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## DEPARTMENT OF AGING

### Long-term Care Ombudsman Program

- Requires the State Long-term Care Ombudsman to conduct advocacy visits with long-term care providers, residents, or recipients.
- Prohibits a long-term care provider, provider employee, or individual from willfully interfering with an Ombudsman representative in the performance of any duties or exercise of any rights.
- Specifies that certain actions under the State Long-term Care Ombudsman Program may be taken only to the extent permitted by federal law.
- Eliminates provisions regarding investigations by the Department of Aging of alleged violations of the Residents' Rights Law, but retains the State Ombudsman's role as a residents' rights advocate.
- Extends the authority of the State Long-term Care Ombudsman's Office to MyCare Ohio.

### Long-term Care Consultation Program

- Modifies the duties of the Department or a program administrator to provide services under the Long-term Care Consultation Program.
- Eliminates provisions specifying the categories of individuals to whom a long-term care consultation must or may be provided and the time frames in which the consultation must be provided, and requires those decisions to be made in accordance with rules to be adopted by the Director of Aging.

### Long-term Care Consumer Guide fee

- Authorizes the Department to establish a deadline for long-term care facilities to pay annual fees for publication of the Ohio Long-term Care Consumer Guide.
- Authorizes the Department to impose a late penalty if the annual fee is not received within 90 days of the deadline.

### Board of Executives of Long-term Services and Supports

- Specifies that the representatives of the Department of Health and Office of the State Long-term Care Ombudsman are nonvoting members on the Board of Executives of Long-term Services and Supports.



- Specifies that a majority of the voting members of the Board constitutes a quorum, and requires a quorum for the Board to act.
- Expands the Board's authority to create education and training programs for nursing home administrators.
- Revises the Board's authority to take disciplinary action against a nursing home administrator by allowing it to impose civil penalties and fines, revising fine amounts, and permitting, rather than requiring, a court to fine or imprison a person for a violation.

### **Other provisions**

- Creates a workgroup to review the Assisted Living Program.
- Repeats, in an uncodified section, the authority the Department of Medicaid already has in ongoing law to provide for the Department of Aging to assess whether Medicaid applicants and recipients need a nursing facility level of care.
- Repeats, in an uncodified section, a requirement the Department of Aging already has in ongoing law to provide long-term care consultations to help individuals plan for their long-term health care needs.
- Repeats, in an uncodified section, the duty the Department of Aging already has in ongoing law to administer the PASSPORT Program, Assisted Living Program, and PACE.
- Permits the Department of Aging to design and utilize a method of paying for PASSPORT administrative agency operations that includes a pay-for-performance incentive component.
- Eliminates references to the defunct Ohio Transitions II Aging Carve-Out Program and the defunct Choices Program.

### **State Long-term Care Ombudsman Program**

(R.C. 173.01, 173.14, 173.15, 173.17, 173.19, 173.20, 173.21, 173.22, 173.24, 173.28, 173.99, and 5101.61)

The act makes several changes to the law governing the State Long-term Care Ombudsman Program. Under continuing law, the program receives and investigates complaints relating to long-term care, including care provided to residents of long-term



care facilities and to recipients in their own homes or community care settings. The program does not regulate long-term care facilities or home or community care services providers, but assists in the resolution of complaints brought by facilities, providers, residents, recipients, or their families.<sup>2</sup>

### **Advocacy visits**

Under the act, the State Long-term Care Ombudsman must conduct advocacy visits with long-term care providers, residents, or recipients. The act also requires the Ombudsman to authorize other representatives of the Office of the State Long-term Care Ombudsman to conduct the visits.

An "advocacy visit" is defined as a visit to a long-term care provider, resident, or recipient when the purpose of the visit is one or more of the following:

- (1) To establish a regular presence that creates awareness of the Office's availability;
- (2) To increase awareness of the services the Office provides; or
- (3) To address any other matter not related to the representative's investigation of a specific complaint.

