

Senate Bill No. 345

CHAPTER 649

An act to amend Sections 9701, 9710.5, 9712, 9713, 9714, 9714.5, 9716, 9717, 9719, 9722, 9724, 9726, and 9726.1 of, to add Sections 9712.5 and 9716.11 to, and to repeal Section 9720 of, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 27, 2012. Filed with
Secretary of State September 27, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 345, Wolk. Office of the State Long-Term Care Ombudsman.

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.

This bill would, among other things, require the office to submit an annual advocacy report to the Legislature and others in accordance with specified provisions of federal law, would require the office to perform specified duties relating to protecting the health, safety, welfare, and rights of residents in long-term care facilities, and would require the office to maintain an Internet Web presence, as prescribed. This bill would also make conforming changes and technical, nonsubstantive changes to these provisions.

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

SECTION 1. This act shall be known and may be cited as the Long-Term Care Ombudsman Program Independence and Improvement Act of 2012.

SEC. 2. The Legislature finds and declares all of the following:

(a) The protection of residents in California's long-term care facilities is of paramount importance to the citizens of California.

(b) The Office of the State Long-Term Care Ombudsman was established pursuant to the federal Older Americans Act and the Mello-Granlund Older Californians Act to identify, investigate, and endeavor to resolve complaints made by, or on behalf of, residents of long-term care facilities.

(c) The Office of the State Long-Term Care Ombudsman is operated by the California Department of Aging, a department within the California Health and Human Services Agency.

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

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

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

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

(a) “Approved organization” means any public agency or other appropriate organization that has been designated by the Office of the State Long-Term Care Ombudsman to hear, investigate, and resolve complaints made by or on behalf of patients or residents of long-term care facilities relating to matters that may affect the health, safety, welfare, and rights of these patients or residents.

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

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

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

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

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

(e) “Resident” or “patient” means an individual living in a long-term care facility.

(f) “State Ombudsman” means the State Long-Term Care Ombudsman.

SEC. 4. Section 9710.5 of the Welfare and Institutions Code is amended to read:

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

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

(2) The position of State Ombudsman is extremely important to the successful coordination of ombudsman services at the local level.

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

(4) Remuneration for the position of State Ombudsman should be commensurate with the demands of the position.

(b) The Director of the California Department of Aging shall do all of the following:

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

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

(3) Within 30 days of the occurrence of a vacancy, convene a meeting with the advisory council established by the department pursuant to Section 9740, for the purpose of obtaining the advice, consultation, and recommendations of the council regarding the selection of a candidate.

SEC. 5. Section 9712 of the Welfare and Institutions Code is amended to read:

9712. (a) The office shall be headed by an individual, to be known as the State Long-Term Care Ombudsman, who shall meet the qualifications established by the federal Older Americans Act (42 U.S.C. Sec. 3001 et seq.) and be selected from among individuals with expertise and experience in the fields of long-term care and advocacy. Within the first year of appointment, the State Ombudsman shall complete the training described in subparagraph (B) of paragraph (1) of subdivision (a) of Section 9719, and a 10-hour internship performing ombudsman services in a long-term care facility.

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

(c) (1) The State Ombudsman shall possess at least a bachelor's degree, and have a minimum of five years' professional experience that shall include all of the following areas:

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

(B) The legal system and the legislative process.

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

(D) Organizational management and program administration.

(2) The professional experience described in paragraph (1) requires any reasonable combination of the fields described in subparagraphs (A) to (D), inclusive, of that paragraph for a total of five years, and does not require five years' experience in each area. At the discretion of the director, a master's or doctoral degree relevant to a field described in paragraph (1) may be substituted for one or two years, respectively, of professional experience. However, the applicant's professional experience and field of study leading to the master's or doctoral degree shall, nevertheless, include all of the fields described in paragraph (1).

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

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

SEC. 6. Section 9712.5 is added to the Welfare and Institutions Code, to read:

9712.5. The State Ombudsman shall, personally or through representatives of the office, do all of the following:

(a) (1) Identify, investigate, and resolve complaints that are made by, or on behalf of, residents of long-term care facilities that relate to actions, inactions, or decisions of providers or representatives of providers of long-term care services, public agencies, or health and social services agencies that may adversely affect the health, safety, welfare, or rights of residents, including the welfare and rights of residents with respect to the appointment and activities of conservators, guardians, and representative payees.

