

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 334

Short Title: Ombudsman/Rest Home Committee/AB.

(Public)

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Sponsors: Senators Cochrane, Edwards, Parnell, Carpenter, and Martin of Pitt.

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Referred to: Children and Human Resources

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March 8, 1995

A BILL TO BE ENTITLED

1 AN ACT TO MAKE CLARIFYING CHANGES TO THE LONG-TERM CARE  
2 OMBUDSMAN PROGRAM LAW, THE NURSING HOME COMMUNITY  
3 ADVISORY COMMITTEE LAW, AND THE ADULT CARE HOME  
4 COMMUNITY ADVISORY COMMITTEE LAW.  
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 143B-181.15 reads as rewritten:

8 "**§ 143B-181.15. Long-Term Care Ombudsman Program/Office; policy.**

9 The General Assembly finds that a significant number of older citizens of this State  
10 reside in long-term care facilities and are dependent on others to provide their care. It is  
11 the intent of the General Assembly to protect and improve the quality of care and life for  
12 residents through the establishment of a program to assist residents and providers in the  
13 resolution of complaints or common concerns, to promote community involvement and  
14 volunteerism in long-term care facilities, and to educate the public about the long-term  
15 care system. It is the further intent of the General Assembly that the Department of  
16 Human Resources, within available resources and pursuant to its duties under the Older  
17 Americans Act of 1965, as amended, ~~42 U.S.C. § 3001-3057g~~, 42 U.S.C. § 3001 et seq.,  
18 ensure that the quality of care and life for these residents is maintained, that necessary  
19 reports are made, and that, when necessary, corrective action is taken at the Department  
20 level."

1 Sec. 2. G.S. 143B-181.16 reads as rewritten:

2 **"§ 143B-181.16. Long-Term Care Ombudsman Program/Office; definition.**

3 Unless the content clearly requires otherwise, as used in this Article:

- 4 (1) 'Long-term care facility' means any skilled nursing facility and  
5 intermediate care facility as defined in ~~G.S. 131A-4~~ G.S. 131A-3(4) or  
6 any ~~domiciliary~~ adult care home as defined in G.S. 131D-20(2).  
7 (2) 'Resident' means any person who is receiving treatment or care in any  
8 long-term care facility.  
9 (3) 'State Ombudsman' means the State Ombudsman as defined by the  
10 Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.,  
11 who carries out the duties and functions established by this Article.  
12 (4) 'Regional Ombudsman' means a person employed by an Area Agency  
13 on Aging to carry out the functions of the Regional Ombudsman Office  
14 established by this Article."

15 Sec. 3. G.S. 143B-181.18 reads as rewritten:

16 **"§ 143B-181.18. Office of State Long-Term Care Ombudsman Program/State  
17 Ombudsman duties.**

18 The State Ombudsman shall:

- 19 (1) Promote community involvement with long-term care ~~provider~~ providers  
20 and residents of long-term care facilities and serve as liaison between  
21 residents, residents' families, facility personnel, and facility  
22 administration;  
23 (2) Supervise the Long-Term Care Program pursuant to rules adopted by  
24 the Secretary of the Department of Human Resources pursuant to G.S.  
25 143B-10;  
26 (3) Certify regional ombudsmen. Certification requirements shall include  
27 an ~~internship~~ internship, training in the aging process, complaint  
28 resolution, long-term care issues, mediation techniques, recruitment and  
29 training of volunteers, and relevant federal, State, and local laws,  
30 policies, and standards;  
31 (4) Attempt to resolve complaints made by or on behalf of individuals who  
32 are residents of long-term care facilities, which complaints relate to  
33 administrative action that may adversely affect the health, safety, or  
34 welfare of residents;  
35 (5) Provide training and technical assistance to regional ombudsmen;  
36 (6) Establish procedures for appropriate access by regional ombudsmen to  
37 long-term care facilities and residents' records including procedures to  
38 protect the confidentiality of these records and to ensure that the identity  
39 of any complainant or resident will not be disclosed ~~without the written  
40 consent of the complainant or resident or upon court order; except as~~  
41 permitted under the Older Americans Act of 1965, as amended, 42  
42 U.S.C. § 3001 et seq.;

