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HOUSE REPUBLICAN STAFF ANALYSIS

Bill: Senate File 495
Committee: Human Resources
Floor Manager: Representative Joel Fry
Date: July 14, 2011
Staff: Brad Trow (1-3471)

Long Term Care Ombudsman Program

Senate File 495 makes a number of changes to the state's long term care ombudsman program. The vast majority of changes in the bill change the name of the program from the "long term care resident advocate" to "long term care ombudsman. The bill also makes changes to the functions and services of the ombudsman office, the Commission on Elder Affairs, and the Department on Aging. Most of these changes are to bring Iowa law into compliance with the latest version of the Older Americans Act.

Summary of Action

Initial Senate Action – The Senate **ADOPTED** Senate File 495 on a vote of 48-0 on March 14, 2011.

Committee Action – The Human Resources Committee **PASSED** Senate File 495, with an amendment, on a vote of 20-0 on March 28, 2011.

House Action – The House **ADOPTED** Senate File 495, as amended, on a vote of 96-0 on April 12, 2011.

Further Senate Action – Senate File 495, with the House amendment, is on the Senate Regular Calendar.

Section by Section Analysis

Section 1 – The section amends Iowa Code section 135C.20A by changing "long-term care advocate" to "long-term care ombudsman".

Section 2 – The section amends Iowa Code section 135C.37 by changing "long-term care advocate" to "long-term care ombudsman".

Section 3 – The section amends Iowa Code section 135C.38 by changing "long-term care advocate" to "long-term care ombudsman".

Section 4 – The amends Iowa Code section 231.4 by adding new definitions for "local long-term care ombudsman", "state long-term care ombudsman", and "state office of long-term care ombudsman".

Section 5 – The section amends Iowa Code section 231.23A by changing “long-term care advocate” to “long-term care ombudsman”.

Section 6 – The section amends Iowa Code section 231.41 by changing “long-term care advocate” to “long-term care ombudsman” and clarifying the purpose of the subchapter dealing with the ombudsman office.

Section 7 – The section re-writes major provisions of Iowa Code section 231.42, which lays out the duties of the Long Term Care Ombudsman office. The section also sets the duties of the Commission on Elder Affairs, and the Department on Aging in relation to the Long Term Care Ombudsman’s office.

In section 7, the state office is established as a distinct unit attached to the department on aging as prescribed in Code section 7E.2, subsection 5, which provides that the distinct unit is to operate independently of the head of the department, but budgeting, program coordination, and related management functions are to be performed under the direction and supervision of the head of the department, unless otherwise provided by law.

The section also provides for the establishment of an advisory committee who are appointed by the commission on aging in consultation with the state long-term care ombudsman. Among the duties of the advisory committee are:

- Ensuring the autonomy of the office;
- Reviewing and providing comment on the procedures of the office regarding complaint investigations, noncomplaint-related visits, and in-service programs;
- Reviewing and commenting on the annual report submitted by the state ombudsman prior to public dissemination;
- Assisting in identifying trends in the long-term care industry;
- Assisting in identifying opportunities for consumer awareness, provider in-service programs, and professional education; providing support for office initiatives;
- Assisting in the dissemination of information regarding the office; and
- Participating in the performance review process and providing comments to the director prior to the annual review of the state long-term care ombudsman.

Section 7 also outlines the duties of the commission on aging in relation to the Ombudsman office. These include:

- Establishing a process to work with the director to search for and interview candidates for the position of state long-term care ombudsman and making a recommendation for selection of a candidate to the director;
- Ensuring compliance with all rules and regulations that ensure autonomy of the office;
- Ensuring support of and assistance to the office by the director;
- Receiving and reviewing reports of the activities of the office;
- Participating in the long-term care ombudsman advisory committee; and
- Participating in the performance review process and providing comments to the director prior to the annual review of the state long-term care ombudsman.

Section 7 specifies that the duties of the Department on Aging are to include providing fiscal, human resources, and media assistance to the office through a Code chapter 28E agreement and providing other services to the office as mutually agreed upon in writing, including the office’s budget and legislative requests with the department’s annual submission as originally submitted by the office, unless changes are mutually agreed upon in writing. The Department is also required to ensure that adequate legal counsel is available to the Ombudsman office to protect the health, safety, welfare, and rights of residents

and to assist the office, state ombudsman, local ombudsmen, and representatives of the office in the performance of official duties.

Section 7 also revises the language on the duties and rights of the long-term care ombudsman office when investigating complaints within a facility. These include when an ombudsman can have access to the medical and personal records of a resident. Finally, Section 7 changes “long-term care advocate” to “long-term care ombudsman” in numerous locations.

Section 8 – The section amends Iowa Code section 231.44 (1,4) by changing “long-term care advocate” to “long-term care ombudsman”.

Section 9 – The section amends Iowa Code section 231.62 (2) by changing “long-term care advocate” to “long-term care ombudsman”.

Section 10 – The section amends Iowa Code section 231B.1 (10) by changing “long-term care advocate” to “long-term care ombudsman”.

Section 11 – The section amends Iowa Code section 231C.2 (14) by changing “long-term care advocate” to “long-term care ombudsman”.

Section 12 – The section amends Iowa Code section 235B.6 (2) (e) (10) by changing “long-term care advocate” to “long-term care ombudsman”.

AMENDMENTS

H-1479, by the Committee on Human Resources: The amendment makes three major changes to the bill. First, the amendment strikes the language which creates the advisory committee within the Long Term Care Ombudsman office, and instead inserts language requiring the Long-Term Care Ombudsman to consider the views of the Area Agencies on Aging, Iowa seniors, those Iowans in long-term care facilities, and providers when planning and operating the programs of the Office.

The amendment also revises the language around when a long-term care ombudsman may talk with a resident of a facility. The amendment clarifies that the ombudsman must seek consent from the resident to talk with them.

The amendment also clarifies when a long-term care ombudsman may have access to confidential records of a resident. The amendment adds language that when an ombudsman obtains records when the resident cannot provide consent, this action is taken only when the resident does not have a guardian or legal representative. The amendment also re-numbers section 7, due to the deletion of the advisory committee.

Amendment H-1479 was ADOPTED on a voice vote on April 12, 2011.