

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 248  
Committee Substitute Favorable 4/19/17  
PROPOSED SENATE COMMITTEE SUBSTITUTE H248-PCS40600-SH-25

Short Title: Sunset CABHAs/OmbudsmanChanges/DHHS Study. (Public)

Sponsors:

Referred to:

March 6, 2017

A BILL TO BE ENTITLED

AN ACT TO SUNSET CRITICAL ACCESS BEHAVIORAL HEALTH AGENCIES; TO MAKE CHANGES TO THE ADULT CARE HOME AND NURSING HOME ADVISORY COMMITTEES TO CONFORM TO THE ADMINISTRATION FOR COMMUNITY LIVING RULES AND RECENT CHANGES TO THE STATE LONG-TERM CARE OMBUDSMAN PROGRAM; AND TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY THE HOPE ACT AND RELATED FEDERAL REGULATIONS AND TO MAKE RECOMMENDATIONS TO THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON HEALTH AND HUMAN SERVICES.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** S.L. 2012-171 is repealed.

**SECTION 1.(b)** G.S. 108C-3(e)(3) is repealed.

**SECTION 1.(c)** G.S. 108C-3(g)(2) reads as rewritten:

"(2) Agencies providing behavioral health services, ~~excluding Critical Access Behavioral Health Agencies services.~~"

**SECTION 1.(d)** The Department of Health and Human Services, Division of Medical Assistance, shall submit a State Plan Amendment request to the Centers for Medicare and Medicaid Services to remove references to Critical Access Behavioral Health Agencies (CABHAs) and to make any other changes necessary to implement this section.

**SECTION 1.(e)** Notwithstanding any other provision of law to the contrary, providers that are enrolled as a Critical Access Behavioral Health Agency as of the date this act becomes law shall remain in the provider screening, enrollment, and revalidation categorical risk level of "moderate" for purposes of G.S. 108C-3 for 12 months from the date this act becomes law.

**SECTION 2.(a)** G.S. 131D-31 reads as rewritten:

**§ 131D-31. Adult care home community advisory committees.**

(a) Statement of Purpose. – It is the intention of the General Assembly that community advisory ~~committees~~ committee members function as representatives of the Office of the State Long-Term Care Ombudsman and through their designation work to maintain the intent of the Adult Care Home Residents' Bill of Rights within the licensed adult care homes in this State. It is the further intent of the General Assembly that the committees promote community involvement and cooperation with adult care homes to ensure quality care for the elderly and disabled adults.