- 1 (7) Analyze data relating to complaints and conditions in long-term care  
2 facilities to identify significant problems and recommend solutions;
- 3 (8) Prepare an annual report containing data and findings regarding the  
4 types of problems experienced and complaints reported by residents as  
5 well as recommendations for resolutions of identified long-term care  
6 issues;
- 7 (9) Prepare findings regarding public education and community  
8 involvement efforts and innovative programs being provided in long-  
9 term care facilities; and
- 10 (10) Provide information to public agencies, and through the State  
11 Ombudsman, to legislators, and others regarding problems encountered  
12 by residents or providers as well as recommendations for resolution."

13 Sec. 4. G.S. 143B-181.20(a) reads as rewritten:

14 "(a) The State and Regional Ombudsman may enter any long-term care facility and  
15 may have reasonable access to any resident in the reasonable pursuit of his function. The  
16 Ombudsman may communicate privately and confidentially with residents of the facility  
17 individually or in groups. The Ombudsman shall have access to the patient records of any  
18 resident, ~~under procedures established by the State Ombudsman pursuant to G.S.143B-~~  
19 ~~181.18(6), provided that the medical and personal financial records pertaining to an individual~~  
20 ~~resident may be inspected only with the permission of the resident or his legally appointed~~  
21 ~~guardian, if any. as permitted under the Older Americans Act of 1965, as amended, 42~~  
22 ~~U.S.C. § 3001 et seq., and under procedures established by the State Ombudsman~~  
23 ~~pursuant to G.S. 143B-181.18(6). Entry shall be conducted in a manner that will not~~  
24 ~~significantly disrupt the provision of nursing or other care to residents and if the long-~~  
25 ~~term care facility requires registration of all visitors entering the facility, then the State or~~  
26 ~~Regional Ombudsman must also register. Any State or Regional Ombudsman who~~  
27 ~~discloses any information obtained from the patient's medical or personal financial records~~  
28 ~~without a court order or without authorization in writing from the resident, or his legal~~  
29 ~~representative, records except as permitted under the Older Americans Act of 1965, as~~  
30 ~~amended, 42 U.S.C. § 3001 et seq., is guilty of a Class 1 misdemeanor."~~

31 Sec. 5. G.S. 143B-181.22 reads as rewritten:

32 "**§ 143B-181.22. State/Regional Long-Term Care Ombudsman; confidentiality.**

33 ~~The identity of any complainant, resident on whose behalf a complaint is made, or~~  
34 ~~individual providing information on behalf of the resident or complainant relevant to the~~  
35 ~~attempted resolution of a complaint is confidential and may be disclosed only with the~~  
36 ~~express permission of the person. The information produced by the process of complaint~~  
37 ~~resolution may be disclosed by the State Ombudsman or Regional Ombudsman only if~~  
38 ~~the identity of any such person is not disclosed by name or inference. If the identity of~~  
39 ~~any such person is disclosed by name or inference in such information, the information~~  
40 ~~may be disclosed only with his express permission. If the complaint becomes the subject~~  
41 ~~of a judicial proceeding, the investigative information may be disclosed for the purpose~~  
42 ~~of the proceeding.~~

1        The identity of any complainant, resident on whose behalf a complaint is made, or any  
2 individual providing information on behalf of the resident or complainant relevant to the  
3 attempted resolution of the complaint along with the information produced by the process  
4 of complaint resolution is confidential and shall be disclosed only as permitted under the  
5 Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq. "

6            Sec. 6. G.S. 131D-31 reads as rewritten:

7 **"§ 131D-31. ~~Domiciliary home~~ Adult care home community advisory committees.**

8        (a) Statement of Purpose. – It is the intention of the General Assembly that  
9 community advisory committees work to maintain the intent of the ~~Domiciliary Home~~  
10 Adult Care Home Residents' Bill of Rights within the licensed ~~domiciliary homes~~ adult  
11 care homes in this State. It is the further intent of the General Assembly that the  
12 committees promote community involvement and cooperation with ~~domiciliary homes~~  
13 adult care homes to ensure quality care for the elderly and disabled adults.