The act also provides that an advocacy visit may unexpectedly involve addressing uncomplicated complaints or lead to an investigation of a complaint when needed.

### **Complaints**

Continuing law requires the State Ombudsman and regional long-term care ombudsman programs to receive, investigate, and attempt to resolve complaints made by residents, recipients, or their representatives, sponsors, or long-term care providers. The complaints must relate to the health, safety, welfare, or civil rights of a resident or recipient or to an action, inaction, or decision on the part of a specified entity adversely affecting the health, safety, welfare, or right of resident or recipient. The act adds Medicaid managed care organizations to the list of entities.

### **Willful interference**

The act prohibits a long-term care provider or other entity, provider or entity employee, or individual from engaging in willful interference. "Willful interference" is defined as any action or inaction that is intended to prevent, interfere with, or impede a

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<sup>2</sup> For more information on the State Ombudsman, see <http://aging.ohio.gov/Ombudsman/>.



representative of the Office of the State Long-term Care Ombudsman from exercising any of an ombudsman's rights or duties.

Any individual or entity that engages in willful interference is subject to a criminal or civil penalty. In lieu of a fine not to exceed \$500 for each violation that may be imposed for a criminal offense, the Director of Aging may impose a fine not to exceed \$500 for each day the violation continued. The Director must do so in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

### **Private communication and access rights**

In order to fulfill the duties of the State Long-term Care Ombudsman's Office, continuing law grants a representative of the Office the right to private communication with residents, recipients, and their sponsors as well as the right of access to long-term care facilities and sites. Continuing law also provides for the imposition of civil and criminal penalties if a representative is denied communication or access. The act clarifies this law by specifically prohibiting a long-term care provider or other entity, provider or entity employee, or individual from knowingly denying a representative of the Office the right of private communication with a resident, recipient, or sponsor or the right of access to any facility or site.

### **Retaliation**

The act expands the law prohibiting long-term care providers, other entities, or provider or entity employees from retaliating against residents or recipients for providing information to or participating in registering a complaint with the Office in the following ways:

- (1) It prohibits any individual from engaging in retaliatory actions.
- (2) It also prohibits retaliation against provider or entity employees, representatives of the Office, or other individuals.
- (3) It includes discharge and termination of employment within the list of prohibited retaliatory actions.

### **Delegation**

The act prohibits the State Long-term Care Ombudsman from delegating to a staff member any authority or duty that federal law requires to be exercised or performed by the Ombudsman.

## **Suspected violations of law**

Prior law allowed for the reporting of suspected violations of certain laws discovered during the course of an investigation conducted by the State Ombudsman or any other representative of the Office as follows: in the case of the law governing nursing homes or residential care facilities, to the Department of Health and in the case of criminal violations, to the Attorney General or other appropriate law enforcement authority. The act broadens this law by authorizing any suspected violation of state law discovered during the course of an investigation or advocacy visit to be reported to an appropriate authority. However, it specifies that this authority to report is limited to the extent permitted by federal law.

### **Reports of abuse, neglect, or exploitation**

The act exempts the State Ombudsman and representatives of the Office from the law requiring certain individuals to report suspected adult abuse, neglect, or exploitation to county departments of job and family services.<sup>3</sup> Permission to report is retained, but the act specifies that the authority is limited to the extent permitted by federal law.

### **Provider records**

With respect to giving oral consent for the State Ombudsman or representative of the Office to access a resident's or recipient's records, the act eliminates the requirement that, in the case of records maintained by a long-term care provider, the resident's or recipient's oral consent must be witnessed in writing by an employee of the long-term care provider. In a related provision, it eliminates the requirement that each long-term care provider designate one or more employees to be responsible for witnessing the giving of oral consent.

The act also eliminates the requirement that the State Ombudsman take necessary action to return records obtained from a long-term care provider during the course of an investigation to the provider no later than three years after the investigation's completion.