(b) Establishment and Appointment of Committees. –



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- 1 (1) A community advisory committee shall be established in each county that  
2 has at least one licensed adult care home, shall serve all the homes in the  
3 county, and shall work with each of these homes for the best interests of the  
4 residents. In a county that has one, two, or three adult care homes with 10 or  
5 more beds, the committee shall have five members.
- 6 (2) In a county with four or more adult care homes with 10 or more beds, the  
7 committee shall have one additional member for each adult care home with  
8 10 or more beds in excess of three, and may have up to five additional  
9 members at the discretion of the county commissioners, not to exceed a  
10 maximum of 25 members. In each county with four or more adult care  
11 homes with 10 or more beds, the committee shall establish a subcommittee  
12 of no more than five members and no fewer than three members from the  
13 committee for each adult care home in the county. Each member must serve  
14 on at least one subcommittee.
- 15 (3) In counties with no adult care homes with 10 or more beds, the committee  
16 shall have five members. Regardless of how many members a particular  
17 community advisory committee is required to have, at least one member of  
18 each committee shall be a person involved in the area of mental retardation.
- 19 (4) The boards of county commissioners are encouraged to appoint the Adult  
20 Care Home Community Advisory Committees. Of the members, a minority  
21 (not less than one-third, but as close to one-third as possible) shall be chosen  
22 from among persons nominated by a majority of the chief administrators of  
23 adult care homes in the county. If the adult care home administrators fail to  
24 make a nomination within 45 days after written notification has been sent to  
25 them requesting a nomination, these appointments may be made without  
26 nominations. If the county commissioners fail to appoint members to a  
27 ~~committee by July 1, 1983, committee,~~ the appointments shall be made by  
28 ~~the Assistant Secretary for Aging, Department of Health and Human~~  
29 ~~Services, Office of the State Long-Term Care Ombudsman~~ no sooner than  
30 45 days after nominations have been requested from the adult care home  
31 ~~administrators, but no later than October 1, 1983-administrators.~~ In making  
32 appointments, the ~~Assistant Secretary for Aging Office of the State~~  
33 ~~Long-Term Care Ombudsman~~ shall follow the same appointment process as  
34 that specified for the County Commissioners.
- 35 (5) Notwithstanding any other provision of this Article, appointment to an Adult  
36 Care Home Community Advisory Committee is contingent upon designation  
37 of the appointee by the Office of the State Long-Term Care Ombudsman in  
38 accordance with G.S. 143B-181.18. A designated appointee is directly  
39 accountable to the State Long-Term Care Ombudsman Program in order to  
40 perform the duties as a representative of the Office of the State Long-Term  
41 Care Ombudsman. Removal of the appointee's designation by the Office of  
42 the State Long-Term Care Ombudsman automatically rescinds the  
43 appointment to the Adult Care Home Community Advisory Committee.
- 44 (6) Any individual who serves as a community advisory committee member  
45 must go through the Office of the State Long-Term Care Ombudsman's  
46 certification and designation process and meet the certification and  
47 designation requirements in accordance with the State Long-Term Care  
48 Ombudsman Program Policies and Procedures.
- 49 (c) Joint Nursing and Adult Care Home Community Advisory Committees. –  
50 Appointment to the Nursing Home Community Advisory Committees shall preclude  
51 appointment to the Adult Care Home Community Advisory Committees except where written

1 approval to combine these committees is obtained from the ~~Assistant Secretary for Aging,~~  
2 ~~Department of Health and Human Services, Office of the State Long-Term Care Ombudsman.~~  
3 Where this approval is obtained, the Joint Nursing and Adult Care Home Community Advisory  
4 Committee shall have the membership required of Nursing Home Community Advisory  
5 Committees and one additional member for each adult care home with 10 or more beds  
6 licensed in the county. In counties with no adult care homes with 10 or more beds, there shall  
7 be one additional member for every four other types of adult care homes in the county. In no  
8 case shall the number of members on the Joint Nursing and Adult Care Home Community  
9 Advisory Committee exceed 25. Each member shall exercise the statutory rights and  
10 responsibilities of both Nursing Home Committees and Adult Care Home Committees. In  
11 making appointments to this joint committee, the county commissioners shall solicit  
12 nominations from both nursing and adult care home administrators for the appointment of  
13 approximately (but no more than) one-third of the members.

14 (d) Terms of Office. – Each committee member shall serve an initial term of one year.  
15 Any person reappointed to a second or subsequent term in the same county shall serve a two-or  
16 three-year term at the county commissioners' discretion to ensure staggered terms of office.

17 (e) Vacancies. – Any vacancy shall be filled by appointment of a person for a one-year  
18 term. If this vacancy is in a position filled by an appointee nominated by the chief  
19 administrators of adult care homes within the county, then the county commissioners shall fill  
20 the vacancy from persons nominated by a majority of the chief administrators. If the adult care  
21 home administrators fail to make a nomination by registered mail within 45 days after written  
22 notification has been sent to them requesting a nomination, this appointment may be made  
23 without nominations. If the county commissioners fail to fill a vacancy, the vacancy ~~may~~ shall  
24 be filled by the ~~Assistant Secretary for Aging, Department of Health and Human Services~~  
25 ~~Office of the State Long-Term Care Ombudsman~~ no sooner than 45 days after the  
26 commissioners have been notified of the appointment or vacancy.

