

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 7.
HUMAN HEALTH CARE AND SAFETY.

CHAPTER 7.
LONG-TERM CARE OMBUDSMAN PROGRAM.

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DISTRICT OF COLUMBIA OFFICIAL CODE
CHAPTER 7. LONG-TERM CARE OMBUDSMAN
PROGRAM.

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CHAPTER 7. LONG-TERM CARE

OMBUDSMAN PROGRAM.

SUBCHAPTER I. DEFINITIONS.

§ 7-701.01. DEFINITIONS.

For the purposes of this chapter, the term:

- (1) "Administrator" means the person who is responsible for the day-to-day operation and management of a long-term care facility, including, in the case of a community residence facility, the residence director.
- (2) "Court" means the Superior Court of the District of Columbia.
- (3) "Department of Consumer and Regulatory Affairs" means the District of Columbia Department of Consumer and Regulatory Affairs established pursuant to Reorganization Plan No. 1 of 1983.
- (3A) "Department of Health, Health Regulations and Licensing Administration" means the administrative office established in January 17, 2007 under the Department of Health.
- (4) "Department of Human Services" means the District of Columbia Department of Human Services established pursuant to Reorganization Plan No. 2 of 1979 and Reorganization Plan No. 3 of 1986.
- (4A) "Department of Mental Health" means the Department of Mental Health established as a separate cabinet-level agency pursuant to § 7-1131.03.
- (5) "Designee" means a person who:
 - (A) Has received a minimum of 15 hours of certified training in accordance with § 7-702.04(a)(15);
 - (B) Is an employee or volunteer of the program established pursuant to § 7-702.01 or has written authorization to act on behalf of the ombudsman pursuant to § 7-702.04(a)(3).
- (6) "Director" means the Executive Director of the District of Columbia Office on Aging established by § 7-503.02.
- (6A) "Home care agency" shall have the same meaning as provided in § 44-501(a)(7).
- (7) "Long-term care facility" means:
 - (A) A "community residence facility" as defined in § 44-501(a)(4);
 - (B) A "nursing home" as defined in § 44-501(a)(3); or
 - (C) An "assisted living residence" as defined in § 44-101.01(4).
- (7A) "Long-term care services" means services received at a long-term care facility and services provided to residents in the community who need a nursing home level of care and receive home health care through the Medicaid Elderly and Physically Disabled Waiver.
- (8) "Ombudsman" means the District of Columbia Long-Term Care Ombudsman established by § 7-702.02(a) and designated under § 307(a)(12) of the Older Americans Act of 1965; (42 U.S.C. § 3027(a)(12)), to perform the mandated functions of the Long-Term Care Ombudsman Program.
- (9) "Office on Aging" means the District of Columbia Office on Aging established by § 7-503.01.
- (10) "Person" means an individual, an agent, a corporation, a partnership, or any other organizational entity.
- (11) "Program" means the District of Columbia Long-Term Care Ombudsman Program established by § 7-702.01.
- (12) "Record" means:
 - (A) Medical, social, personal, or financial information maintained by a health-care facility covered by the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of

1983, or by a District of Columbia ("District") government agency that has responsibility for the care and maintenance of a resident in a long-term care facility; and

(B) An administrative record, cost or incident report, or a report of a civil infraction, inspection, or deficiency maintained by a long-term care facility or a District government agency.

(13) "Resident" means a resident of a long-term care facility or an individual receiving long-term care services from a home care agency through the Medicaid Elderly and Physically Disabled Waiver.

(14) "Representative of a resident" means:

(A) A person who is knowledgeable about the circumstances of a resident and has been designated by that resident to represent him or her; or

(B) A person, other than a facility, who has been appointed by a court to administer the financial or personal affairs of a resident or to protect and advocate for the rights of a resident; or

(C) The ombudsman or his or her designee, if no person has been designated or appointed in accordance with subparagraph (A) or (B) of this paragraph.

(Mar. 16, 1989, D.C. Law 7-218, § 101, 36 DCR 534; Mar. 12, 2011, D.C. Law 18-321, § 2(a), 57 DCR 12438; Mar. 14, 2012, D.C. Law 19-111, § 2(a), 59 DCR 455.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-3501.

