

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 345

Introduced by Senator Wolk

February 15, 2011

~~An act to amend Section 9710.5 of, and to repeal Article 5 (commencing with Section 9740) of Chapter 11 of Division 8.5 of, the Welfare and Institutions Code, and to repeal and add Sections 9701, 9712, 9714, 9716, 9717, 9719, 9720, 9722, 9724, 9726, and 9726.1 of, to repeal Sections 9713 and 9714.5 of, to repeal Article 5 (commencing with Section 9740) of Chapter 11 of Division 8.5 of, and to repeal and add Sections 9710, 9710.5, and 9711 of, the Welfare and Institutions Code, relating to public social services.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 345, as amended, Wolk. Long-Term Care Ombudsman Program.

Existing law, as part of the Mello-Granlund Older Californians Act, establishes the Office of the State Long-Term Care Ombudsman, *under the direction of the State Long-Term Care Ombudsman*, in the California Department of Aging. Existing law provides for the Long-Term Care Ombudsman Program under which funds are allocated to local ombudsman programs to assist elderly persons in long-term health care facilities and residential care facilities by, among other things, investigating and seeking to resolve complaints against these facilities.

~~Existing law requires the department to establish an 11-member advisory council for the office to provide advice and consultation on issues affecting the provision of ombudsman services.~~

~~This bill would delete the provisions relating to the advisory council.~~

This bill would, instead, require the department to contract with a qualified nonprofit organization selected by a panel established by the department, as specified, to operate as the Office of the State Long-Term Care Ombudsman, and would require the contracting nonprofit organization to hire a qualified person to serve as the State Long-Term Care Ombudsman after consulting with the department's director and other stakeholders on the selection. This bill would provide that the office shall carry out all the duties prescribed by the federal Older Americans Act and would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. This act shall be known, and may be cited, as the*
2 *Long-Term Care Ombudsman Program Independence and*
3 *Improvement Act of 2011.*
4 *SEC. 2. The Legislature finds and declares all of the following:*
5 *(a) The protection of residents in California's long-term care*
6 *facilities is of paramount importance to the citizens of California.*
7 *(b) The Office of the State Long-Term Care Ombudsman was*
8 *established pursuant to the federal Older Americans Act of 1965*
9 *and the Mello-Granlund Older Californians Act to investigate and*
10 *endeavor to resolve complaints made by, or on behalf of, individual*
11 *residents in long-term care facilities.*
12 *(c) The Office of the State Long-Term Care Ombudsman is*
13 *operated by the California Department of Aging, a division of the*
14 *California Health and Human Services Agency.*
15 *(d) The California Health and Human Services Agency also*
16 *oversees the State Department of Public Health and the State*
17 *Department of Social Services, which are the state agencies that*
18 *administer the licensing and certification of long-term care*
19 *facilities in California.*
20 *(e) To guard against conflicts of interest, the federal Older*
21 *Americans Act expressly prohibits the Office of the State*
22 *Long-Term Care Ombudsman from being operated by any state*
23 *agency that is responsible for licensing or certifying long-term*
24 *care facilities.*

1 (f) A conflict of interest currently exists with the placement of
2 the Office of the State Long-Term Care Ombudsman under the
3 aegis of the California Health and Human Services Agency.

4 (g) The State Long-Term Care Ombudsman is a political
5 appointee, constrained in his or her responsibilities to advocate
6 for changes in policy, legislation, or funding that directly impact
7 residents of long-term care facilities. Further compromising
8 independence, the State Long-Term Care Ombudsman is exempt
9 from civil service and can be dismissed without cause or notice.

10 (h) The vulnerable residents of long-term care facilities rely on
11 the State Long-Term Care Ombudsman to advocate on their behalf
12 in the long-term care system and at state and federal levels of
13 government.

14 (i) The federal Older Americans Act requires the State
15 Long-Term Care Ombudsman to represent the interests of
16 long-term care facility residents before governmental agencies,
17 and seek administrative, legal, and other remedies to protect the
18 health, safety, welfare, and rights of the residents.

19 (j) The State Long-Term Care Ombudsman is unable to
20 effectively advocate for the needs of residents of long-term care
21 facilities in California.