### **Investigative files**

The act specifies that any records relating to advocacy visits made by representatives of the Office contained within the Office's investigative files are not

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<sup>3</sup> This exemption is duplicated, in part, in a separate but related provision of the act, effective September 29, 2018. See "**Adult Protective Services – Retained Mandatory Reporters**" under the **DEPARTMENT OF JOB AND FAMILY SERVICES** portion of this analysis.)



public records subject to inspection. It also exempts from the law governing the maintenance of personal information systems by state or local agencies the investigative files of the Office, including any proprietary records of a long-term care provider or any records relating to advocacy visits made by representatives of the Office contained within such files.

### **Annual reports**

Continuing law requires the State Ombudsman to prepare an annual report regarding the types of problems experienced by residents and recipients and the complaints made by or on their behalf. The report must be submitted to certain officials, including the Directors of the Department of Health and the Department of Job and Family Services. Under the act, it must also be submitted to the Medicaid Director and Director of the Department of Mental Health and Addiction Services.

### **MyCare Ohio**

(Section 209.30)

The act extends the authority of the State Long-term Care Ombudsman's Office to MyCare Ohio while that program is operated. MyCare Ohio, called the Integrated Care Delivery System in the Revised Code, is a demonstration project the Department of Medicaid operates.

### **Residents' rights and the Department of Aging**

The act eliminates provisions requiring the Department of Aging to conduct investigations related to grievances filed by or on behalf of nursing home and residential care facility residents regarding alleged violations of Ohio's Residents' Rights Law. Under law unchanged by the act, these grievances are investigated by the Department of Health, and the State Ombudsman continues to serve as a residents' rights advocate.

### **Long-term Care Consultation Program**

(R.C. 173.42 and 173.424)

The act modifies the Department's responsibilities regarding the Long-term Care Consultation Program, under which individuals or their representatives are provided with information through professional consultations about options available to meet long-term care needs and about factors to consider in making long-term care decisions.

The act makes permissive, instead of mandatory as under prior law, that the Department or a program administrator provide the following services under the



program: (1) assist an individual or an individual's representative in accessing all appropriate sources of care and services for which the individual is eligible and (2) provide for assessments or evaluations and the development of individualized plans of care or services.

The act eliminates provisions that specify which individuals must be given a long-term care consultation. Prior law required that a consultation be given to individuals who apply or indicate an intention to apply for admission to a nursing facility, individuals who request a consultation, and individuals identified by the Department or a program administrator as being likely to benefit from a consultation. The act instead requires a consultation to be provided to each individual for whom the Department or a program administrator determines such a consultation is appropriate and permits the Director of Aging to adopt rules specifying criteria for identifying such individuals.

The act eliminates provisions specifying time frames in which the consultations must be provided and completed, and instead requires that a consultation be provided or completed within time frames to be established in rules. Under prior law, a consultation must have generally been provided within five calendar days after the Department or program administrator received notice that an individual was required to be provided with a consultation, unless the individual had applied for Medicaid and the consultation was being provided within the time frames established for a level of care assessment.

The act modifies the Director's duty to adopt rules to implement the program by making the duty mandatory rather than permissive. It permits the rules to specify any standards or procedures the Director considers necessary.

### **Long-term Care Consumer Guide fee**

(R.C. 173.48)

The act authorizes the Department to establish by rule a deadline for payment of annual fees for the Ohio Long-term Care Consumer Guide (the fees must be paid by long-term care facilities under law unchanged by the act). Under the act, if the annual fee is not paid within 90 days of any deadline established by the Department, a long-term care facility may be required to pay a late penalty equal to the annual fee.

Continuing law provides that annual Guide fees paid by nursing facilities that participate in Medicaid are to be reimbursed by the Medicaid program. The act extends the reimbursement to the late penalty, but provides for both the annual fee and the late penalty that reimbursement is to be made "unless prohibited by federal law." Like



annual fees, late penalties are to be credited to the Long-term Care Consumer Guide Fund.

