

1 SENATE BILL 171

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Gay G. Kernan

5  
6  
7  
8  
9  
10 AN ACT

11 RELATING TO HUMAN RIGHTS; AMENDING SECTIONS OF THE LONG-TERM  
12 CARE OMBUDSMAN ACT TO ESTABLISH LIMITATIONS ON REFERRAL IN  
13 CASES OF ABUSE, NEGLECT OR EXPLOITATION OF PERSONS RESIDING IN  
14 LONG-TERM CARE FACILITIES; REMOVING THE REQUIREMENT FOR THIRD-  
15 PARTY WITNESSING WHEN RESIDENTS OF LONG-TERM CARE FACILITIES  
16 ORALLY CONSENT TO RELEASE OF MEDICAL, PERSONAL, FINANCIAL AND  
17 OTHER NONMEDICAL RECORDS FOR OFFICE OF THE STATE LONG-TERM CARE  
18 OMBUDSMAN INVESTIGATIONS.

19  
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

21 SECTION 1. Section 28-17-1 NMSA 1978 (being Laws 1989,  
22 Chapter 208, Section 1) is amended to read:

23 "28-17-1. SHORT TITLE.--~~[Sections 1 through 19 of this~~  
24 ~~act]~~ Chapter 28, Article 17 NMSA 1978 may be cited as the

25 "Long-Term Care Ombudsman Act"."

.205392.3SA

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1           SECTION 2. Section 28-17-3 NMSA 1978 (being Laws 1989,  
2 Chapter 208, Section 3, as amended) is amended to read:

3           "28-17-3. DEFINITIONS.--As used in the Long-Term Care  
4 Ombudsman Act:

5           A. "adult protective services" means [~~the children,~~  
6 ~~youth and families department pursuant to the Adult Protective~~  
7 ~~Services Act]~~ the agency's adult protective services division  
8 that receives and investigates reports of adult abuse, neglect  
9 or exploitation;

10           B. "agency" means the [~~state agency on]~~ aging and  
11 long-term services department;

12           C. "care" means assistance with the activities of  
13 daily living, including eating, dressing, oral hygiene,  
14 bathing, mobility, toileting, grooming, taking medications,  
15 transferring from a bed or chair and walking;

16           D. "director" means the [~~director of the state~~  
17 ~~agency on]~~ secretary of aging and long-term services;

18           E. "licensing and certification" means the  
19 licensing and certification bureau of the [~~public health~~  
20 ~~division of the]~~ department of health;

21           F. "long-term care facility" means any residential  
22 facility that provides care to one or more persons unrelated to  
23 the owner or operator of the facility, including:

- 24                   (1) a skilled nursing facility;  
25                   (2) an intermediate care nursing facility,

.205392.3SA

underscored material = new  
[bracketed material] = delete

1 including an intermediate care facility for the [~~mentally~~  
2 ~~retarded~~] intellectually disabled;

3 (3) a nursing facility;

4 (4) an adult residential shelter care home;

5 (5) a boarding home;

6 (6) any other adult care home or adult  
7 residential care facility;

8 (7) a continuing care community;

9 (8) any swing bed in an acute care facility or  
10 extended care facility; and

11 (9) any adult [~~day care~~] daycare facility;

12 G. "office" means the office of the state long-term  
13 care ombudsman;

14 H. "Older Americans Act" means the federal Older  
15 Americans Act of 1965;

16 I. "ombudsman" means an [~~individual~~] employee or  
17 volunteer of the office who is trained and certified to act as  
18 a representative of the office [~~of the state long-term care~~  
19 ~~ombudsman~~];

20 J. "ombudsman coordinator" means the coordinator of  
21 a regional or local ombudsman program designated by the office  
22 [~~of the state ombudsman~~];

23 K. "program" means the New Mexico long-term care  
24 ombudsman program;

25 L. "resident" means any patient, client or person

.205392.3SA

underscoring material = new  
[bracketed material] = delete

1 residing in and receiving care in a long-term care facility;