14        (b) Establishment and Appointment of Committees. –

15            (1) A community advisory committee shall be established in each county  
16 ~~which that~~ has at least one licensed ~~domiciliary home~~ adult care home,  
17 shall serve all the homes in the county, and shall work with each of  
18 these homes for the best interests of the residents. In a county ~~which that~~  
19 has one, two, or three ~~homes for the aged and disabled~~ adult care homes  
20 with 10 or more beds, the committee shall have five members.

21            (2) In a county with four or more ~~homes for the aged and disabled~~ adult care  
22 homes with 10 or more beds, the committee shall have one additional  
23 member for each ~~home for the aged and disabled~~ adult care home with 10  
24 or more beds in excess of three, up to a maximum of 20 members. In  
25 each county with four or more ~~homes for the aged and disabled~~ adult care  
26 homes with 10 or more beds, the committee shall establish a  
27 subcommittee of no more than five members and no fewer than three  
28 members from the committee for each ~~domiciliary home~~ adult care home  
29 in the county. Each member must serve on at least one subcommittee.

30            (3) In counties with no ~~homes for the aged and disabled~~ adult care homes  
31 with 10 or more beds, the committee shall have five members.  
32 Regardless of how many members a particular community advisory  
33 committee ~~must~~ is required to have, at least one member of each  
34 committee shall be a person involved in the area of mental retardation.

35            (4) The boards of county commissioners are encouraged to appoint the  
36 ~~Domiciliary Home~~ Adult Care Home Community Advisory Committees.  
37 Of the members, a minority (not less than one-third, but as close to one-  
38 third as possible) ~~must~~ shall be chosen from among persons nominated  
39 by a majority of the chief administrators of ~~domiciliary homes~~ adult care  
40 homes in the county. If the ~~domiciliary home~~ adult care home  
41 administrators fail to make a nomination within 45 days after written  
42 notification has been sent to them requesting a nomination, ~~such~~ these  
43 appointments may be made without nominations. If the county

1 commissioners fail to appoint members to a committee by July 1, 1983,  
2 the appointments shall be made by the Assistant Secretary ~~on~~for Aging,  
3 Department of Human Resources, no sooner than 45 days after  
4 nominations have been requested from the ~~domiciliary home~~adult care  
5 home administrators, but no later than October 1, 1983. In making ~~his~~  
6 appointments, the Assistant Secretary for Aging shall follow the same  
7 appointment process as that specified for the County Commissioners.

8 (c) ~~Joint nursing~~Nursing and Domiciliary Home~~Adult Care Home~~ Community  
9 Advisory Committees. – Appointment to the Nursing Home Community Advisory  
10 Committees shall preclude appointment to the ~~Domiciliary Home~~Adult Care Home  
11 Community Advisory Committees except where written approval to combine these  
12 committees is obtained from the Assistant Secretary ~~on~~for Aging, Department of Human  
13 Resources. Where ~~such~~this approval is obtained, the Joint Nursing and ~~Domiciliary Home~~  
14 Adult Care Home Community Advisory Committee shall have the membership required  
15 of Nursing Home Community Advisory Committees and one additional member for each  
16 ~~home for the aged and disabled present~~adult care home with 10 or more beds licensed in the  
17 county. In counties with no ~~homes for the aged and disabled,~~adult care homes with 10 or  
18 more beds, there shall be one additional member for every four ~~domiciliary homes~~other  
19 types of adult care homes in the county. In no case shall the number of members on the  
20 Joint Nursing and ~~Domiciliary Home~~Adult Care Home Community Advisory Committee  
21 exceed 25. Each member shall exercise the statutory rights and responsibilities of both  
22 Nursing Home Committees and ~~Domiciliary Home~~Adult Care Home Committees. In  
23 making appointments to this joint committee, the county commissioners shall solicit  
24 nominations from both nursing and ~~domiciliary home~~adult care home administrators for  
25 the appointment of approximately (but no more than) one-third of the members.

26 (d) Terms of Office. – Each committee member shall serve an initial term of one  
27 year. Any person reappointed to a second or subsequent term in the same county shall  
28 serve a two- or three-year term at the county commissioners' discretion to ensure  
29 staggered terms of office.

