

Testimony for the Senate Committee on Health and Welfare

on

H.265, An act relating to the State Long-Term Care Ombudsman

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Thank you for the opportunity to testify on this bill. DAIL supports this bill as passed by the House.

Older Americans Act Services

As the State Unit on Aging and Disabilities, DAIL supports the Older Americans Act (OAA) services in the State. In furtherance of the Act's objectives to assist those 60 and older, OAA funding supports a wide range of programs designed to help older Vermonters remain as independent as possible and to experience a high quality of life. At the local level, services are provided through Vermont's five Area Agencies on Aging (AAA). These include case management; nutrition services and programs; health promotion and disease prevention; information, referral and assistance; legal assistance; and family caregiver support.

State Long Term Care Ombudsman Program

Title VII of the OAA establishes the requirement that the State agency establish the State Long-Term Care Ombudsman Program, a person-centered consumer protection service. DAIL operates the Office of the State Long Term Care Ombudsman Program (SLTCOP) through contracts with Vermont Legal Aid. The SLTCOP is charged with protecting the safety, welfare and rights of Vermonters in long-term care facilities, as well as those receiving long-term services and supports through the Choices for Care program in home- and community-based settings. One of the Program's primary responsibilities is to investigate and resolve complaints on behalf of individuals. It also provides information and consultations to individuals, family members, providers, the public, and other community partners. Staff within the Office of the Long-Term Care Ombudsman includes a full-time director (the State Long Term Care Ombudsman) and regional ombudsmen. A volunteer coordinator works with certified volunteers, who are assigned to specific long-term care facilities throughout the state.

Despite the program's existence since the 1970s, when it was established to respond to widespread reports of abuse in nursing facilities, until recently there were no regulations to fully implement the program and provide a consistent level of consumer protection across all states. In 2015, the Administration for Community

Living/Administration on Aging (the federal agency) promulgated federal OAA regulations governing State Long-Term Care Ombudsman Programs.

ACL determined that these regulations were necessary for several reasons, including the following:

1. Some OAA provisions needed additional clarity;
2. Some OAA provisions had raised questions about implementation;
3. ACL compliance review of, and technical assistance engagements with, states had highlighted difficulty of ACL’s ability to determine compliance in carrying out basic program requirements;
4. OAA requires ACL to promulgate regulations related t conflict of interest provisions; and
5. Media attention to LTCOP deficits (e.g., questions about permissible communications with the Legislature).

These regulations have required some states, including Vermont, to review and revisit and revise their statutes and policies to address these issues. These LTCOP regulations operationalize OAA provisions, which are uncharacteristic of ways SUAs and AAAs operate other OAA programs. Examples include:

1. Ombudsman responsibility to designate representatives;
2. Stringent disclosure limitations;
3. Conflict of interest requirements; and
4. Responsibility to perform systems advocacy functions.

The LTCOP Rule is part of OAA Grant compliance requirements of states. Delayed implementation was afforded to assist impacted states with training and technical assistance. I have identified below the sections of the bill that have been added or modified to achieve compliance with Federal law or regulations, and I have included the citation to the federal authority.

Page, line(s) of bill as passed by House	Subject	Citation to federal authority
Page 2, lines 4-7	“Long-term care facility”	See Older Americans Act, §102(a)(35)
Page 2, line 15	“Representatives of the Office of the State Long-Term Care Ombudsman”	45 CFR § 1324.1
Page 2, line 21	“Resident”	42 U.S.C. § 3058(f) defines a resident as “an older individual who resides in a long-term care facility.”
Page 3, line 5	“Resident representative”	45 CFR § 1324.1

Page 3, line 13	“State Long-Term Care Ombudsman”	45 CFR § 1324.1
Page 4, lines 4-7	“Willful interference”	45 CFR § 1324.1
Page 5, line 6	Office policies and procedures	45 CFR § 1324.11(e)
Page 5, line 19	Functions and responsibilities of the Ombudsman	45 CFR § 1324.13
Page 6, line 12	Functions and responsibilities of the Ombudsman	45 CFR § 1324.13
Page 7, lines 12-15	Lobbying	45 CFR § 1324.11(e)(5)(i) & 45 CFR § 1324.13(a)(7)
Page 8, lines 1-9	H.I.P.A.A.	42 U.S.C. § 3058g(b); 45 CFR § 1324.11(e)(2)(vii)
Page 9, lines 4-5	Ombudsman’s authority to delegate is limited	45 CFR § 1324.11(e)(3)
Page 9, line 14	State agency responsibilities	45 CFR § 1324.15
Page 9, line 19	Disclosure of information	45 CFR § 1324.13
Page 10, lines 3-5	Extent of Ombudsman disclosure of files, records, etc. maintained by the program	45 CFR § 1324.13(e)(1)-(3)
Page 10, lines 6-12	Ombudsman may not delegate the authority to make or delegate determinations concerning the disclosure of files, records, etc. maintained by the program.	45 CFR § 1324.11(e)(3); Section 712 (d) of the OAA (42 U.S.C. § 3058g(d))
Page 10, line 17 through Page 11, line 17	Informed consent to disclosure; methods of communicating consent	45 CFR § 1324.11(e)(3)(ii) & (iii); 45 CFR § 1324.19(b)(5)-(9)
Page 12, lines 1-18	“willful interference” and sanctions for violations	45 CFR § 1324.1; 45 CFR § 1324.15
Page 13, line 2 through Page 14, line 13	Organizational conflicts of interest	45 CFR § 1324.21(a) & (b)
Page 14, line 16	Policies and procedures regarding individual conflicts of interest	45 CFR § 1324.21(d)(2)-(4)
Page 15, lines 1 through Page 16, line 7	Individual conflicts of interest; examples	45 CFR § 1324.21(c)(2)
Page 17, lines 1-3	A process for periodic review and identification	45 CFR § 1324.21

	of conflicts	
Page 17, line 5 through Page 18, line 4	Qualifications of legal representation of the Ombudsman program	45 CFR § 1324.15(j)
Page 18, lines 9-10	Ombudsman and representatives of the Office are exempt from mandatory reporter requirements as set forth in 33 V.S.A. Chapter 69	45 CFR § 1324.11(e)(3)(iv)