Effect of Amendments

D.C. Law 18-321 added pars. (3A) and (4A); in par. (5)(B), substituted "Is an employee or volunteer" for "Is an employee"; and, in par. (7), deleted "or" from the end of subpar. (A), substituted "; or" for a period at the end of subpar. (B), and added subpar. (C).

D.C. Law 19-111 added pars. (6A) and (7A); and rewrote par. (13), which formerly read:

"(13) 'Resident' means a resident of a long-term care facility."

Legislative History of Laws

Law 7-218, the "District of Columbia Long-Term Care Ombudsman Program Act of 1988," was introduced in Council and assigned Bill No. 7-334, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-293 and transmitted to both Houses of Congress for its review.

Law 18-321, the "Long-Term Care Ombudsman Program Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-1003, which was referred to the Committee on Aging and Community Affairs. The Bill was adopted on first and second readings on November 9, 2010, and November 23, 2010, respectively. Signed by the Mayor on December 9, 2010, it was assigned Act No. 18-642 and transmitted to both Houses of Congress for its review. D.C. Law 18-321 became effective on March 12, 2011.

Law 19-111, the "Long-Term Care Ombudsman Program Amendment Act of 2012", was introduced in Council and assigned Bill No. 19-213, which was referred to the Committee on Aging and Community Affairs. The Bill was adopted on first and second readings on December 6, 2011, and January 4, 2012, respectively. Signed by the Mayor on January 20, 2012, it was assigned Act No. 19-281 and transmitted to both Houses of Congress for its review. D.C. Law 19-111 became effective on March 14, 2012.

References in Text

The "Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983", referred to in paragraph (12), is D.C. Law 5-48.

SUBCHAPTER II. ESTABLISHMENT OF A LONG-TERM CARE OMBUDSMAN PROGRAM.

§ 7-702.01. PURPOSE AND FUNCTIONS.

There is established a Long-Term Care Ombudsman Program for the District of Columbia within the Office on Aging. The program shall provide a comprehensive continuum of advocacy services for older persons and other persons who are residents in the District, which shall include:

(1) Advocating for the rights of older persons and other persons who are residents;

(2) Investigating and resolving any complaint made by or on behalf of an older person or other person

who is a resident; and

(3) Monitoring the quality of care, services provided, and quality of life experienced by older persons and residents to ensure that the care and services are in accordance with applicable District and federal laws.

(Mar. 16, 1989, D.C. Law 7-218, § 201, 36 DCR 534.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-3511.

Legislative History of Laws

For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

§ 7-702.02. LONG-TERM CARE OMBUDSMAN; APPOINTMENT; VACANCY.

(a) The program shall be administered by a full-time ombudsman and shall be under the Director of the Office on Aging ("Director") or his or her designee. The Director shall appoint the ombudsman for a term of 2 years and approve of the designee of the ombudsman. The ombudsman shall be a resident of the District.

(b) The Director may contract with a nonprofit provider, other than the District government, to operate the program. The provider shall have experience advocating for the rights of older persons and residents. The ombudsman shall be an employee of the nonprofit provider.

(c) The Director shall ensure that the following are provided to the ombudsman or his or her designee to implement the provisions of this chapter:

- (1) Legal counsel for advice and consultation;
- (2) Legal representation, if legal action is taken to implement the provisions of this chapter; and
- (3) Clerical and administrative support staff and materials.

(d) The primary responsibility of the ombudsman or his or her designee shall be the investigation and resolution of any complaint made by or on behalf of a resident.

(Mar. 16, 1989, D.C. Law 7-218, § 202, 36 DCR 534.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-3512.

Legislative History of Laws

For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

**§ 7-702.03. LONG-TERM CARE OMBUDSMAN; APPOINTMENT; VACANCY--
TRAINING AND EXPERIENCE.**

(a) The ombudsman shall have training and experience in the following areas:

- (1) Gerontology, long-term care, health care, or relevant social services program;
- (2) The legal system;
- (3) Dispute resolution techniques, including investigation, mediation, or negotiation; and
- (4) Long-term care advocacy.