30 (e) Vacancies. – Any vacancy shall be filled by appointment of a person for a one-  
31 year term. If this vacancy is in a position filled by an appointee nominated by the chief  
32 administrators of ~~domiciliary homes~~adult care homes within the county, then the county  
33 commissioners shall fill the vacancy from persons nominated by a majority of the chief  
34 administrators. If the ~~domiciliary home~~adult care home administrators fail to make a  
35 nomination by registered mail within 45 days after written notification has been sent to  
36 them requesting a nomination, ~~such~~this appointment may be made without nominations.  
37 If the county commissioners fail to fill a vacancy, the vacancy may be filled by the  
38 Assistant Secretary ~~on~~for Aging, Department of Human Resources no sooner than 45  
39 days after the commissioners have been notified of the appointment or vacancy.

40 (f) Officers. – The committee shall elect from its members a chair, to serve a one-  
41 year term.

42 (g) Minimum Qualifications for Appointment. – Each member must be a resident  
43 of the county which the committee serves. No person or immediate family member of a

1 person with a financial interest in a home served by the committee, or employee or  
2 governing board member of a home served by the committee, or immediate family  
3 member of a resident in a home served by the committee may be a member of that  
4 committee. Any county commissioner who is appointed to the committee shall be  
5 deemed to be serving on the committee in an ex officio capacity. Members of the  
6 committee shall serve without compensation, but may be reimbursed for actual expenses  
7 incurred by them in the performance of their duties. The names of the committee  
8 members and the date of expiration of their terms shall be filed with the Division of  
9 Aging, Department of Human Resources.

10 (h) Training. – The Division of Aging, Department of Human Resources, shall  
11 develop training materials, which shall be distributed to each committee member. Each  
12 committee member must receive training as specified by the Division of Aging prior to  
13 exercising any power under G.S. 131D-32. The Division of Aging, Department of  
14 Human Resources, shall provide the committees with information, guidelines, training,  
15 and consultation to direct them in the performance of their duties.

16 (i) Any written communication made by a member of a ~~domiciliary home~~ an adult  
17 care home advisory committee within the course and scope of the member's duties, as  
18 specified in G.S. 131D-32, shall be privileged to the extent provided in this subsection.  
19 This privilege shall be a defense in a cause of action for libel if the member was acting in  
20 good faith and the statements and communications do not amount to intentional  
21 wrongdoing.

22 To the extent that any ~~domiciliary home~~ adult care home advisory committee or any  
23 member thereof is covered by liability insurance, that committee or member shall be  
24 deemed to have waived the qualified immunity herein to the extent of indemnification by  
25 insurance."

26 Sec. 7. G.S. 131D-32 reads as rewritten:

27 "**§ 131D-32. Functions of ~~domiciliary home~~ adult care home community advisory**  
28 **committees.**

29 (a) The committee shall serve as the nucleus for increased community  
30 involvement with ~~domiciliary homes~~ adult care homes and their residents.

31 (b) The committee shall promote community education and awareness of the needs  
32 of aging and disabled persons who reside in ~~domiciliary homes~~, adult care homes, and  
33 shall work towards keeping the public informed about aspects of long-term care and the  
34 operation of ~~domiciliary homes~~ adult care homes in North Carolina.

35 (c) The committee shall develop and recruit volunteer resources to enhance the  
36 quality of life for ~~domiciliary home~~ adult care home residents.

37 (d) The committee shall establish linkages with the ~~domiciliary home~~ adult care  
38 home administrators and the county department of social services for the purpose of  
39 maintaining the intent of the ~~Domiciliary Home~~ Adult Care Home Residents' Bill of  
40 Rights.