22 (k) The federal Older Americans Act authorizes states to
23 contract with a private nonprofit organization to operate the Office
24 of the State Long-Term Care Ombudsman.

25 (l) It is, therefore, the intent of the Legislature to enact
26 legislation that would establish an independent state long-term
27 care ombudsman office within a qualified nonprofit organization,
28 under contract with the California Department of Aging, to operate
29 the office in accordance with the federal Older Americans Act of
30 1965 and the Mello-Granlund Older Californians Act, with the
31 office having the full power and authority to advocate for residents
32 of long-term care facilities on all matters relating to their care
33 and well-being.

34 SEC. 3. Section 9701 of the Welfare and Institutions Code is
35 amended to read:

36 9701. Unless the contrary is stated or clearly appears from the
37 context, the following definitions shall govern the interpretation
38 of this chapter:

39 (a) "Approved organization" means any public agency or other
40 appropriate organization that has been designated by the ~~department~~

1 *Office of the State Long-Term Care Ombudsman* to hear,
 2 investigate, and resolve complaints made by or on behalf of
 3 patients, residents, or clients of long-term care facilities relating
 4 to matters that may affect the health, safety, welfare, and rights of
 5 these patients, residents, or clients.

6 (b) “Long-term care facility” means any of the following:

7 (1) Any nursing or skilled nursing facility, as defined in Section
 8 1250 of the Health and Safety Code, including distinct parts of
 9 facilities that are required to comply with licensure requirements
 10 for skilled nursing facilities.

11 (2) Any residential care facility for the elderly as defined in
 12 Section 1569.2 of the Health and Safety Code.

13 ~~(c) “Medical training” or “medical records training” means the~~
 14 ~~completion of training as a physician, registered nurse, nurse~~
 15 ~~practitioner, licensed vocational nurse, pharmacist, medical social~~
 16 ~~worker, medical records technician, physician’s assistant, or~~
 17 ~~discharge planner.~~

18 (c) “Nonprofit organization” means the organization that
 19 contracts with the California Department of Aging to operate the
 20 *Office of the State-Long-Term Care Ombudsman*.

21 (d) “Office” means the Office of the State Long-Term Care
 22 Ombudsman, including approved organizations.

23 (e) “Ombudsman coordinator” means the individual selected
 24 by the governing board or executive director of the approved
 25 organization to manage the day-to-day operation of the ombudsman
 26 program, including the implementation of federal and state
 27 requirements governing the office.

28 (f) “Resident,” “patient,” or “client” means an older or elderly
 29 individual residing in a long-term care facility.

30 (g) “State Ombudsman” means the State Long-Term Care
 31 Ombudsman.

32 *SEC. 4. Section 9710 of the Welfare and Institutions Code is*
 33 *repealed.*

34 ~~9710. There is within the department an Office of the State~~
 35 ~~Long-Term Care Ombudsman.~~

36 *SEC. 5. Section 9710 is added to the Welfare and Institutions*
 37 *Code, to read:*

38 *9710. (a) The Legislature finds and declares all of the*
 39 *following:*

1 (1) *The Office of the State Long-Term Care Ombudsman has*
2 *an extremely important role in protecting and advocating for the*
3 *rights and health and safety of long-term care facility residents,*
4 *and in providing leadership, direction, and support to local*
5 *long-term care ombudsman programs.*

6 (2) *In order to comply with the federal Older Americans Act*
7 *(42 U.S.C. Sec. 3001 et seq.) and to effectively carry out its duties,*
8 *the office must be operated by a qualified nonprofit organization*
9 *that has no conflicts of interest.*

10 (b) *The department shall do all of the following:*

11 (1) *Establish a five-member selection panel, as described in*
12 *Section 9710.5, to select a qualified private nonprofit organization*
13 *to operate the Office of the State Long-Term Care Ombudsman.*

14 (2) (A) *Contract with the qualified private nonprofit*
15 *organization selected by the selection panel to operate the office*
16 *as specified under, and consistent with, the federal Older*
17 *Americans Act (42 U.S.C. Sec. 3001 et seq.) and state law.*

18 (B) *The initial contract with the selected nonprofit organization*
19 *shall take effect on July 1, 2012. The department shall provide*
20 *assistance to and fully cooperate with the nonprofit organization*
21 *to ensure a successful transition for the Office of State Long-Term*
22 *Care Ombudsman, including the transfer of the statewide uniform*
23 *reporting system and collected data described in Section 9716.*