(b) No person who has been employed by a long-term care facility or a corporation that directly or indirectly owned or operated a long-term care facility within the past 2 years shall be an ombudsman.

(c) Neither the ombudsman nor any member of his or her immediate family shall have any pecuniary interest in a long-term care facility.

(Mar. 16, 1989, D.C. Law 7-218, § 203, 36 DCR 534.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-3513.

For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

**§ 7-702.04. LONG-TERM CARE OMBUDSMAN; APPOINTMENT; VACANCY--
POWERS AND DUTIES.**

(a) The ombudsman shall:

- (1) Receive, investigate, and resolve complaints or concerns made by or on behalf of residents;
- (2) Promote the well-being and quality of life of each resident;
- (3) Encourage the development and the expansion of the activities of the program in all wards of the District, sufficient to serve the residents in those wards;
- (4) Submit to the Office on Aging for submission to the Council and the Mayor annual reports that document complaints received and resolved and recommend policy, regulatory, or legislative changes;
- (5) Enter into, on behalf of the Office on Aging and with the approval of the Director, written agreements of understanding, cooperation, and collaboration with any District government agency that provides funding, oversight, or inspection of, or operates a long-term care facility;
- (6) Establish and implement program policies and procedures to elicit, receive, investigate, verify, refer, and resolve residents' complaints;
- (7) Develop an on-going program for publicizing the program;
- (8) Identify, document, and address solutions to problems affecting residents;
- (9) Serve as the legal representative for residents, pursuant to §§ 44- 1003.02(e), 44-1003.03(a)(1), and 44-1003.07(a) and (b);
- (10) Repealed.
- (11) Establish a uniform system to record data on complaints and conditions relating to long-term care services;
- (12) Monitor the development and implementation of district and federal laws, rules, regulations, and policies that affect residents;
- (13) Make specific recommendations, through the Office on Aging, to the operator or agent of the operator of any long-term care facility, whenever the ombudsman believes that conditions exist that adversely affect residents' health, safety, welfare, or rights;
- (14) Report to the appropriate enforcement agency any act of an operator of a long-term care facility or home care agency that the ombudsman believes to be a violation of an applicable federal or District law, regulation, or rule;
- (15) Establish and conduct a training program for persons employed by or associated with the program, which shall include training in the following areas:
 - (A) The review of medical records;
 - (B) Regulatory requirements for long-term care facilities;
 - (C) Confidentiality of records;
 - (D) Techniques of complaint investigation;
 - (E) The effects of institutionalization; and
 - (F) The special needs of the elderly;
- (16) Assist in the formation, development, and use by residents, their families, and friends of forums that permit residents, their families, and friends to discuss and communicate, on a regular and continuing basis, their views on the strengths and weaknesses of the operation of the facility, the quality of care provided, and the quality of life fostered in long-term care facilities;
- (17) Establish and maintain procedures to protect the confidentiality of the records of residents and long-term care facilities where access is authorized pursuant to § 7-703.02;
- (18) Prohibit any employee, designee, or representative of the program from investigating any complaint or representing the ombudsman, unless that person has received training in accordance with paragraph (15) of this subsection; and
- (19) Designate local ombudsman programs to act on behalf of the ombudsman within specific geographical areas.

(b) No person, agency, or long-term care facility shall obstruct the ombudsman or his or her designee from the lawful performance of any duty or the exercise of any power.

(Mar. 16, 1989, D.C. Law 7-218, § 204, 36 DCR 534; Feb. 5, 1994, D.C. Law 10-68, § 18, 40 DCR 6311; Mar. 12, 2011, D.C. Law 18-321, § 2(b), 57 DCR 12438; Mar. 14, 2012, D.C. Law 19-111, § 2(b), 59 DCR 455; Sept. 26, 2012, D.C. Law 19-171, § 54(a), 59 DCR 6190.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-3514.