2 M. "state ombudsman" means the ~~[state long-term~~  
3 ~~care ombudsman]~~ individual who heads the office and supervises  
4 the ombudsmen; and

5 N. "surrogate ~~[decision maker]~~ decision-maker"  
6 means ~~[a legally appointed agent, guardian or surrogate who is~~  
7 ~~authorized to act on behalf of a resident]~~ any of the  
8 following:

9 (1) an individual chosen by a resident to act  
10 on the resident's behalf to support the resident in decision-  
11 making; accessing medical, social or other personal information  
12 of the resident; managing financial matters; or receiving  
13 notifications;

14 (2) an individual authorized by state or  
15 federal law, including an agent pursuant to a power of  
16 attorney, a representative payee or other fiduciary of the  
17 resident, to act on behalf of a resident to support the  
18 resident in decision-making; accessing medical, social or other  
19 personal information of the resident; managing financial  
20 matters; or receiving notifications;

21 (3) a resident's legal representative; or

22 (4) the court-appointed guardian or  
23 conservator of a resident."

24 SECTION 3. Section 28-17-9 NMSA 1978 (being Laws 1989,  
25 Chapter 208, Section 9, as amended) is amended to read:

.205392.3SA

1 "28-17-9. REFERRALS.--

2 A. When [~~abuse, neglect or exploitation of a~~  
3 ~~patient, resident or client of a long-term care facility is~~  
4 ~~suspected, the office shall make a referral to adult protective~~  
5 ~~services and licensing and certification, where appropriate.~~  
6 ~~The office shall coordinate with adult protective services and~~  
7 ~~licensing and certification pursuant to any investigation of~~  
8 ~~abuse, neglect or exploitation undertaken by those agencies]~~  
9 the state ombudsman or an ombudsman witnesses the abuse,  
10 neglect or exploitation of a resident who is unable to provide  
11 informed consent, the state ombudsman or ombudsman shall  
12 determine the wishes of the resident with regard to referring  
13 the complaint to another state agency, as set forth in  
14 Subsection B of this section. Only if the resident provides  
15 informed consent, or if the resident's surrogate decision-maker  
16 provides informed consent, may the state ombudsman or ombudsman  
17 disclose resident information or other relevant information  
18 with respect to whether the allegations are referred to a state  
19 agency listed in Subsection B of this section. Additionally,  
20 if the resident is unable to communicate informed consent to  
21 the state ombudsman or ombudsman and has no surrogate decision-  
22 maker, the state ombudsman or ombudsman shall comply with the  
23 procedures established pursuant to federal law.

24 B. The following state agencies or boards shall  
25 endeavor to give priority to any complaint referred to them by

.205392.3SA

underscored material = new  
[bracketed material] = delete

1 the office:

2 (1) the facilities management division of the  
3 general services department;

4 ~~[(1)]~~ (2) licensing and certification;  
5 ~~[(2) the children, youth and families~~  
6 ~~department;]~~

7 (3) adult protective services;

8 ~~[(3)]~~ (4) the New Mexico medical board; ~~[of~~  
9 ~~medical examiners;~~

10 ~~[(4)]~~ (5) the board of nursing;

11 ~~[(5)]~~ (6) the board of nursing home  
12 administrators; ~~[or~~

13 ~~[(6)]~~ (7) the board of pharmacy;

14 ~~[The office shall coordinate its efforts with those of any~~  
15 ~~state agency or board to which it makes investigation~~  
16 ~~referrals]~~

17 (8) the office of the attorney general; and

18 (9) the medical assistance division of the  
19 human services department.

20 C. Any state agency or board ~~[which]~~ that responds  
21 to a complaint against a long-term care facility or licensed  
22 individual that was referred to the agency by the office shall  
23 forward to the office copies of related inspection reports and  
24 plans of correction and notice of any citations ~~[and]~~ or  
25 sanctions levied against the long-term care facility or the

.205392.3SA

underscored material = new  
[bracketed material] = delete

1 licensed individual."