24 (C) *The term of the contract with the nonprofit organization*
25 *shall be three years and may be extended by the selection panel*
26 *at its discretion.*

27 (3) *Provide the support necessary for the selection panel to*
28 *carry out its duties as specified in Section 9710.5.*

29 (4) *Allocate federal and state funds that are appropriated for*
30 *the Office of the State Long-Term Care Ombudsman to the office,*
31 *except that the department may reserve funds to cover reasonable,*
32 *actual administrative costs for contracting and oversight purposes.*

33 (5) *Oversee the contract with the selected nonprofit organization*
34 *to ensure that the office effectively carries out its duties under state*
35 *and federal laws. The department shall not interfere with the Office*
36 *of the State Long-Term Care Ombudsman or its parent*
37 *organization carrying out its duties under state and federal law.*

38 (c) *Nothing in this section shall be construed to change the*
39 *relationship of area agencies on aging and local long-term care*
40 *ombudsman programs. Area agencies on aging shall continue to*

1 *contract with approved organizations to operate local long-term*
2 *care ombudsman programs using funds designated for this purpose.*
3 *SEC. 6. Section 9710.5 of the Welfare and Institutions Code*
4 *is repealed.*

5 ~~9710.5. (a) The Legislature finds and declares as follows:~~

6 ~~(1) The position of State Ombudsman is extremely important~~
7 ~~to the successful coordination of ombudsman services at the local~~
8 ~~level.~~

9 ~~(2) The position of State Ombudsman requires both an extensive~~
10 ~~background in social or health services programs, and an ability~~
11 ~~to manage and motivate individuals and groups.~~

12 ~~(3) Remuneration for the position of State Ombudsman should~~
13 ~~be commensurate with the demands of the position.~~

14 ~~(b) The Legislature, therefore, encourages the Director of the~~
15 ~~California Department of Aging, to do all of the following:~~

16 ~~(1) Provide widespread notification of the availability of the~~
17 ~~position of State Long-Term Care Ombudsman in order to reach~~
18 ~~the greatest number of qualified candidates and hire the most~~
19 ~~capable individual for the position.~~

20 ~~(2) Within 10 days of the occurrence of a vacancy, publicly~~
21 ~~announce the vacancy and solicit candidates for the position.~~

22 ~~(3) Within 30 days of the occurrence of a vacancy, convene a~~
23 ~~meeting with the advisory council established by Section 9740,~~
24 ~~for the purpose of obtaining the advice, consultation, and~~
25 ~~recommendations of the council regarding the selection of a~~
26 ~~candidate.~~

27 *SEC. 7. Section 9710.5 is added to the Welfare and Institutions*
28 *Code, to read:*

29 *9710.5. (a) (1) The five-member selection panel established*
30 *by the department pursuant to subdivision (b) of Section 9710 shall*
31 *be chaired by the President of the California Long-Term Care*
32 *Ombudsman Association or member designee.*

33 *(2) Additional members of the selection panel shall include the*
34 *Director of the California Department of Aging or his or her*
35 *designee, the Director of the California Association of Area*
36 *Agencies on Aging or his or her designee, a representative of the*
37 *California Senior Legislature, and a long-term care ombudsman*
38 *coordinator selected by the other members of the panel.*

39 *(3) Selection panel participation shall be voluntary and members*
40 *of the panel shall serve without compensation.*

1 (b) The selection panel shall do both of the following:

2 (1) Identify the qualifications of the nonprofit organization
3 consistent with Section 9711 and the federal Older Americans Act
4 (42 U.S.C. Sec. 3001 et seq.).

5 (2) Notwithstanding any other provision of law, establish a
6 bidding process to facilitate the selection of the nonprofit
7 organization, solicit applications from nonprofit organizations
8 consistent with that process, and select the most qualified applicant
9 to operate the office.

10 (c) The selection panel may consult with other stakeholders in
11 making the selection of the nonprofit organization to operate the
12 office.

13 (d) The initial selection panel shall be established by January
14 31, 2012. Subsequent selection panels shall be convened in a timely
15 manner as needed to make determinations about the selection or
16 continuation of a nonprofit organization to operate the Office of
17 the State Long-Term Care Ombudsman.