27 (f) Officers. – The committee shall elect from its members a chair, to serve a one-year  
28 term.

29 (g) Minimum Qualifications for Appointment. – Each member must be a resident of the  
30 county which the committee serves. No person or immediate family member of a person with a  
31 financial interest in a home served by the committee, or employee or governing board member  
32 of a home served by the committee, or immediate family member of a resident in a home  
33 served by the committee may be a member of that committee. Any county commissioner who  
34 is appointed to the committee shall be deemed to be serving on the committee in an ex officio  
35 capacity. Members of the committee shall serve without compensation, but may be reimbursed  
36 for actual expenses incurred by them in the performance of their duties. The names of the  
37 committee members and the date of expiration of their terms shall be filed with the ~~Division of~~  
38 ~~Aging, Department of Health and Human Services, Office of the State Long-Term Care~~  
39 ~~Ombudsman.~~

40 (h) ~~Training.~~ Training, Certification, and Designation. – The ~~Division of Aging,~~  
41 ~~Department of Health and Human Services, Office of the State Long-Term Care Ombudsman~~  
42 shall develop ~~training materials, which shall be distributed to each committee member.~~ training  
43 requirements for certification and designation in accordance with 45 C.F.R. § 1324.13(c)(2).  
44 Each committee member must receive certification training as specified by the ~~Division of~~  
45 ~~Aging State Long-Term Care Ombudsman Program Policies and Procedures~~ and be designated  
46 as representatives of the State Long-Term Care Ombudsman Program prior to exercising any  
47 power under G.S. 131D-32. The ~~Division of Aging, Department of Health and Human~~  
48 ~~Services, State Long-Term Care Ombudsman Program~~ shall provide the committees with  
49 information, guidelines, training, and consultation to direct them in the performance of their  
50 duties.

1 (i) Any written communication made by a member of adult care home advisory  
2 committee within the course and scope of the member's duties, as specified in G.S. 131D-32,  
3 shall be privileged to the extent provided in this subsection. All communication shall be  
4 considered the property of the Office of the State Long-Term Care Ombudsman and subject to  
5 the Office's disclosure policies. This privilege shall be a defense in a cause of action for libel if  
6 the member was acting in good faith and the statements and communications do not amount to  
7 intentional wrongdoing.

8 To the extent that any adult care home advisory committee or any member is covered by  
9 liability insurance, that committee or member shall be deemed to have waived the qualified  
10 immunity herein to the extent of indemnification by insurance."

11 **SECTION 2.(b)** G.S. 131E-128 reads as rewritten:

12 **"§ 131E-128. Nursing home advisory committees.**

13 (a) It is the purpose of the General Assembly that community advisory ~~committees~~  
14 committee members function as representatives of the Office of the State Long-Term Care  
15 Ombudsman and through their designation work to maintain the intent of ~~this Part~~ the Nursing  
16 Home Resident's Bill of Rights within the nursing homes in this State, including nursing homes  
17 operated by hospitals licensed under Article 5 of G.S. Chapter 131E. It is the further purpose of  
18 the General Assembly that the committees promote community involvement and cooperation  
19 with nursing homes and an integration of these homes into a system of care for the elderly.

20 (b) (1) A community advisory committee shall be established in each county which  
21 has a nursing home, including a nursing home operated by a hospital  
22 licensed under Article 5 of G.S. Chapter 131E, shall serve all the homes in  
23 the county, and shall work with each home in the best interest of the persons  
24 residing in each home. In a county which has one, two, or three nursing  
25 homes, the committee shall have five members. In a county with four or  
26 more nursing homes, the committee shall have one additional member for  
27 each nursing home in excess of three, and may have up to five additional  
28 members per committee at the discretion of the county commissioners.

