

SENATE BILL NO. 312

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

on January 30, 2024)

(Patron Prior to Substitute--Senator Salim)

A BILL to amend and reenact §§ 51.5-182 and 51.5-183 of the Code of Virginia and to amend the Code of Virginia by adding in Article 13 of Chapter 14 of Title 51.5 a section numbered 51.5-186, relating to Office of the State Long-Term Care Ombudsman; independent living community.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 51.5-182 and 51.5-183 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 13 of Chapter 14 of Title 51.5 a section numbered 51.5-186 as follows:**

**§ 51.5-182. Responsibility for complaints and investigations.**

A. For purposes of this article, "independent living community" means any congregate housing reserved for residents age 55 and older who do not require assistance with activities of daily living from community staff members that provide two or more services, such as meals, transportation, laundry, or housekeeping for their residents. "Independent living community" includes (i) such services for which a resident or representative acting on his behalf contracts through third-party providers and (ii) communities that oversee residents either through daily check-ins or emergency call systems monitored by community staff. "Independent living community" shall not include the following services: the provision of nursing or medical care, medication administration, assistance with medication administration, or assistance with activities of daily living.

B. In addition to its responsibilities for complaints regarding services provided by long-term care facilities pursuant to the Older Americans Act, 42 U.S.C. § 3001 et seq., as amended, the Office of the State Long-Term Care Ombudsman shall investigate complaints regarding services provided by (i) licensed adult day care centers as defined in § 63.2-100, (ii) home care organizations as defined in § 32.1-

27 162.7, (iii) hospice facilities as defined in § 32.1-162.1, (iv) providers as defined in § 37.2-403, (v) state  
28 hospitals operated by the Department of Behavioral Health and Developmental Services, ~~and~~ (vi) an area  
29 agency on aging or any private nonprofit or proprietary agency providing services, and (vii) independent  
30 living communities.

31 Nothing in this section shall affect the services provided by local departments of social services  
32 pursuant to § 63.2-1605.

33 **§ 51.5-183. Access to clients, patients, individuals, providers, and records by Office of the**  
34 **State Long-Term Care Ombudsman; interference, retaliation, and reprisals against complainants.**

35 A. The Office of the State Long-Term Care Ombudsman pursuant to the Older Americans Act, 42  
36 U.S.C. § 3001 et seq., shall, in the performance of its functions, responsibilities, and duties, have access  
37 to (i) licensed assisted living facilities and adult day care centers as those terms are defined in § 63.2-100,  
38 (ii) home care organizations as defined in § 32.1-162.7, (iii) hospice facilities as defined in § 32.1-162.1,  
39 (iv) certified nursing facilities and nursing homes as those terms are defined in § 32.1-123, (v) providers  
40 as defined in § 37.2-403, (vi) state hospitals operated by the Department of Behavioral Health and  
41 Developmental Services, ~~and~~ (vii) independent living communities, and (viii) providers of services by an  
42 area agency on aging or any private nonprofit or proprietary agency providing services; the clients,  
43 patients, and individuals receiving services; and the records of such clients, patients, and individuals  
44 whenever the Office of the State Long-Term Care Ombudsman has the consent of the client, patient, or  
45 individual receiving services or his legal representative. However, if a client, patient, or individual  
46 receiving services is unable to consent to the review of his medical and social records and has no legal  
47 representative, and access to the records is necessary to investigate a complaint, access shall be granted to  
48 the extent necessary to conduct the investigation. Further, access shall be granted to the Office of the State  
49 Long-Term Care Ombudsman if a legal representative of the client, patient, or individual receiving  
50 services refuses to give consent and the Office of the State Long-Term Care Ombudsman has reasonable  
51 cause to believe that the legal representative is not acting in the best interests of the client, patient, or  
52 individual receiving services. Notwithstanding the provisions of § 32.1-125.1, the Office of the State  
53 Long-Term Care Ombudsman shall have access to state hospitals in accordance with this section. Access

54 to patients, residents, and individuals receiving services and their records and to providers shall be  
55 available at any time during a provider's regular business or visiting hours and at any other time when  
56 access is required by the circumstances to be investigated. Records that are confidential under federal or  
57 state law shall be maintained as confidential by the Office of the State Long-Term Care Ombudsman and  
58 shall not be further disclosed, except as permitted by law. However, notwithstanding the provisions of this  
59 section, there shall be no right of access to privileged communications pursuant to § 8.01-581.17.