## **Board of Executives of Long-term Services and Supports**

### **Nonvoting board members**

(R.C. 4751.03)

The act specifies that the representatives of the Department of Health and the Office of the State Long-term Care Ombudsman are nonvoting members on the Board of Executives of Long-term Services and Supports and serve only in an advisory capacity. Accordingly, the act clarifies that a majority of the voting members of the Board constitutes a quorum, and requires a quorum for the Board to act. Under prior law, the representatives of the Department and Office were both voting members.

### **Education and training programs for nursing home administrators**

(R.C. 4751.04, 4751.043, 4751.044, and 4751.14)

The act modifies the Board's duty to create education, training, and credentialing opportunities. Continuing law requires the Board to create such opportunities for nursing home administrators and others in leadership positions in long-term services and supports settings. The act adds persons interested in becoming licensed nursing home administrators. It also adds credentialed individuals to the list of individuals for whom the Board must identify appropriate core competencies and areas of knowledge.

The act requires the Board to approve continuing education courses for nursing home administrators and permits training and education programs developed by the Board to be conducted in person or through electronic media. It also permits the Board to establish and charge a fee for the programs and for approving the programs. The fees must be deposited into the Board of Executives of Long-term Services and Supports Fund.

The act permits the Board to enter into a contract with a government or private entity to develop and conduct the education and training programs. The contract may authorize the entity to pay the costs associated with the programs and to collect any program enrollment fees as all or part of the entity's compensation under the contract.



## **Disciplinary authority**

(R.C. 4751.04, 4751.10, 4751.14, and 4751.99)

The act revises the Board's authority to take disciplinary action against a nursing home administrator. Under the act, the Board may impose a civil penalty, fine, or any other Board-authorized sanction against a nursing home administrator for failure to substantially conform to Board standards. The sanctions added by the act are in addition to the Board's authority under continuing law to revoke or suspend a nursing home administrator's license or registration. The act also eliminates the requirement that disciplinary proceedings to suspend or revoke a license or registration be instituted by the Board or begin by filing written charges with the Board.

The act permits, rather than requires as under prior law, a court to fine or imprison a person who violates the Nursing Home Administrator Licensing Law. The act revises the fine amounts to not more than \$500 for each violation. Previously, the fine amounts were \$50 to \$500 for a first violation and \$100 to \$500 for each subsequent violation. Additionally, the act specifies that a court's existing authority to fine or imprison a person for violating the Law does not preclude the Board from imposing other civil penalties or fines. Any civil penalties and fines collected by the Board under the act must be deposited into the Board of Executives of Long-term Services and Supports Fund.

## **Assisted Living Program workgroup**

(Section 209.61)

The act establishes a workgroup to conduct a review of the Assisted Living Program. The workgroup is to consist of the following:

(1) Two members of the House appointed by the Speaker from among the chairpersons of the Aging and Long-Term Care Committee, the Health Committee, and the Finance Subcommittee on Health and Human Services;

(2) One member of the House appointed by the Minority Leader from among the members of the minority party serving on any of those House committees;

(3) Two members of the Senate appointed by the Senate President from among the chairpersons of the Health, Human Services, and Medicaid Committee, the full Finance Committee, and the Finance – Health and Medicaid Subcommittee;

(4) One member of the Senate appointed by the Minority Leader from among members of the minority party serving on any of those Senate committees;



(5) The Executive Director of the Office of Health Transformation;

(6) The Medicaid Director;

(7) The Director of Aging;

(8) The Director of Health;

(9) One representative of each of the following organizations, appointed by the chief executive of the organization: LeadingAge Ohio, the Ohio Assisted Living Association, the Ohio Association of Area Agencies on Aging, and the Ohio Health Care Association.

Appointments must be made to the workgroup by August 29, 2017. A member may designate another individual to serve in the member's place for one or more sessions. Members are to serve without compensation or reimbursement, except to the extent that serving on the workgroup is part of their usual job duties.

The Medicaid Director and Director of Aging are to serve as co-chairpersons. The Departments of Medicaid and Aging must provide any administrative assistance the workgroup needs.