29 (2) In each county with four or more nursing homes, the committee shall  
30 establish a subcommittee of no more than five members and no fewer than  
31 three members from the committee for each nursing home in the county.  
32 Each member must serve on at least one subcommittee.

33 (3) ~~Each committee shall be appointed by the board of county commissioners.~~  
34 Boards of county commissioners are encouraged to appoint the Nursing  
35 Home Community Advisory Committees. Of the members, a minority (not  
36 less than one-third, but as close to one-third as possible) must be chosen  
37 from among persons nominated by a majority of the chief administrators of  
38 nursing homes in the county and of the governing bodies of the hospitals  
39 licensed under Article 5 of G.S. Chapter 131E, which operate nursing  
40 homes. If the nursing home administrators and the governing bodies of the  
41 hospitals licensed under Article 5 of G.S. Chapter 131E, which operate  
42 nursing homes fail to make a nomination within 45 days after written  
43 notification has been sent to them by the board of county commissioners  
44 requesting a nomination, these appointments may be made by the board of  
45 county commissioners without nominations.

46 (4) Notwithstanding any other provision of this Article, appointment to a  
47 nursing home community advisory committee is contingent upon  
48 designation of the appointee by the Office of the State Long-Term Care  
49 Ombudsman in accordance with G.S. 143B-181.18. A designated appointee  
50 is directly accountable to the State Long-Term Care Ombudsman Program in  
51 order to perform the duties as a representative of the Office of the State

1 Long-Term Care Ombudsman. Removal of the appointee's designation by  
2 the Office of the State Long-Term Care Ombudsman automatically rescinds  
3 the appointment to the nursing home community advisory committee.

4 (5) Any individual who serves as a community advisory committee member  
5 must go through the Office of the State Long-Term Care Ombudsman's  
6 certification and designation process and meet the certification and  
7 designation requirements in accordance with the State Long-Term Care  
8 Ombudsman Program Policies and Procedures.

9 (c) Each committee member shall serve an initial term of one year. Any person  
10 reappointed to a second or subsequent term in the same county shall serve a three-year term.  
11 Persons who were originally nominees of nursing home chief administrators and the governing  
12 bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing  
13 homes, or who were appointed by the board of county commissioners when the nursing home  
14 administrators and the governing bodies of the hospitals licensed under Article 5 of  
15 G.S. Chapter 131E, which operate nursing homes failed to make nominations, may not be  
16 reappointed without the consent of a majority of the nursing home chief administrators and the  
17 governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate  
18 nursing homes within the county. If the nursing home chief administrators and the governing  
19 bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing  
20 homes fail to approve or reject the reappointment within 45 days of being requested by the  
21 board of county commissioners, the commissioners may reappoint the member if they so  
22 choose.

23 (d) Any vacancy shall be filled by appointment of a person for a one-year term. Any  
24 person replacing a member nominated by the chief administrators and the governing bodies of  
25 the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes or a  
26 person appointed when the chief administrators and the governing bodies of the hospitals  
27 licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes failed to make a  
28 nomination shall be selected from among persons nominated by the administrators and the  
29 governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate  
30 nursing homes, as provided in subsection (b). If the county commissioners fail to appoint  
31 members to a committee, or fail to fill a vacancy, the appointment ~~may~~ shall be made or  
32 vacancy filled by the ~~Secretary or the Secretary's designee~~ Office of the State Long-Term Care  
33 Ombudsman no sooner than 45 days after the commissioners have been notified of the  
34 appointment or vacancy if nomination or approval of the nursing home administrators and the  
35 governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate  
36 nursing homes is not required. If nominations or approval of the nursing home administrators  
37 and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which  
38 operate nursing homes is required, the appointment ~~may~~ shall be made or vacancy filled by the  
39 ~~Secretary or the Secretary's designee~~ Office of the State Long-Term Care Ombudsman no  
40 sooner than 45 days after the commissioners have received the nomination or approval, or no  
41 sooner than 45 days after the 45-day period for action by the nursing home administrators and  
42 the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which  
43 operate nursing homes.

