

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to amend and reenact sections 50-10.1-02, 50-10.1-04, 50-10.1-05, and  
2 50-10.1-07 of the North Dakota Century Code, relating to appointment of state and local  
3 ombudsmen, ombudsmen access to facilities and records, posting information about the  
4 ombudsman program, and confidentiality of ombudsman records and files.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 50-10.1-02 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **50-10.1-02. Appointment of state and ~~regional~~local long-term care ombudsmen.**

9 The ~~executive director of the department shall appoint~~employ a state long-term care  
10 ombudsman and ~~such regional~~local long-term care ombudsmen as the ~~executive director~~  
11 ~~deems~~department determines necessary within the limits of legislative appropriations.

12 **SECTION 2. AMENDMENT.** Section 50-10.1-04 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **50-10.1-04. Access to facilities and records.**

15 To carry out the powers and duties of this chapter, the state long-term care ombudsman and  
16 the ombudsman's authorized agents shall:

- 17 1. Have ~~reasonable~~ access to all long-term care facilities within the state and shall have  
18 private access to any resident within any long-term care facility within the state.  
19 ~~Reasonable access is defined as access by an ombudsman during normal working~~  
20 ~~hours or by appointment and upon notification to the administrator or person in charge~~  
21 ~~of the facility.~~
- 22 2. Have access to all ~~personal~~social and medical records of ~~any~~a resident of a long-term  
23 care facility who has sought ombudsman services, or on whose behalf such services  
24 have been sought, ~~except that no record may be obtained without the written consent~~

1           ~~of a resident or a legal representative of a resident, or unless a court orders the~~  
2           ~~disclosure if the ombudsman or the ombudsman's authorized agent has the permission~~  
3           ~~of the resident or the legal representative of the resident; the resident is unable to~~  
4           ~~consent to the review and has no legal representative; or access to the records is~~  
5           ~~necessary to investigate a complaint if a legal representative of the resident refuses to~~  
6           ~~give the permission and the ombudsman or the ombudsman's authorized agent has~~  
7           ~~reasonable cause to believe that the legal representative is not acting in the best~~  
8           ~~interests of the resident, and the state long-term care ombudsman approves access.~~

9           **SECTION 3. AMENDMENT.** Section 50-10.1-05 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11           **50-10.1-05. ~~Chapter~~Information to be posted - Retaliation prohibited.**

12           ~~A copy of this chapter~~Information about the ombudsman program must be posted in a  
13 conspicuous place in each long-term care facility, along with ~~a statement of the right~~how to file a  
14 complaint concerning administrative actions which affect any resident and the address where a  
15 complaint may be filed. Each resident, the spouse of each resident having a spouse, and any  
16 designated representative of a resident must be provided with ~~copies of the posted~~  
17 ~~documents~~information about the ombudsman program at the time the resident is admitted to the  
18 long-term care facility. A long-term care facility, and its agents, may not take or threaten  
19 retaliatory action against a resident, employee, or any other person on account of the filing of a  
20 complaint by or on behalf of that resident, or on account of the providing of information to a  
21 long-term care ombudsman constituting or relating to a complaint.

22           **SECTION 4. AMENDMENT.** Section 50-10.1-07 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24           **50-10.1-07. Confidentiality and disclosure of records and files.**

25           Those records and files of the state and ~~regional~~local ombudsman, and their authorized  
26 agents, which relate to, or identify any resident of a long-term care facility or a complainant, are  
27 confidential and may not be disclosed unless:

- 28           1. A resident, or a legal guardian or attorney in fact, consents in writing to the release of  
29           the information and designates to whom the information must be disclosed;
- 30           2. The ombudsman authorizes a disclosure which does not reveal the identity of any  
31           complainant or resident; or

- 1        3.    A court of competent jurisdiction orders the disclosure.