Effect of Amendments

D.C. Law 18-321 rewrote subsecs. (a)(1), (4), (6); repealed subsec. (a)(10); in subsec. (a)(11), substituted "Establish a uniform system to record data on complaints and conditions relating to long-term care services;" for "Establish a system for coordinating a uniform District-wide system to record data on complaints and conditions in long-term care facilities;"; and, in subsec. (a)(13), substituted "conditions exist that adversely affect residents' health, safety, welfare, or rights;" for ""conditions which adversely affect the health, safety, welfare, or rights of a resident exist within the long-term care facility;". Prior to amendment or repeal, subsecs. (a)(1), (4), (6), and (10) read as follows:

"(1) Investigate and resolve complaints and concerns made by or on behalf of older persons and other residents in the District;"

"(4) Submit annually, to the Office on Aging for submission to the Council and the Mayor, a written report documenting the complaints received and resolved, and recommending policy, regulatory, or legislative changes;"

"(6) Establish and implement program policies and procedures for eliciting, receiving, investigating, verifying, referring, and resolving complaints of residents;"

"(10) Report any instance of suspected abuse, neglect, or exploitation of a resident to the Office of Adult Protective Services, within the Department of Human Services, and the Service Facility Regulation Administration, within the Department of Consumer and Regulatory Affairs, within 24 hours of receipt of a complaint or information concerning suspected abuse, neglect, or exploitation;"

D.C. Law 19-111, in subsec. (a)(1), substituted "Receive, investigate," for "Investigate"; and, in subsec. (a)(14), substituted "long-term care facility or home care agency" for "long-term care facility".

D.C. Law 19-171, in subsec. (a)(6), validated a previously made technical correction.

Legislative History of Laws

For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

For history of Law 18-321, see notes under § 7-701.01.

For history of Law 19-111, see notes under § 7-701.01.

For history of Law 19-171, see notes under § 7-242.

§ 7-702.05. COMPLAINT INVESTIGATION.

(a) The ombudsman and his or her designee shall have access to any record that is necessary to carry out his or her responsibilities under this chapter.

(b) The ombudsman or his or her designee may initiate an investigation of a long-term care facility independent of the receipt of a specific complaint.

(Mar. 16, 1989, D.C. Law 7-218, § 205, 36 DCR 534.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-3515.

Legislative History of Laws

For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

§ 7-702.06. CONFIDENTIALITY OF RECORDS AND IDENTITIES OF

RESIDENTS.

(a) The program shall protect the confidentiality of the records (electronic or hard copy) of the residents and employees.

(b) No information or records (electronic or hard copy) maintained by the program shall be disclosed to the public.

(c) Except as provided in subsection (d) of this section, the program shall not disclose the identity of any complainant, resident involved in a complaint, witness, or representative of a resident, unless the complainant, resident, or representative of a resident authorizes the disclosure.

(d) A court may order the disclosure of information made confidential under this chapter if it determines that the disclosure is necessary to enforce this chapter.

(e) A communication between a resident and a person who has access under § 7-703.01 shall be confidential, unless the resident authorizes the release of the communication or unless disclosure is authorized under § 7-702.04(a)(1) or subsection (d) of this section.

(Mar. 16, 1989, D.C. Law 7-218, § 206, 36 DCR 534; Mar. 12, 2011, D.C. Law 18-321, § 2(c), 57 DCR 12438; Sept. 26, 2012, D.C. Law 19-171, § 54(b), 59 DCR 6190.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-3516.

Effect of Amendments

D.C. Law 18-321, in subssecs. (a) and (b), substituted "records (electronic or hard copy)" for "records"; in subsec. (c), substituted "Except as provided in subsection (d) of this section, the program" for "the program"; and added subssecs. (d) and (e).

D.C. Law 19-171, in subsec. (c), validated a previously made technical correction.

Legislative History of Laws

For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

For history of Law 18-321, see notes under § 7-701.01.

For history of Law 19-171, see notes under § 7-242.

§ 7-702.07. IMMUNITY FROM LIABILITY.