(2) The requirement described in paragraph (1) shall not preclude the referral of other individuals' complaints and concerns that a representative becomes aware are occurring in the facility to the appropriate governmental agency.

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

(b) Provide services to assist residents in the protection of their health, safety, welfare, and rights.

(c) Inform residents about the means of obtaining services delivered by the providers or agencies described in paragraph (1) of subdivision (a) or services described in subdivision (b).

(d) (1) Ensure that residents have regular and timely access to the services provided through the office and that the residents or other complainants receive timely responses from representatives of the office to complaints.

(2) To the extent permitted under federal law, paragraph (1) shall be implemented only to the maximum extent possible within available resources.

(e) Represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

(f) Provide administrative and technical assistance to entities designated as local ombudsman programs, to assist the entities in participating in the program.

(g) Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the state, without interference from the office of the Governor, any state agency, or other entity.

(h) Facilitate public comment on relevant laws, regulations, policies, and actions.

(i) Recommend changes to relevant laws, regulations, policies, or actions that the office determines to be appropriate.

(j) Provide information that the office determines to be necessary to public and private agencies, legislators, and other persons, regarding the problems and concerns of residents of long-term care facilities and recommendations relating to resolving these problems and concerns.

(k) Provide for training representatives of the office.

(l) Promote the development of citizen organizations to participate in the program.

SEC. 7. Section 9713 of the Welfare and Institutions Code is amended to read:

9713. (a) Upon request of the office, the Attorney General shall represent the office or the department and the state in litigation concerning affairs of the office, unless the Attorney General represents another state agency, in which case the agency or the office shall employ other counsel.

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

SEC. 8. Section 9714 of the Welfare and Institutions Code is amended to read:

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

SEC. 9. Section 9714.5 of the Welfare and Institutions Code is amended to read:

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

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

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

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

(e) By March 1 of each year, the board shall determine the amount of funds to be appropriated from the foundation to the office for the support

of the operations and programs of the office and the operations of the foundation. Foundation funds may only be appropriated for the support of the operations and programs of the office and the operations of the foundation.

(f) The members of the board shall be free from conflicts of interest and shall be subject to the same conflict of interest provisions that apply to the State Ombudsman under Section 3058g(f)(3) of Title 42 of the United States Code.

SEC. 10. Section 9716 of the Welfare and Institutions Code is amended to read:

9716. (a) The office shall be responsible for activities that promote the development, coordination, and utilization of resources to meet the long-term care needs of older individuals, consistent with its mission. These responsibilities shall include establishing a statewide uniform reporting system to collect and analyze data relative to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems. The office shall submit the data to the state agency responsible for licensing or certifying long-term care facilities and to the federal Administration on Aging.

(b) Notwithstanding Section 10231.5 of the Government Code, beginning September 30, 2013, and annually thereafter, the office shall prepare and submit an annual advocacy report in accordance with Section 3058g(h)(1) of Title 42 of the United States Code. The annual advocacy report shall do all of the following:

(1) Describe the activities carried out by the office in the year for which the report is prepared, including, but not limited to, actions taken to carry out the advocacy duties of the office described in Sections 9712.5 and 9726.1 and prescribed by the federal Older Americans Act in Section 3058g(a)(3)(E) and (G) of Title 42 of the United States Code.

(2) Contain and analyze the data collected pursuant to Section 3058g(c) of Title 42 of the United States Code.

(3) Evaluate the problems experienced by, and the complaints made by or on behalf of, residents.

(4) Contain recommendations for both of the following:

(A) Improving quality of the care and life of residents.

(B) Protecting the health, safety, welfare, and rights of residents.

(5) (A) Analyze the success of the ombudsman program, including success in providing services to residents of long-term care facilities and other similar adult care facilities.

(B) Identify barriers that prevent the optimal operation of the program.

(6) Provide policy, regulatory, and legislative recommendations to solve identified problems, to resolve complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers identified in subparagraph (B) of paragraph (5).

