

Date of Hearing: May 1, 2012

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Mariko Yamada, Chair

SB 345 (Wolk) – As Amended: April 26, 2012

SENATE VOTE: 26-9

SUBJECT: Office of the State Long-Term Care Ombudsman.

SUMMARY: Conforms various provisions of the codes authorizing the Office of State Long-Term Care Ombudsman (OSLTCO), including requiring an annual advocacy report, to federal statutes. Specifically, this bill:

- 1) Adds legislative findings and declarations with regard to the OSLTCO and the State Long-Term Care Ombudsman's (SLTCO) roles and responsibilities, including that the SLTCO is obligated to represent the interests of long-term care facility residents before governmental agencies, and to seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents.
- 2) Adds conformity language with federal authorizing statutes, including that the OSLTCO represent the interest of long-term care facility residents before governmental agencies, and seek remedies to protect the health, safety, welfare and rights of long-term care facility residents.
- 3) Repeals definition of "medical training" and "medical records training."
- 4) Requires the California Department of Aging (CDA) provide widespread public notification of the availability of the position of SLTCO, and solicit candidates for the position of SLTCO within 10 days of a vacancy, while seeking advice, consultation and recommendations of an existing (though inactive) 7-11 member, advisory council regarding the selection of a candidate within 30 days.
- 5) Requires the SLTCO to be selected from among individuals with expertise and experience in the fields of long-term care and advocacy.
- 6) Requires the Ombudsman to be located in Sacramento, and conforms state statutes to federal law requiring the SLTCO to have completed ombudsman training curriculum, and a 10 hour in-service, performing the duties of a long-term care ombudsman.
- 7) Requires, rather than authorizes, the OSLTCO to hire legal representation, in the event the Attorney General is unavailable, for litigation related to the affairs of the office.
- 8) Requires rather than allows the OSLTCO to solicit, and receive funds, gifts and contributions to support the operations of the office and a charitable foundation, as defined.
- 9) Prohibits conflicts of interest for the 5-member body that governs a charitable foundation, as defined.

- 10) Shifts from the CDA to the OSLTCO, responsibility for the development of a statewide uniform reporting system to collect and analyze data relative to complaints and conditions in long-term care facilities, and responsibility for activities that promote the development, coordination and utilization of resources to meet the needs of older individuals served by the OSLTCO program.
- 11) Requires the SLTCO to report to the legislature and local long-term care ombudsman programs annually on prospective advocacy plans, as well as advocacy activities from the previous year, as defined, in compliance with federal guidance in Title 42.
- 12) Requires the OSLTCO to maintain a website within the CDA's website, and that the web site be consumer driven and include various long-term care related information.
- 13) Requires the CDA and other departments and programs involved in regulating, monitoring, or serving long-term care facility residents to cooperate with, and meet with, the OSLTCO periodically and as needed, to address concerns and questions about care, quality of life, safety, rights, health and well-being of long-term care facility residents.
- 14) Deletes a section of code describing primary roles of the SLTCO, and recasts those duties to identify, investigate and resolve complaints made by, or on behalf of residents of long-term care facilities; provide services to assist residents in the protection of their health, safety, welfare, and rights; inform and ensure residents have timely access to services provided through the OSLTCO; provided technical and administrative support to local long-term care ombudsman programs; analyze, monitor, comment on, and recommend changes to the development of policy impacting residents of long-term care facilities; provide public information regarding the problems and concerns of residents within long-term care facilities; and support the development of organizations to participate in the long-term care program.
- 15) Expands state law to conform with federal law, the reasons why a long-term care ombudsman may enter a long-term care facility, to include identifying complaints, observing and monitoring conditions, speaking confidentially with residents about complaints, and expands the eligible clientele to include all long-term care facility residents, not just those that are elderly.
- 16) Requires long-term care facilities to provide contact information for a conservator, legal representative, or next-of-kin of any resident to the OSLTCO within 24 hours of a request, and to provide long-term care ombudsman program representatives with census information regarding the residents of the facility upon request.
- 17) Requires the OSLTCO, not the CDA, to staff the 24-hour, long-term care ombudsman hotline.
- 18) Reaffirms federal law and requires the OSLTCO to analyze, monitor and comment on the development of local, state, and federal laws, regulations and other governmental policies; to recommend changes to them, and facilitate public comment.
- 19) Allows the OSLTC, in conjunction with local programs, to advise the public of long-term care facility inspection reports, deficiencies, and plans of correction; promote visitation

programs, establish and assist in the development of resident, family, and friends' councils, and present community education programs.

- 20) Requires the convening of an advisory body made up of 7 to 11 members, as defined, and appointed by the Director of the CDA by June 30 of 2013.

#### EXISTING LAW

- 1) Establishes the Long-Term Care Ombudsman program as a result of the federal Older Americans Act (OAA) and places it within the CDA in order to encourage community contact and involvement with elderly patients or residents of long-term care facilities or residential facilities through the use of volunteers and volunteer programs. Federal law generally prohibits ombudsman from making a disclosure of personal information pertaining to an ombudsman program client, unless the client provides written consent.
- 2) Allocates funds 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.
- 3) Provides for the appointment of a SLTCO by the Governor, and specifies requirements of the person filling that position.
- 4) Requires the CDA to establish an 11-member advisory council for the office to provide advice and consultation on issues affecting the provision of ombudsman services.