41 (e) Each committee shall apprise itself of the general conditions under which the  
42 persons are residing in the homes, and shall work for the best interests of the persons in  
43 the homes. This may include assisting persons who have grievances with the home and

1 facilitating the resolution of grievances at the local level. ~~The names of all complaining~~  
2 ~~persons and the names of residents involved in the complaint shall remain confidential unless~~  
3 ~~written permission is given for disclosure. The identity of any complainant or resident~~  
4 ~~involved in a complaint shall not be disclosed except as permitted under the Older~~  
5 ~~Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq. The committee shall notify~~  
6 ~~the enforcement agency of all verified violations of the Domiciliary Home Adult Care~~  
7 ~~Home Residents' Bill of Rights.~~

8 (f) The committee or subcommittee may communicate through the committee  
9 chair with the Department of Human Resources, the county department of social services,  
10 or any other agency in relation to the interest of any resident.

11 (g) Each committee shall quarterly visit the ~~homes for the aged and disabled adult~~  
12 ~~care homes with 10 or more beds~~ it serves. For each official quarterly visit, a majority of  
13 the committee members shall be present. A minimum of three members of the committee  
14 shall make at least one visit annually to each ~~family care home and group home for~~  
15 ~~developmentally disabled adults present other type of adult care home licensed in the~~  
16 county. In addition, each committee may visit the ~~domiciliary homes adult care homes~~ it  
17 serves whenever it deems it necessary to carry out its duties. In counties with  
18 subcommittees, the subcommittee assigned to a home shall perform the duties of the  
19 committee under this subsection, and a majority of the subcommittee members must be  
20 present for any visit. When visits are made to group homes for developmentally disabled  
21 adults, rules concerning confidentiality as adopted by the Commission for Mental Health,  
22 Developmental Disabilities, and Substance Abuse Services shall apply.

23 (h) The individual members of the committee shall have the right between 10:00  
24 a.m. and 8:00 p.m. to enter the facility the committee serves in order to carry out the  
25 members' responsibilities. In a county where subcommittees have been established, this  
26 right of access shall be limited to members of the subcommittee which serves that home.  
27 A majority of the committee or subcommittee members ~~must shall~~ be present to enter the  
28 facility at other hours. Before entering any ~~domiciliary home, adult care home,~~ the  
29 committee or members of the committee shall identify themselves to the person present at  
30 the facility who is in charge of the facility at that time.

31 (i) The committee shall prepare reports as required by the Department of Human  
32 Resources containing an appraisal of the problems of ~~domiciliary care adult care~~ facilities  
33 as well as issues affecting long-term care in general. Copies of the report shall be sent to  
34 the board of county commissioners, county department of social services and the  
35 Division of Aging.

36 (j) Nothing contained in this section shall be construed to require the expenditure  
37 of any county funds to carry out the provisions ~~herein. in this section.~~"

38 Sec. 8. 131E-101 reads as rewritten:

39 "**§ 131E-101. Definitions.**

40 As used in this Part, unless otherwise specified:

- 41 (1) 'Adult care home,' as distinguished from a nursing home, means a  
42 facility operated as a part of a nursing home and which provides  
43 residential care for aged or disabled persons whose principal need is a

1 home with the sheltered or personal care their age or disability requires.  
2 Medical care in a ~~domiciliary adult care~~ home is usually occasional or  
3 incidental, such as may be required in the home of any individual or  
4 family, but the administration of medication is supervised. Continuing  
5 planned medical and nursing care to meet the resident's needs may be  
6 provided under the direct supervision of a physician, nurse, or home  
7 health agency. ~~Domiciliary Adult care~~ homes are to be distinguished  
8 from nursing homes subject to licensure under this Part. ~~The three types~~  
9 ~~of domiciliary homes are homes for the aged and disabled, family care homes~~  
10 ~~and group homes for developmentally disabled adults.~~

11 (4) (1a) 'Combination home' means a nursing home offering one or more  
12 levels of care, including any combination of skilled nursing,  
13 intermediate care, and ~~domiciliary adult care~~ home.

14 (2) 'Commission' means the North Carolina Medical Care Commission.

15 (3) 'Community advisory committee' means a nursing home advisory  
16 committee established for the statutory purpose of working to carry out  
17 the intent of the Nursing Home Patients' Bill of Rights (Chapter 131E,  
18 Article 6, Part B) in accordance with G.S. 143B-181.1.

