

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

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

12 **50-10.1-05. Chapter Information to be posted - Retaliation prohibited.**

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

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

25 **50-10.1-07. Confidentiality and disclosure of records and files.**

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

- 29 1. A resident, or a legal guardian or attorney in fact, consents in writing to the release of
30 the information and designates to whom the information must be disclosed;

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2. The ombudsman authorizes a disclosure which does not reveal the identity of any complainant or resident; or
 3. A court of competent jurisdiction orders the disclosure.