18 SEC. 8. Section 9711 of the Welfare and Institutions Code is
19 repealed.

20 ~~9711. (a) The office shall be under the direction of a chief
21 executive officer who shall be known as the State Long-Term Care
22 Ombudsman. The State Ombudsman shall be appointed by the
23 director and shall report directly to the director. He or she shall
24 devote his or her entire time to the duties of his or her position,
25 and shall receive the salary otherwise provided by law.~~

26 ~~(b) Any vacancy occurring in the position of State Ombudsman
27 shall be filled in the same manner as the original appointment.
28 Whenever the State Ombudsman dies, resigns, becomes ineligible
29 to serve for any reason, or is removed from office, the director
30 shall appoint an acting State Ombudsman within 30 days, who
31 shall serve until the appointment and qualification of the State
32 Ombudsman's successor, but in no event longer than four months
33 from the occurrence of the vacancy. The acting State Ombudsman
34 shall exercise during this period all the powers and duties of the
35 State Ombudsman pursuant to this chapter.~~

36 SEC. 9. Section 9711 is added to the Welfare and Institutions
37 Code, to read:

38 9711. A nonprofit organization shall meet the following
39 qualifications to operate as the Office of the State Long-Term Care
40 Ombudsman:

1 (a) *Have not less than five years of successful operation as a*
2 *nonprofit organization.*

3 (b) *Have relevant experience in some or all of the following:*

4 (1) *Service to persons who are aged and individuals with*
5 *disabilities.*

6 (2) *Advocacy.*

7 (3) *Long-term care ombudsman services.*

8 (4) *Legal services to persons who are aged and individuals with*
9 *disabilities.*

10 (5) *Leadership to a network of advocacy, aging, or human*
11 *service organizations.*

12 (c) *Be free of conflicts of interest consistent with the*
13 *requirements of this chapter and the federal Older Americans Act*
14 *(42 U.S.C. Sec. 3001 et seq.).*

15 (d) *Be able and willing to carry out all of the duties of the office*
16 *established by this chapter and the federal Older Americans Act*
17 *(42 U.S.C. Sec. 3001 et seq.), including, but not limited to, the*
18 *duties to engage in legislative advocacy on behalf of long-term*
19 *care facility residents and to provide or arrange necessary legal*
20 *support to local long-term care ombudsman programs.*

21 (e) *Be in compliance with state and federal laws governing*
22 *nonprofit organizations.*

23 (f) *Have adequate resources and be of sound financial status*
24 *to operate the office.*

25 *SEC. 10. Section 9712 of the Welfare and Institutions Code is*
26 *amended to read:*

27 9712. (a) *The office shall be headed by an individual, to be*
28 *known as the State Long-Term Care Ombudsman, who shall be a*
29 *certified ombudsman, meet the qualifications established by the*
30 *federal Older Americans Act (42 U.S.C. Sec. 3001 et seq.), and be*
31 *selected from among individuals with expertise and experience in*
32 *the fields of long-term care and advocacy.*

33 (b) *The nonprofit organization shall hire a qualified person to*
34 *serve as the State Ombudsman after consulting with the*
35 *department's director and other stakeholders on the selection.*

36 (c) *The State Ombudsman shall be located in Sacramento. Other*
37 *staff employed by the office may be located elsewhere in the state.*

38 (d) *The State Ombudsman may employ technical experts and*
39 *other employees who, in his or her judgment, are necessary to*
40 *conduct the business of the office.*

1 (e) *The State Ombudsman shall establish an advisory council*
2 *to obtain advice and consultation on operation of the ombudsman*
3 *program and on issues of concern to long-term care facility*
4 *residents and local long-term care ombudsman programs.*

5 (a)

6 (f) (1) The State Ombudsman shall possess at least a bachelor's
7 degree, and have a minimum of five years' professional experience
8 that shall include ~~at least three~~ *all* of the following ~~four~~ areas:

9 (A) Gerontology, long-term care, or other relevant social
10 services or health services programs.

11 (B) The legal system and the legislative process.

12 (C) Dispute or problem resolution techniques, including
13 investigation, mediation, and negotiation.

14 (D) Organizational management and program administration.