(a) No employee, designee, or representative of the program shall be held liable for the good faith performance of responsibilities under this chapter, except that no immunity shall extend to criminal acts.

(b) Repealed.

(c) No communication made by the ombudsman or his or her designee, if reasonably related to the requirements of his or her responsibilities, shall be subject to civil action.

(d) Repealed.

(Mar. 16, 1989, D.C. Law 7-218, § 207, 36 DCR 534; Mar. 12, 2011, D.C. Law 18-321, § 2(d), 57 DCR 12438.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-3517.

Effect of Amendments

D.C. Law 18-321 repealed subssecs. (b) and (d); and, in subsec. (c), substituted "action" for "action for libel or slander". Prior to repeal, subssecs. (b) and (d) read as follows:

"(b) No discriminatory, disciplinary, or retaliatory action shall be taken against an employee of a long-term care facility or agency, resident, or representative of the program, for any communication made to aid the program in carrying out its duties and responsibilities, unless the communication was made maliciously or in bad faith. This subsection shall not be construed to infringe upon the rights of an employer to supervise, discipline, or terminate an employee for other reasons."

"(d) A court may order the disclosure of information made confidential under this chapter, if it determines that the disclosure is necessary to enforce this chapter."

Legislative History of Laws

For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

For history of Law 18-321, see notes under § 7-701.01.

SUBCHAPTER III. ACCESS FOR THE LONG-TERM CARE OMBUDSMAN AND DESIGNEES.

§ 7-703.01. ACCESS TO LONG-TERM CARE FACILITIES.

(a) The operator of a long-term care facility shall permit the ombudsman or his or her designee access to the facility to:

- (1) Visit, talk with, or make personal, social, or legal services available to all residents, or investigate complaints;
- (2) Inform residents of their rights or entitlements, and corresponding obligations under applicable federal and District law by means of distribution of educational materials or discussion in groups and with individual residents;
- (3) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance, social security benefits, or other matters in which residents are aggrieved; and
- (4) Inspect all areas of the facility, except the living area of a resident who protests inspection.

(b) Access under this section shall be permitted to the ombudsman or his or her designee 24 hours a day, 7 days a week.

(c) Upon entering a long-term care facility in accordance with this section, the ombudsman or his or her designee shall promptly advise 1 of the following persons of his or her presence:

- (1) The administrator or acting administrator;
- (2) The residence director; or
- (3) Another available supervisory agent of the facility.

(d) A person who has access under this section shall not enter the living area of a resident without identifying him or herself to the resident and receiving the permission of the resident to enter.

(e) A resident shall have the right to terminate, at any time, any visit by a person or representative of the program who has access under this section.

(f) Repealed.

(g) No resident shall be punished or harassed by the operator of a facility or an agent or employee of the operator of the facility because of efforts of the resident to avail himself or herself of his or her rights pursuant to this chapter.

(h) A written notice, prescribed by the ombudsman, that describes the rights of a resident pursuant to this chapter and the telephone number of the ombudsman shall be posted in a conspicuous place at or near the entrance to the long-term care facility and on each floor of the facility.

(i) The operator of a long-term care facility shall provide each resident a personal written copy of the notice required under subsection (h) of this section. Each new resident shall be provided a written copy of the notice upon admission.

(j) If a resident cannot read the notice required under subsection (h) of this section, the contents of the notice shall be communicated to that resident orally and in writing.

(k) The written notice required under subsection (h) of this section shall be provided in the appropriate language to those residents who do not speak or understand English.

(l) A notation that personal notice, as required by subsection (i) of this section, has been provided shall be entered in the clinical record of each resident.

(m) Nothing in this section shall be construed to restrict any right or privilege of a resident to receive a visitor who is not a representative of a community organization, legal services program, or the program.

(Mar. 16, 1989, D.C. Law 7-218, § 301, 36 DCR 534; Mar. 12, 2011, D.C. Law 18-321, § 2(f), 57 DCR 12438.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-3521.