FISCAL EFFECT: Unknown

#### AUTHORS STATEMENT:

"For too long, facility residents have not had an independent voice at the state level, as required by the federal law. State law needs to be aligned with existing federal law to resolve the conflict that currently exists, and ensure the State Ombudsman can take positions on legislation that affects long-term care residents and local ombudsman programs without interference. SB 345 is the first step toward improving the effectiveness and efficiency of the State Ombudsman's office; strengthen local programs; requiring an annual report; and ensuring the State Ombudsman program is fulfilling its mandated responsibilities to long-term care facility residents throughout the state."

#### COMMENTS:

According to the CDA website, the primary responsibility of the program is to investigate and endeavor to resolve complaints made by, or on behalf of, individual residents in long-term care facilities. These facilities include nursing homes, residential care facilities for the elderly, and assisted living facilities. The Long-Term Care Ombudsman Program investigates elder abuse complaints in long-term care facilities and in residential care facilities for the elderly.

The OSLTCO contracts with 35 local organizations that provide local ombudsman services. Local ombudsman programs recruit and train volunteers to enter long-term care facilities, monitor quality of care and conditions, receive complaints, and endeavor to resolve them

confidentially. There are about 1,000 volunteers providing about 150,000 hours of unpaid advocacy and support to long-term care residents.

SB 345 was originally introduced to establish the OSLTCO as an independent entity outside the state administrative structure. Various legal barriers inspired the current version of the bill, which instead requires an annual advocacy plan in accordance with federal law, among other changes intended to insulate the OSLTCO from the California Department of Aging, and to narrow the field of potential candidates eligible to be appointed by the Governor to the position of SLTCO, when a vacancy occurs. The bill also states that the SLTCO advocacy be free from state departments' interference.

#### SUPPORTERS ARGUE

The California Senior Legislature (CSL) writes that while federal law requires that the OSLTCO speak on behalf of the interests of facility residents before government agencies, in California this is not happening; and that since the SLTCO is a political appointee, the ability to advocate on behalf of residents for changes in policy or funding is seriously constrained. The Congress of California Seniors (CCS) writes that SB 345 would require the SLTCO to take actions that will make clear its authority to act independently as an active advocate for long-term care residents. CCS cites a recent report which indicates that the SLTCO in 21 states was discouraged from acting by their own state's department of aging.

#### OPPONENTS ARGUE

The OSLTCO is largely in support of SB 345 and will remove their opposition upon adoption of committee amendments to be presented in committee.

#### Related Legislation:

AB 40 (Yamada) Requires telephonic reports of physical abuse of dependent adults in institutional settings to be submitted directly to law enforcement with follow-up written reports to be submitted to both law enforcement and the long-term care ombudsman.

AB 2149 (Butler) Prohibits gag-clauses in settlement agreements of actions brought as a result of abuse under the Elder Abuse and Dependent Adult Civil Protections Act from including bans on contacting the long-term care ombudsman, Department of Aging, and various other investigative entities.

AB 2276 (Campos) Appropriates \$1.6 million to the OSLTCO from the State Health Facilities Citation Penalties Account for support of the program during FY 2012-13 and FY 2013-14.

AB 2550 (Carter) Conforms state law to federal guidelines related to the long-term care ombudsman program.

SB 718 (Vargas) Chapter 373, Statutes of 2011, provides for an electronic, internet-based elder abuse reporting mechanism.

SB 897 (Leno) Chapter 376, Statutes of 2011, provides for notification to residents within residential care facilities for the elderly, and the long-term care ombudsman, when facilities become distressed financially, as defined.

REGISTERED SUPPORT / OPPOSITION:

Support

AARP

Advocacy, Inc.

American Federation of State, County and Municipal Employees (AFSCME)

Advisory Council for the Area Agency on Aging – Napa/Solano

Area Agency on Aging – San Luis Obispo/Santa Barbara Counties

California Advocates for Nursing Home Reform (CANHR)

California Long-Term Care Ombudsman Association (CLTCOA)

California Senior Legislature (CSL)

Camarillo health Care District

Central Coast Senior Placement Services

Committee for an Independent State Ombudsman Office (CISO)

Congress of California Seniors (CCS)

Contra Costa County Advisory Council on Aging

Elder and Dependent Adult Abuse Prevention Council

Long-Term Care Ombudsman – San Luis Obispo County

Long-Term Care Ombudsman – Santa Cruz/San Benito Counties

Long-Term Care Ombudsman – Ventura County

Older Women's League (OWL) – Santa Clara County Chapter

Ombudsman & HICAP Services of Northern California

Ombudsman Services of San Mateo County

San Luis Obispo County Commission on Aging

Ventura County Board of Supervisors

WISE & Healthy Aging Long-Term Care Ombudsman Program

Individuals - 2

Support if Amended

California Commission on Aging

Opposition

Office of State Long-Term Care Ombudsman

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