15 (2) The professional experience described in paragraph (1)
16 requires any reasonable combination of the fields described in
17 subparagraphs (A) to (D), inclusive, of that paragraph for a total
18 of five years, and does not require five years' experience in each
19 area. At the discretion of the ~~director~~ *nonprofit organization*, a
20 master's or ~~doctorate~~ *doctoral* degree relevant to a field described
21 in paragraph (1) may be substituted for one or two years,
22 respectively, of professional experience. However, the applicant's
23 professional experience and field of study leading to the master's
24 or ~~doctorate~~ *doctoral* degree shall, nevertheless, include all of the
25 fields described in paragraph (1).

26 (b)

27 (g) The State Ombudsman may not have been employed by any
28 long-term care facility within the three-year period immediately
29 preceding his or her appointment.

30 (c)

31 (h) Neither the State Ombudsman nor any member of his or her
32 immediate family may have, or have had within the past three
33 years, any pecuniary interest in long-term health care facilities.

34 *SEC. 11. Section 9713 of the Welfare and Institutions Code is*
35 *repealed.*

36 ~~9713. (a) Upon request of the office, the Attorney General~~
37 ~~shall represent the office or the department and the state in~~
38 ~~litigation concerning affairs of the office, unless the Attorney~~
39 ~~General represents another state agency, in which case the agency~~
40 ~~or the office shall be authorized to employ other counsel.~~

1 ~~(b) The State Ombudsman may employ technical experts and~~
2 ~~other employees that, in his or her judgment, are necessary for the~~
3 ~~conduct of the business of the office.~~

4 *SEC. 12. Section 9714 of the Welfare and Institutions Code is*
5 *amended to read:*

6 9714. The office ~~may~~ shall solicit and receive funds, gifts, and
7 contributions to support the operations and programs of the office.
8 ~~The office may form a foundation eligible to receive tax-deductible~~
9 ~~contributions to support the operations and programs of the office.~~
10 The office shall not solicit or receive any funds, gifts, or
11 contributions where the solicitation or receipt would jeopardize
12 the independence and objectivity of the office.

13 *SEC. 13. Section 9714.5 of the Welfare and Institutions Code*
14 *is repealed.*

15 ~~9714.5. (a) The foundation formed pursuant to Section 9714~~
16 ~~shall be under the direction and management of a five-member~~
17 ~~board of directors. One member shall be appointed by the Speaker~~
18 ~~of the Assembly, one member shall be appointed by the Senate~~
19 ~~Committee on Rules, and three members shall be appointed by the~~
20 ~~Governor. The members of the board shall each be experienced~~
21 ~~in the management, promotion, and funding of nonprofit charitable~~
22 ~~organizations.~~

23 ~~(b) The board shall select from among its members a chair, a~~
24 ~~vice chair, and any other officers as it deems necessary.~~

25 ~~(c) The members of the board shall serve without compensation,~~
26 ~~but shall be reimbursed for all necessary expenses actually incurred~~
27 ~~in the performance of their duties as directors.~~

28 ~~(d) Three members of the board shall constitute a quorum for~~
29 ~~the purpose of conducting the board's business.~~

30 ~~(e) By July 1 of each year, the board shall determine the amount~~
31 ~~of funds to be appropriated from the foundation to the office for~~
32 ~~the support of its operations and programs. Foundation funds may~~
33 ~~only be appropriated for the support of the operations and programs~~
34 ~~of the office.~~

35 *SEC. 14. Section 9716 of the Welfare and Institutions Code is*
36 *amended to read:*

37 9716. The ~~department~~ office shall be responsible for activities
38 that promote the development, coordination, and utilization of
39 resources to meet the long-term care needs of older individuals,
40 consistent with its mission. These responsibilities shall include

1 establishing a statewide uniform reporting system to collect and
2 analyze data relative to complaints and conditions in long-term
3 care facilities for the purpose of identifying and resolving
4 significant problems. The ~~department~~ office shall submit the data
5 to the state agency responsible for licensing or certifying long-term
6 care facilities and to the federal agency on aging.