44 (e) The committee shall elect from its members a chair, to serve a one-year term.

45 (f) Each member must be a resident of the county which the committee serves. No  
46 person or immediate family member of a person with a financial interest in a home served by a  
47 committee, or employee or governing board member or immediate family member of an  
48 employee or governing board member of a home served by a committee, or immediate family  
49 member of a patient in a home served by a committee may be a member of a committee.  
50 Membership on a committee shall not be considered an office as defined in G.S. 128-1 or  
51 G.S. 128-1.1. Any county commissioner who is appointed to the committee shall be deemed to

1 be serving on the committee in an ex officio capacity. Members of the committee shall serve  
2 without compensation, but may be reimbursed for the amount of actual expenses incurred by  
3 them in the performance of their duties. The names of the committee members and the date of  
4 expiration of their terms shall be filed with the ~~Division of Aging, Office of the State~~  
5 Long-Term Care Ombudsman, which shall supply a copy to the Division of Health Service  
6 Regulation.

7 (g) ~~The Division of Aging, Department of Health and Human Services, Office of the~~  
8 State Long-Term Care Ombudsman shall develop training materials which shall be distributed  
9 ~~to each committee member and nursing home.~~ requirements for certification and designation in  
10 accordance with 45 C.F.R. § 1324.13(c)(2). Each committee member must receive certification  
11 training as specified by the ~~Division of Aging State Long-Term Care Ombudsman Program~~  
12 Policies and Procedures and be designated as representatives of the State Long-Term Care  
13 Ombudsman Program prior to exercising any power under subsection (h) of this section. The  
14 ~~Division of Aging, Department of Health and Human Services, State Long-Term Care~~  
15 Ombudsman Program shall provide the committees with information, guidelines, training, and  
16 consultation to direct them in the performance of their duties.

17 (h) (1) Each committee shall apprise itself of the general conditions under which the  
18 persons are residing in the homes, and shall work for the best interests of the  
19 persons in the homes. This may include assisting persons who have  
20 grievances with the home and facilitating the resolution of grievances at the  
21 local level.

22 (2) Each committee shall quarterly visit the nursing home it serves. For each  
23 official quarterly visit, a majority of the committee members shall be  
24 present. In addition, each committee may visit the nursing home it serves  
25 whenever it deems it necessary to carry out its duties. In counties with four  
26 or more nursing homes, the subcommittee assigned to a home shall perform  
27 the duties of the committee under this subdivision, and a majority of the  
28 subcommittee members must be present for any visit.

29 (3) Each member of a committee shall have the right ~~between 10:00 A.M. and~~  
30 ~~8:00 P.M.~~ to enter into the facility the committee serves in order to carry out  
31 the members' responsibilities. In a county where subcommittees have been  
32 established, this right of access shall be limited to homes served by those  
33 subcommittees to which the member has been appointed.

34 (4) The committee or subcommittee may communicate through its chair with the  
35 Department or any other agency in relation to the interest of any patient. The  
36 identity of any complainant or resident involved in a complaint shall not be  
37 disclosed except as permitted under the Older Americans Act of 1965, as  
38 amended, 42 U.S.C. § 3001 et seq.

39 (5) Each home shall cooperate with the committee as it carries out its duties.

40 (6) Before entering into any nursing home, the committee, subcommittee, or  
41 member shall identify itself to the person present at the facility who is in  
42 charge of the facility at that time.

43 (i) Any written communication made by a member of a nursing home advisory  
44 committee within the course and scope of the member's duties, as specified in G.S. 131E-128,  
45 shall be privileged to the extent provided in this subsection. All communication shall be  
46 considered the property of the Office of the State Long-Term Care Ombudsman and subject to  
47 the Office's disclosure policies. This privilege shall be a defense in a cause of action for libel if  
48 the member was acting in good faith and the statements or communications do not amount to  
49 intentional wrongdoing.