2 SECTION 4. Section 28-17-13 NMSA 1978 (being Laws 1989,  
3 Chapter 208, Section 13, as amended) is amended to read:

4 "28-17-13. ACCESS TO RECORDS OF PATIENTS, RESIDENTS OR  
5 CLIENTS.--

6 A. In order for the office to carry out its  
7 responsibilities, including conducting investigations, under  
8 the Long-Term Care Ombudsman Act, the office shall have full  
9 and immediate access to readily available medical, personal,  
10 financial and other nonmedical records, which include  
11 administrative records, policies, procedures or documents that  
12 concern, involve or pertain to a resident's diet, comfort,  
13 health, safety or welfare, but do not include internal quality  
14 assurance and risk management reports, of a patient, resident  
15 or client of a long-term care facility that are retained by the  
16 facility or the facility's parent corporation or owner. If the  
17 records are not readily available, they are to be provided to  
18 the office within twenty-four hours of the request. If the  
19 patient, resident or client:

20 (1) has the ability to consent in writing,  
21 access may only be obtained by the written consent of the  
22 patient, resident or client;

23 (2) is unable to consent in writing, oral  
24 consent may be given [~~in the presence of a third party as~~  
25 ~~witness~~];

.205392.3SA

underscored material = new  
[bracketed material] = delete

1 (3) has a legally appointed surrogate  
2 [~~decision-maker~~] decision-maker authorized to approve review of  
3 records, the office shall obtain the permission of the  
4 surrogate [~~decision-maker~~] decision-maker for review of the  
5 records, unless any of the following apply:

6 (a) the existence of the surrogate  
7 [~~decision-maker~~] decision-maker is unknown to the office or the  
8 facility;

9 (b) the surrogate [~~decision-maker~~]  
10 decision-maker cannot be reached within five working days;

11 (c) access to the records is necessary  
12 to investigate or evaluate a complaint; or

13 (d) the surrogate [~~decision-maker~~]  
14 decision-maker refuses to give the permission and a  
15 representative of the office has reasonable cause to believe  
16 that the surrogate [~~decision-maker~~] decision-maker is not  
17 following the wishes of the resident; and

18 (4) is unable to express written or oral  
19 consent and there is no surrogate [~~decision-maker~~] decision-  
20 maker or the notification of the surrogate [~~decision-maker~~]  
21 decision-maker is not applicable for reasons set forth in  
22 Paragraph (3) of this subsection or the patient, resident or  
23 client is deceased, inspection of records may be made by  
24 employees of the office, ombudsman coordinators and by  
25 ombudsmen approved by the ombudsman coordinator or the state

.205392.3SA

underscoring material = new  
~~[bracketed material] = delete~~

1 ombudsman.

2 B. Copies of records may be reproduced by the  
3 office. If investigation of records is sought pursuant to this  
4 section, the ombudsman shall upon request produce a statement  
5 signed by the ombudsman coordinator or state ombudsman  
6 authorizing the ombudsman to review the records. Facilities  
7 providing copies of records pursuant to this section may charge  
8 the office for the actual copying cost for each page copied.

9 C. Upon request by the office, a long-term care  
10 facility shall provide to the office the name, address and  
11 telephone number of the guardian, conservator, attorney-  
12 in-fact, legal representative or next-of-kin of any patient,  
13 resident or client and a copy of any document granting legal  
14 decision-making power over a resident.

15 D. The long-term care facility and personnel who  
16 disclose records pursuant to this section shall not be liable  
17 for the disclosure.

18 E. In order to carry out its responsibilities as a  
19 health oversight agency, the office shall establish procedures  
20 to protect the confidentiality of records obtained pursuant to  
21 this section and in accordance with the federal Health  
22 Insurance Portability and Accountability Act of 1996  
23 regulations."

24 - 9 -

25