7 *SEC. 15. Section 9717 of the Welfare and Institutions Code is*
8 *amended to read:*

9 9717. (a) All advocacy programs and any programs similar in
10 nature to the Long-Term Care Ombudsman Program that receive
11 funding or official designation from the state shall cooperate with
12 the office, where appropriate. These programs include, but are not
13 limited to, the Patients' Rights Advocacy Program within the State
14 Department of Mental Health, ~~Protection and Advocacy, Inc.~~
15 *Disability Rights California*, and Department of Rehabilitation
16 Client Assistance Program.

17 (b) The office shall maintain a close working relationship with
18 the Legal Services Development Program for the Elderly within
19 the department.

20 (c) In order to ensure the provision of counsel for patients,
21 residents, and clients of long-term care facilities, the ~~department~~
22 office shall seek to establish effective coordination ~~between the~~
23 ~~office and~~ with programs that provide legal services for the elderly,
24 including, but not limited to, programs that are funded by the
25 federal Legal Services Corporation or under the federal Older
26 Americans Act (42 U.S.C. Sec. 3001 et seq.), as amended.

27 (d) *The department and other state departments and programs*
28 *that have roles in funding, regulating, monitoring, or serving*
29 *long-term care facility residents, including law enforcement*
30 *agencies, shall cooperate with and meet with the office periodically*
31 *and as needed to address concerns or questions involving the care,*
32 *quality of life, safety, rights, health, and well-being of long-term*
33 *care facility residents.*

34 *SEC. 16. Section 9719 of the Welfare and Institutions Code is*
35 *amended to read:*

36 9719. (a) (1) The office shall sponsor a ~~meeting~~ training of
37 representatives of approved organizations at least twice each year.
38 The office shall provide training to these representatives as
39 appropriate. Prior to the certification of an ombudsman by the
40 office, individuals shall meet both of the following requirements:

1 (A) Have a criminal offender record clearance conducted by
2 the State Department of Social Services. A clearance pursuant to
3 Section 1569.17 of the Health and Safety Code shall constitute
4 clearances for the purpose of entry to any long-term care facility.

5 (B) Have received a minimum of 36 hours of ~~classroom~~
6 *certification* training approved by the office.

7 (2) Upon receipt of an applicant's criminal record clearance and
8 acceptance by the office, the ~~California Department of Aging~~ *office*
9 shall issue a card identifying the bearer as a certified ombudsman.
10 Each ombudsman shall receive a minimum of 12 hours of
11 additional training annually.

12 (b) (1) ~~Beginning July 1, 2007, the California Department of~~
13 ~~Aging~~ *The department* shall contract with the State Department
14 of Social Services to conduct a criminal offender record
15 information search, pursuant to Section 1569.17 of the Health and
16 Safety Code, for each applicant seeking certification as an
17 ombudsman. The State Department of Social Services shall notify
18 the individual and the office of the individual's clearance or denial.

19 ~~(2) Within a reasonable time after July 1, 2007, the office shall~~
20 ~~seek the clearance of each ombudsman already certified or~~
21 ~~designated as of July 1, 2007.~~

22 ~~(3)~~

23 (2) An applicant for certification as an ombudsman ~~and any~~
24 ~~currently certified or designated ombudsman~~ shall not be
25 responsible for any costs associated with transmitting the
26 fingerprint images and related information or conducting criminal
27 record clearances.

28 (c) Nothing in this section shall be construed to prohibit the
29 Department of Justice from assessing a fee pursuant to Section
30 11105 of the Penal Code to cover the cost of searching for or
31 furnishing summary criminal offender record information.

32 *SEC. 17. Section 9720 of the Welfare and Institutions Code is*
33 *amended to read:*

34 9720. (a) The office shall *identify*, investigate, and seek to
35 resolve complaints and concerns communicated by, or on behalf
36 of, patients, residents, or clients of any long-term care facility.
37 This requirement shall not preclude the referral of other
38 individuals' complaints and concerns that a representative becomes
39 aware are occurring in the facility to the appropriate governmental

1 agency. Complaint investigation shall be done in an objective
2 manner to ascertain the pertinent facts.

3 (b) At the conclusion of any investigation of a complaint, the
4 findings shall be reported to the complainant. If the office does
5 not investigate a complaint, the complainant shall be notified in
6 writing of the decision not to investigate and the reasons for the
7 decision.