(c) The office shall promptly post the annual advocacy report on its Internet Web site and shall submit it to the Assistant Secretary of the federal

Administration on Aging, the Governor, the Legislature, the State Department of Public Health, the State Department of Social Services, local ombudsman programs, and other appropriate governmental entities.

(d) The State Ombudsman shall consult with the local ombudsman programs in developing the report.

SEC. 11. Section 9716.11 is added to the Welfare and Institutions Code, to read:

9716.11. (a) The Office of the State Long-Term Care Ombudsman shall maintain an Internet Web presence.

(b) The Internet Web site shall be easily found and prominent on the department's homepage. The Legislature finds and declares that resources currently exist for this purpose.

(c) The Internet Web site shall be consumer driven and shall include, but not be limited to, current long-term care trends and issues, links to local ombudsman programs, the annual advocacy report described in Section 9716, and other information relevant to long-term care facility residents and consumers.

SEC. 12. Section 9717 of the Welfare and Institutions Code is amended to read:

9717. (a) All advocacy programs and any programs similar in nature to the Long-Term Care Ombudsman Program that receive funding or official designation from the state shall cooperate with the office, where appropriate. These programs include, but are not limited to, the Office of Human Rights within the State Department of Mental Health, the Office of Patients' Rights, Disability Rights California, and the Department of Rehabilitation's Client Assistance Program.

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

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

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

SEC. 13. Section 9719 of the Welfare and Institutions Code is amended to read:

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

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

(B) Have received a minimum of 36 hours of certification training that is approved by the office and offered by an approved organization.

(2) Upon receipt of an applicant's criminal record clearance and acceptance by the office, the office shall issue a card identifying the bearer as a certified ombudsman. Each ombudsman shall receive a minimum of 12 hours of additional training annually.

(b) (1) The department shall contract with the State Department of Social Services to conduct a criminal offender record information search, pursuant to Section 1569.17 of the Health and Safety Code, for each applicant seeking certification as an ombudsman. The State Department of Social Services shall notify the individual and the office of the individual's clearance or denial.

(2) An applicant for certification as an ombudsman shall not be responsible for any costs associated with transmitting the fingerprint images and related information or conducting criminal record clearances.

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

SEC. 14. Section 9720 of the Welfare and Institutions Code is repealed.

SEC. 15. Section 9722 of the Welfare and Institutions Code is amended to read:

9722. (a) Representatives of the office shall have the right to enter long-term care facilities and to unescorted, unhindered movement within them for the purposes of identifying, hearing, investigating, and resolving complaints, observing and monitoring conditions of residents and facilities, speaking confidentially with residents, and providing services to assist residents in protecting their health, safety, welfare, and rights. Entry shall be provided at any time deemed necessary and reasonable by the State Ombudsman to effectively carry out this chapter, for any of the purposes described in this subdivision.

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

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

(d) Notwithstanding any other provision of law, a long-term care facility, upon request by a representative of the office, shall provide a roster, census, or other list of the names and room numbers or room locations of all current residents or patients residing in the facility.

SEC. 16. Section 9724 of the Welfare and Institutions Code is amended to read:

9724. Notwithstanding Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code, in order for the office to carry out its responsibilities under this chapter, the office shall have access to the medical or personal records of a patient or resident of a long-term care facility that are retained by the facility, under the following conditions:

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

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

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

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

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

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

(d) If the patient or resident is unable to express written or oral consent and there is no guardian, conservator, or legal representative, or the notification of the guardian, conservator, or legal representative is not applicable for reasons set forth in subdivision (c), inspection of records may be made by ombudsmen when there is sufficient cause for the inspection. The licensee may, at his or her discretion, permit other representatives of the office to inspect records in the performance of their official duties. Copies may be reproduced by the office. The licensee and facility personnel who disclose records pursuant to this subdivision shall not be liable for the disclosure. If investigation of records is sought pursuant to this subdivision, the ombudsman shall, upon request, produce a statement signed by the ombudsman coordinator authorizing the ombudsman to review the records.

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

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

SEC. 17. Section 9726 of the Welfare and Institutions Code is amended to read:

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

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

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

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

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

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

SEC. 18. Section 9726.1 of the Welfare and Institutions Code is amended to read:

9726.1. (a) The office and approved organizations may do any of the following:

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

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

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

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

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

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