19 (4)7 ~~'Domiciliary home,' as distinguished from a nursing home, means a~~  
20 ~~facility operated as a part of a nursing home and which provides~~  
21 ~~residential care for aged or disabled persons whose principal need is a~~  
22 ~~home with the sheltered or personal care their age or disability requires.~~  
23 ~~Medical care in a domiciliary home is usually occasional or incidental,~~  
24 ~~such as may be required in the home of any individual or family, but the~~  
25 ~~administration of medication is supervised. Continuing planned medical~~  
26 ~~and nursing care to meet the resident's needs may be provided under the~~  
27 ~~direct supervision of a physician, nurse, or home health agency.~~  
28 ~~Domiciliary homes are to be distinguished from nursing homes subject~~  
29 ~~to licensure under this Part. The three types of domiciliary homes are~~  
30 ~~homes for the aged and disabled, family care homes and group homes~~  
31 ~~for developmentally disabled adults.~~

32 (5) 'Medical review committee' means a committee of a State or local  
33 professional society, of a medical staff of a licensed hospital, of  
34 physicians having privileges within the nursing home or of a peer  
35 review corporation or organization ~~which~~ that is formed for the purpose  
36 of evaluating the quality, cost of or necessity for health care services  
37 under applicable federal statutes.

38 (6) 'Nursing home' means a facility, however named, ~~which~~ that is  
39 advertised, announced, or maintained for the express or implied purpose  
40 of providing nursing or convalescent care for three or more persons  
41 unrelated to the licensee. A 'nursing home' is a home for chronic or  
42 convalescent patients, who, on admission, are not as a rule, acutely ill  
43 and who do not usually require special facilities such as an operating

1 room, X-ray facilities, laboratory facilities, and obstetrical facilities. A  
2 'nursing home' provides care for persons who have remedial ailments or  
3 other ailments, for which medical and nursing care are indicated; who,  
4 however, are not sick enough to require general hospital care. Nursing  
5 care is their primary need, but they will require continuing medical  
6 supervision.

7 (7) 'Peer review committee' means any committee appointed in accordance  
8 with G.S. 131E-108, 'Peer review.'

9 Sec. 9. G.S. 131E-128(h) reads as rewritten:

10 "(h) (1) Each committee shall apprise itself of the general conditions  
11 under which the persons are residing in the homes, and shall work for  
12 the best interests of the persons in the homes. This may include  
13 assisting persons who have grievances with the home and facilitating  
14 the resolution of grievances at the local level.

15 (2) Each committee shall quarterly visit the nursing home it serves. For  
16 each official quarterly visit, a majority of the committee members shall  
17 be present. In addition, each committee may visit the nursing home it  
18 serves whenever it deems it necessary to carry out its duties. In counties  
19 with four or more nursing homes, the subcommittee assigned to a home  
20 shall perform the duties of the committee under this subdivision, and a  
21 majority of the subcommittee members must be present for any visit.

22 (3) Each member of a committee shall have the right between 10:00 A.M.  
23 and 8:00 P.M. to enter into the facility the committee serves in order to  
24 carry out the members' responsibilities. In a county where  
25 subcommittees have been established, this right of access shall be  
26 limited to homes served by those subcommittees to which the member  
27 has been appointed.

28 (4) The committee or subcommittee may communicate through its chair  
29 with the Department or any other agency in relation to the interest of  
30 any patient. ~~The names of all complaining persons shall remain confidential~~  
31 ~~unless written permission is given for disclosure.~~ identity of any  
32 complainant or resident involved in a complaint shall not be disclosed  
33 except as permitted under the Older Americans Act of 1965, as  
34 amended, U.S.C. § 3001 et seq.

35 (5) Each home shall cooperate with the committee as it carries out its  
36 duties.

37 (6) Before entering into any nursing home, the committee, subcommittee,  
38 or member shall identify itself to the person present at the facility who is  
39 in charge of the facility at that time."

40 Sec. 10. Rules adopted by the Department of Human Resources and any  
41 relevant commissions regulating domiciliary care homes prior to the effective date of this  
42 act remain in effect for adult care homes on and after this date until amended or repealed.

43 Sec. 11. This act becomes effective July 1, 1995.