8 *SEC. 18. Section 9722 of the Welfare and Institutions Code is*
9 *amended to read:*

10 9722. (a) Representatives of the office shall have the right of
11 entry to long-term care facilities for the purpose of *monitoring,*
12 *identifying,* hearing, investigating, and resolving complaints by,
13 or on behalf of, and rendering advice to, ~~elderly~~ individuals who
14 are patients or residents of the facilities at any time deemed
15 necessary and reasonable by the State Ombudsman to effectively
16 carry out this chapter.

17 (b) Nothing in this chapter shall be construed to restrict, limit,
18 or increase any existing right of any organizations or individuals
19 not described in subdivision (a) to enter, or provide assistance to
20 patients or residents of, long-term care facilities.

21 (c) Nothing in this chapter shall restrict any right or privilege
22 of any patient or resident of a long-term care facility to receive
23 visitors of his or her choice.

24 *SEC. 19. Section 9724 of the Welfare and Institutions Code is*
25 *amended to read:*

26 9724. Notwithstanding Section 56 of the Civil Code, in order
27 for the office to carry out its responsibilities under this chapter,
28 the office shall have access to the medical or personal records of
29 a patient or resident of a long-term care facility that are retained
30 by the facility, under the following conditions:

31 (a) If the patient or resident has the ability to write, access may
32 only be obtained by the written consent of the patient or resident.

33 (b) If the patient or resident is unable to write, oral consent may
34 be given in the presence of a third party as witness.

35 (c) If the patient or resident is under a California guardianship
36 or conservatorship of the person that provides the guardian or
37 conservator with the authority to approve review of records, the
38 office shall obtain the permission of the guardian or conservator
39 for review of the records, unless any of the following apply:

1 (1) The existence of the guardianship or conservatorship is
2 unknown to the office or the facility.

3 (2) The guardian or conservator cannot be reached within three
4 working days.

5 (3) The office has reason to believe the guardian or conservator
6 is not acting in the best interests of the ward or the conservatee.

7 (d) If the patient or resident is unable to express written or oral
8 consent and there is no guardian ~~or conservator~~, *conservator*, or
9 *legal representative*, or the notification of the guardian ~~or~~
10 ~~conservator~~, *conservator*, or *legal representative* is not applicable
11 for reasons set forth in subdivision (c), inspection of records may
12 be made by ~~full-time state employees of the office ombudsman~~
13 ~~coordinator, and by ombudsmen qualified by medical training and~~
14 ~~with the approval of the ombudsman coordinator or the State~~
15 ~~Ombudsman~~, when there is sufficient cause for the inspection. The
16 licensee may, at his or her discretion, permit other representatives
17 of the office to inspect records in the performance of their official
18 duties. Copies may be reproduced by the office. The licensee and
19 facility personnel who disclose records pursuant to this subdivision
20 shall not be liable for the disclosure. If investigation of records is
21 sought pursuant to this subdivision, the ombudsman shall, upon
22 request, produce a statement signed by the ombudsman coordinator
23 authorizing the ombudsman to review the records.

24 (e) Facilities providing copies of records pursuant to this section
25 may charge the actual copying cost for each page copied.

26 (f) Upon request by the office, a long-term care facility shall
27 provide to the office, *within 24 hours*, the name, address, and
28 telephone number of the conservator, legal representative, or
29 next-of-kin of any patient or resident.

30 *SEC. 20. Section 9726 of the Welfare and Institutions Code is*
31 *amended to read:*

32 9726. (a) The office shall establish a toll-free telephone hotline;
33 ~~in Sacramento~~, to receive telephone calls concerning any crises
34 discovered by any person in a long-term care facility, as defined
35 in subdivision (b) of Section 9701. The telephone hotline
36 established under this section shall be operated to include at least
37 all of the following:

38 (1) The telephone hotline shall be available 24 hours a day,
39 seven days a week.

1 (2) The operator shall respond to a crisis call by contacting the
2 appropriate office, agency, or individual in the local community
3 in which the crisis occurred.

4 (3) The toll-free hotline telephone number shall be posted
5 conspicuously in either the facility foyer, lobby, residents' activity
6 room, or other conspicuous location easily accessible to residents
7 in each licensed facility by the licensee. The office shall issue, in
8 conjunction with the State Department of Social Services and the
9 State Department of ~~Health Services~~ *Public Health*, guidelines
10 concerning the posting of the toll-free number. The posting shall,
11 at a minimum, include the purpose of the hotline number.