Effect of Amendments

D.C. Law 18-321, in subsec. (b), substituted "to the ombudsman or his or her designee 24 hours a day, 7 days a week" for "between the hours of 8:00 a.m. and 8:00 p.m. daily, unless the nature of the complaint requires investigation at other times"; and repealed subsec. (f), which had read as follows:

"(f) A communication between a resident and a person who has access under this section shall be confidential, unless the resident authorizes the release of the communication."

Legislative History of Laws

For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

For history of Law 18-321, see notes under § 7-701.01.

§ 7-703.02. ACCESS TO RECORDS.

(a) Each District agency shall provide cooperation, assistance, data, and the access to records necessary to enable the ombudsman to perform his or her duties under this chapter and other applicable federal and District law. This section shall not be construed to supercede the laws or rules governing access to unexpurgated arrest records maintained by the Metropolitan Police Department or interfere with ongoing criminal investigations.

(b) The ombudsman or his or her designee shall have the same access that is provided to the Mayor to review, inspect, or photocopy the records of a resident of a facility covered by § 44-501 et seq., or § 44-1001.01 et seq., to carry out the provisions of this chapter.

(c) The ombudsman or his or her designee may request a subpoena pursuant to § 1-301.21, to obtain access to records covered by this section.

(d) An owner, employee, or agent of a long-term care facility who lawfully discloses information or permits access to records pursuant to this section shall not be liable for civil penalties or criminal prosecution.

(e) An owner, employee, or agent of a long-term care facility or home care agency subject to 45 CFR §§ 164.500 through 164.534 (the Health Insurance Portability and Accountability Act privacy regulation), shall release records to the program as an exempt health oversight agency.

(Mar. 16, 1989, D.C. Law 7-218, § 302, 36 DCR 534; Mar. 12, 2011, D.C. Law 18-321, § 2(g), 57 DCR 12438; Mar. 14, 2012, D.C. Law 19-111, § 2(c), 59 DCR 455.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-3522.

Effect of Amendments

D.C. Law 18-321 added subsec. (e).

D.C. Law 19-111, in subsec. (e), substituted "long-term care facility or home care agency" for "long-term care facility".

Legislative History of Laws

For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

For history of Law 18-321, see notes under § 7-701.01.

For history of Law 19-111, see notes under § 7-701.01.

§ 7-703.03. VISITS TO THE HOME OF A RESIDENT.

The Ombudsman may communicate and visit with a resident who receives home care services; provided, that the Ombudsman obtains permission from the resident or a representative of the resident to enter the resident's home.

(Mar. 16, 1989, D.C. Law 7-218, § 303, as added Mar. 14, 2012, D.C. Law 19-111, § 2(d), 59 DCR 455.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) repeal of section 3 of D.C. Law 19-111, see § 7013 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) repeal of section 3 of D.C. Law 19-111, see § 7013 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

For history of Law 19-111, see notes under § 7-701.01.

Miscellaneous Notes

Section 3 of D.C. Law 19-111 provides:

"Sec. 3. Applicability.

"This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan."

Section 7013 of D.C. Law 19-168 repealed section 3 of D.C. Law 19-111.

SUBCHAPTER IV. ENFORCEMENT; PENALTIES; JUDICIAL REVIEW.

§ 7-704.01. ENFORCEMENT; PENALTIES.

(a) Civil fines, penalties, or related costs may be imposed against any long-term care facility, owner, executive officer, administrator, employee, or agent, for the violation of any provision of this chapter or any rule issued pursuant to this chapter.

(b) Procedures for adjudication and enforcement and applicable civil fines, penalties, or costs shall be those prescribed for a Class 2 civil infraction, pursuant to Chapter 18 of Title 2.

(c) If the ombudsman or his or her designee knowingly violates § 7-703.06 by releasing a confidential document, record, or other information obtained pursuant to § 7-703.02(b), the ombudsman or his or her designee may be prosecuted for a misdemeanor and, upon conviction, subject to a fine of not more than \$1,500, imprisonment for not more than 30 days, or both.

