLL CALL VOTE: — RESULT

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					NATHANSON					THOMAS SR.				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SCHWARTZ									
MASON					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Russell Smith
Secretary to the Council

12-22-88
Date

Item on Consent Calendar

ACTION & DATE: Adopted Final Reading, 12-13-88

VOICE VOTE: Approved

Recorded vote on request

Absent: Wilson and Smith

ROLL CALL VOTE: — RESULT

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					NATHANSON					THOMAS, SR.				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SCHWARTZ									
MASON					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Russell Smith
Secretary to the Council

12-22-88
Date

Item on Consent Calendar

ACTION & DATE: _____

VOICE VOTE: _____

Recorded vote on request

Absent: _____

ROLL CALL VOTE: — RESULT

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
					NATHANSON					THOMAS, SR.				