12 (b) The office shall respond to hotline telephone calls.

13 (c) The toll-free telephone hotline shall be staffed in a manner
14 consistent with available resources in the ~~department~~. The
15 ~~department~~ *office*. The *office* may contract for the services of
16 individuals to staff the telephone hotline. The ~~department~~ *office*
17 shall seek to provide opportunities for older individuals to be
18 employed to staff the hotline. The State Department of ~~Health~~
19 ~~Services~~ *Public Health* and the State Department of Social
20 Services, and other appropriate departments, shall make available
21 to the department and the office training and technical assistance
22 as needed.

23 *SEC. 21. Section 9726.1 of the Welfare and Institutions Code*
24 *is amended to read:*

25 9726.1. ~~The~~ *(a) The office shall carry out all of the duties*
26 *prescribed by the federal Older Americans Act in Section 3058g*
27 *of Title 42 of the United States Code, including, but not limited to,*
28 *all of the following:*

29 *(1) Represent the interests of long-term care facility residents*
30 *before governmental agencies and seek administrative, legal, and*
31 *other remedies to protect the health, safety, welfare, and rights of*
32 *the residents.*

33 *(2) (A) Analyze, comment on, and monitor the development and*
34 *implementation of federal, state, and local laws, regulations, and*
35 *other governmental policies and actions, that pertain to the health,*
36 *safety, welfare, and rights of the residents, with respect to the*
37 *adequacy of long-term care facilities and services in the state.*

38 *(B) Recommend any changes in the applicable laws, regulations,*
39 *policies, and governmental actions as the office determines to be*
40 *appropriate.*

1 (C) Facilitate public comment on the applicable laws,
2 regulations, policies, and governmental actions.

3 (b) The office may do any ~~or all~~ of the following:

4 (a)

5 (1) Advise the public of any inspection report, statements of
6 deficiency, and plans of correction, for any long-term health care
7 facilities within its service area.

8 (b)

9 (2) Promote visitation programs to long-term health care
10 facilities within its service area.

11 (c)

12 (3) Establish and assist in the development of resident, family,
13 and friends' councils.

14 (d)

15 (4) Sponsor other community involvement in long-term health
16 care facilities.

17 (e)

18 (5) Present community education and training programs, to
19 long-term health care facilities, human service workers, families,
20 and the general public, about long-term care and residents' rights
21 issues.

22 (f)

23 (6) Those programs created under this section that are held in
24 a facility shall be developed in consultation with the facility. If the
25 facility and the ombudsman cannot agree on these programs, the
26 State Ombudsman may assist in resolving the dispute.

27 *SEC. 22. Article 5 (commencing with Section 9740) of Chapter*
28 *11 of Division 8.5 of the Welfare and Institutions Code is repealed.*

29 ~~SECTION 1. Section 9710.5 of the Welfare and Institutions~~
30 ~~Code is amended to read:~~

31 ~~9710.5. (a) The Legislature finds and declares as follows:~~

32 ~~(1) The position of State Ombudsman is extremely important~~
33 ~~to the successful coordination of ombudsman services at the local~~
34 ~~level.~~

35 ~~(2) The position of State Ombudsman requires both an extensive~~
36 ~~background in social or health services programs, and an ability~~
37 ~~to manage and motivate individuals and groups.~~

38 ~~(3) Remuneration for the position of State Ombudsman should~~
39 ~~be commensurate with the demands of the position.~~

1 ~~(b) The Legislature, therefore, encourages the Director of the~~
2 ~~California Department of Aging, to do all of the following:~~
3 ~~(1) Provide widespread notification of the availability of the~~
4 ~~position of State Long-Term Care Ombudsman in order to reach~~
5 ~~the greatest number of qualified candidates and hire the most~~
6 ~~capable individual for the position.~~
7 ~~(2) Within 10 days of the occurrence of a vacancy, publicly~~
8 ~~announce the vacancy and solicit candidates for the position.~~
9 ~~SEC. 2. Article 5 (commencing with Section 9740) of Chapter~~
10 ~~11 of Division 8.5 of the Welfare and Institutions Code is repealed.~~