(d) No person shall take discriminatory, disciplinary, or retaliatory action against an employee of a long-term care facility or agency, resident, or resident representative for filing in good faith a complaint with, or providing information to, the ombudsman or his designees. A person who violates this provision, or who aids, abets, invites, compels, or coerces another to do so, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed \$1,000, imprisonment not to exceed 180 days, or both. This subsection shall not infringe upon the rights of an employer to supervise, discipline, or to terminate an employee for other reasons.

(e) A person who knowingly denies access to the ombudsman or his or her designee in violation of subchapter III of this chapter, or aids, abets, invites, compels, or coerces another to do so, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed \$1,000, imprisonment not to exceed 180 days, or both.

(Mar. 16, 1989, D.C. Law 7-218, § 401, 36 DCR 534; Mar. 12, 2011, D.C. Law 18-321, § 2(h), 57 DCR 12438.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-3531.

Effect of Amendments

D.C. Law 18-321 added subsecs. (d) and (e).

Legislative History of Laws

For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

For history of Law 18-321, see notes under § 7-701.01.

SUBCHAPTER V. PRIVATE RIGHTS OF ACTION.

§ 7-705.01. INJUNCTIVE RELIEF.

A resident, a representative of a resident, the ombudsman, or the Attorney General may bring an action in court for a temporary restraining order, preliminary injunction, or permanent injunction to enjoin a long-term care facility from violating a provision of subchapter II or III of this chapter or any rule issued by the Mayor pursuant to this chapter.

(Mar. 16, 1989, D.C. Law 7-218, § 501, 36 DCR 534; Mar. 12, 2011, D.C. Law 18-321, § 2(i), 57 DCR

12438.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-3541.

Effect of Amendments

D.C. Law 18-321 substituted "Attorney General" for "Corporation Counsel".

Legislative History of Laws

For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

For history of Law 18-321, see notes under § 7-701.01.

§ 7-705.02. CIVIL ACTION FOR DAMAGES.

(a) A resident, a representative of a resident, or the ombudsman, on behalf of a resident, may bring an action in court to recover actual and punitive damages for an injury that results from a violation of subchapter II or III of this chapter, or any rule issued by the Mayor pursuant to this chapter. Upon proof of a violation, the resident shall be awarded 3 times the actual damages or \$1000, whichever is greater, and may be awarded punitive damages not to exceed \$10,000.

(b) The first \$7,000 of a damage award recovered by a resident in an action brought under this section shall be excluded from consideration when determining the eligibility of the resident for Medicaid, the amount of assistance the resident is entitled to under Medicaid, or the assets of the resident that the District may subject to a lien, set-off, or other legal process for the purpose of satisfying indebtedness created by the receipt of Medicaid or other public assistance payments.

(Mar. 16, 1989, D.C. Law 7-218, § 502, 36 DCR 534; Mar. 12, 2011, D.C. Law 18-321, § 2(j), 57 DCR 12438.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-3542.

Effect of Amendments

D.C. Law 18-321, in subsec. (a), substituted "\$1000, whichever is greater, and may be awarded punitive damages not to exceed \$10,000" for "\$100, whichever is greater, and may be awarded punitive damages of up to \$5,000"; and, in subsec. (b), substituted "\$7,000" for "\$3,000".

Legislative History of Laws

For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

For history of Law 18-321, see notes under § 7-701.01.

§ 7-705.03. COURT COSTS AND ATTORNEY'S FEES.

The court shall award costs and reasonable attorney's fees to a resident who prevails in an action brought under § 7-705.01 or § 7-705.02.

(Mar. 16, 1989, D.C. Law 7-218, § 503, 36 DCR 534.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-3543.

Legislative History of Laws

For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

SUBCHAPTER VI. MISCELLANEOUS.

§ 7-706.01. RULES.

Within 90 days of March 16, 1989, the Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue

proposed rules to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(Mar. 16, 1989, D.C. Law 7-218, § 601, 36 DCR 534.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 6-3551.

Legislative History of Laws

For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

Delegation of Authority

Delegation of authority under D.C. Law 7-218, the "District of Columbia Long-Term Care Ombudsman Program Act of 1988", see Mayor's Order 89-86, April 28, 1989.