The workgroup must do both of the following in reviewing the Assisted Living program:

(1) Identify potential barriers to enrollment and providers' participation, including barriers related to payment rates, the tier levels to which enrollees are assigned and their use in setting payment rates, the statutory and administrative requirements that providers must meet to participate, and other issues the workgroup determines are barriers; and

(2) Determine the feasibility and desirability of making community-based services that are similar to assisted living services available under pre-existing Department of Aging programs or under a new program.

Each state agency and advocacy organization represented on the workgroup must make available to the workgroup any relevant federal or state data concerning, or assessments of, providers of assisted living services that the agency or organization possesses and is needed for the workgroup to complete its review. The workgroup must use the data and assessments only for the purpose of its review.

The workgroup must complete a report of its review by July 1, 2018. The report must include recommendations regarding assisted living services. The workgroup is



prohibited from recommending that different types of facilities be allowed to be providers under the Assisted Living program in addition to residential care facilities (i.e., assisted living facilities) licensed by the Department of Health. If the workgroup recommends that a new program be created, it must include (1) a name for the new program and its services that distinguishes them for the Assisted Living program and assisted living services, (2) potential sources of funding the new program that do not reduce any pre-existing or future federal or state funds for the Assisted Living program, and (3) a determination of whether a new Medicaid waiver would be needed for the new program. The report must be submitted to the Governor, General Assembly, and Joint Medicaid Oversight Committee. It also must be made available to the public. On submission of the report, the workgroup ceases to exist.

### **Nursing facility level of care assessments**

(Sections 209.20 and 809.10)

The act permits the Department of Medicaid to enter into an interagency agreement with the Department of Aging under which the Department of Aging assesses whether Medicaid applicants and recipients need a nursing facility level of care. This uncodified provision has no effect after June 30, 2019, but the Department of Medicaid has this authority on an ongoing basis under continuing codified law.<sup>4</sup>

### **Long-term care consultations**

(Sections 209.20 and 809.10)

The act requires the Department of Aging to provide long-term care consultations to help individuals plan for their long-term health care needs. This uncodified provision has no effect after June 30, 2019, but the Department has this authority on an ongoing basis under continuing codified law.<sup>5</sup>

### **Administration of parts of the Medicaid program**

(Sections 209.20 and 809.10)

The act requires the Department of Aging to administer the following parts of the Medicaid program through an interagency agreement with the Department of Medicaid: the PASSPORT Program, Assisted Living Program, and PACE. This

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<sup>4</sup> R.C. 5165.04, not in the act.

<sup>5</sup> R.C. 173.42.

uncodified provision has no effect after June 30, 2019, but the Department of Aging has this duty on an ongoing basis under continuing codified law.<sup>6</sup>

## **Performance payment for PASSPORT administrative agencies**

(Sections 209.20 and 809.10)

The act permits the Department of Aging to design and utilize a method of paying for PASSPORT administrative agency operations that includes a pay-for-performance incentive component. A PASSPORT administrative agency would earn an incentive payment by achieving consumer and policy outcomes. This provision has no effect after June 30, 2019.

## **References to defunct programs**

### **Ohio Transitions II Aging Carve-Out Program**

(R.C. 5166.01, 5166.16, and 5166.30; repealed R.C. 5166.13)

The act eliminates references to the defunct Ohio Transitions II Aging Carve-Out Program. The Program was a Medicaid waiver program administered by the Department of Aging. The federal waiver authorizing the Program expired July 1, 2015.<sup>7</sup>

### **Choices Program**

(R.C. 173.42, 173.51, 173.55, and 5166.16; repealed R.C. 173.53)

The act eliminates references to the defunct Choices Program, which was a Medicaid waiver program administered by the Department of Aging. The Program ceased to operate on June 30, 2014.

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<sup>6</sup> R.C. 173.50, 173.52, and 173.54, none of which are in the act.

<sup>7</sup> Amendment to the Ohio Transitions II Aging Carve-Out Program, approved September 15, 2014, by the U.S. Department of Health and Human Services.