60 B. No provider, entity, or person may interfere with, retaliate against, or subject to reprisals a  
61 person who in good faith complains or provides information to, or otherwise cooperates with, the Office  
62 of the State Long-Term Care Ombudsman or any of its representatives or designees. The Commissioner  
63 shall promulgate regulations regarding the investigation of allegations of interference, retaliation, or  
64 reprisals and the implementation of sanctions with respect to such interference, retaliation, or reprisals as  
65 required under the Older Americans Act, 42 U.S.C. § 3001 et seq.

66 **§ 51.5-186. Independent living communities.**

67 A. When handling complaints related to independent living communities, the Office of the State  
68 Long-Term Care Ombudsman shall:

69 1. Provide complaint counseling to an appropriate person alleging a reasonably specified complaint  
70 to assist such person in resolving the complaint himself.

71 2. Attempt to obtain reasonably specific information from the complainant if the person alleging a  
72 reasonably specified complaint is unable or unwilling to resolve the complaint himself, and in accordance  
73 with such information, shall assess the complaint to determine the most appropriate means of investigating  
74 the complaint. In resolving the complaint, the Office of the State Long-Term Care Ombudsman shall:

75 a. Investigate reasonably specified complaints reported to the Office of the State Long-Term Care  
76 Ombudsman that allege action, inaction, or decisions of providers of independent living community  
77 services or their representatives that may adversely affect the rights, health, welfare, or safety of the person  
78 complaining or the recipient of services.

79 b. Initiate the investigation of a complaint within two working days of the date on which the  
80 complaint is received.

81 c. Refer complaints concerning independent living community regulatory issues and allegations of  
82 abuse, neglect, and exploitation to the appropriate agency for investigation.

83 d. Make a referral by telephone immediately to the appropriate adult protective services staff in  
84 the appropriate local department of social services when the complaint alleges abuse, neglect, or  
85 exploitation. "Appropriate local department of social services" means the department of social services in  
86 the locality where (i) the alleging person resides; (ii) the abuse, neglect, or exploitation is alleged to have  
87 occurred; or (iii) the complaint is discovered.

88 e. Forward a reasonably specified complaint to the appropriate regulatory agency or to the adult  
89 protective services unit within three working days of the date on which the complaint is received.

90 f. Complete its investigation of a complaint handled by the Office of the State Long-Term Care  
91 Ombudsman within 45 working days of the date on which the complaint is received.

92 B. No action shall be taken or threatened by any independent living service provider or facility for  
93 the purpose of punishing or retaliating against any resident, ombudsman, employee, or other interested  
94 person for presenting a complaint under this regulation or for providing assistance to the complaining  
95 party.

96 C. The Office of the State Long-Term Care Ombudsman shall comply with the provisions of  
97 confidentiality required by the Code of Virginia and the Government Data Collection and Dissemination  
98 Practices Act (§ 2.2-3800 et seq.) concerning confidentiality with respect to the identity of the alleging  
99 person or the service recipient and the records maintained by the Office of the State Long-Term Care  
100 Ombudsman with respect to independent living communities. The Office of the State Long-Term Care  
101 Ombudsman shall provide identifying information to the Adult Protective Services unit of the Department  
102 of Social Services concerning the affected person or service recipient alleged to be a victim of abuse,  
103 neglect, or exploitation. The Office of the State Long-Term Care Ombudsman may provide identifying  
104 information to appropriate agencies involved in the investigation of complaints, at the discretion of the  
105 State Long-Term Care Ombudsman.

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