1 To the extent that any nursing home advisory committee or any member thereof is covered  
2 by liability insurance, that committee or member shall be deemed to have waived the qualified  
3 immunity herein to the extent of indemnification by insurance."

4 **SECTION 2.(c)** G.S. 143B-181.18 reads as rewritten:

5 **"§ 143B-181.18. Office of State Long-Term Care Ombudsman Program/State**  
6 **Ombudsman duties.**

7 The State Ombudsman shall perform the duties provided below:

- 8 (1) Promote community involvement with long-term care providers and  
9 residents of long-term care facilities and serve as liaison between residents,  
10 residents' families, facility personnel, and facility administration.
- 11 (2) Supervise the State Long-Term Care Ombudsman Program pursuant to rules  
12 adopted by the Secretary of the Department of Health and Human Services  
13 pursuant to G.S. 143B-10.
- 14 (3) Certify regional ombudsmen. Certification requirements shall include an  
15 internship, training in the aging process, complaint resolution, long-term  
16 care issues, mediation techniques, recruitment and training of volunteers,  
17 and relevant federal, State, and local laws, policies, and standards.
- 18 (3a) Designate certified Regional Ombudsmen as representatives of the Office of  
19 the State Long-Term Care Ombudsman Office—as well as refuse, suspend, or  
20 remove designation as a representative of the Office of the State Long-Term  
21 Care Ombudsman in accordance with the ~~Office of the State Long-Term~~  
22 Care Ombudsman Program Policies and Procedures.
- 23 (3b) Designate and refuse, suspend, or remove designation of volunteer  
24 representatives of the Office of the State Long-Term Care Ombudsman,  
25 including any community advisory committee appointees, in accordance  
26 with the State Long-Term Care Ombudsman Program Policies and  
27 Procedures.
- 28 (4) Attempt to resolve complaints made by or on behalf of individuals who are  
29 residents of long-term care facilities, which complaints relate to  
30 administrative action that may adversely affect the health, safety, or welfare  
31 of residents.
- 32 (5) Provide training and technical assistance to regional ombudsmen.
- 33 (6) Establish procedures for appropriate access by regional ombudsmen to  
34 long-term care facilities and residents' files, records, and other information,  
35 including procedures to protect the confidentiality of these files, records, and  
36 other information and to ensure that the identity of any complainant or  
37 resident will not be disclosed except as permitted under the Older Americans  
38 Act of 1965, as amended, 42 U.S.C. § 3001 et seq. and regulations  
39 promulgated thereunder.
- 40 (7) Analyze data relating to complaints and conditions in long-term care  
41 facilities to identify significant problems and recommend solutions.
- 42 (8) Prepare an annual report containing data and findings regarding the types of  
43 problems experienced and complaints reported by residents as well as  
44 recommendations for resolutions of identified long-term care issues.
- 45 (9) Prepare findings regarding public education and community involvement  
46 efforts and innovative programs being provided in long-term care facilities.
- 47 (10) Provide information to public agencies, and through the State Ombudsman,  
48 to legislators, and others regarding problems encountered by residents or  
49 providers as well as recommendations for resolution.
- 50 (11) Provide leadership for statewide systems advocacy efforts of the Office on  
51 behalf of long-term care residents, including independent determinations and

1 positions that shall not be required to represent the position of the State  
2 agency or other agency within which the Ombudsman Program is  
3 organizationally located. Provide coordination of systems advocacy efforts  
4 with representatives of the Office as outlined in Ombudsman Policies and  
5 Procedures.

6 (12) To the extent required to meet the requirement of the Older Americans Act  
7 and regulations promulgated thereunder regarding allotments for Vulnerable  
8 Elder Rights Protection Activities, the State Ombudsman and representatives  
9 of the Office are excluded from any State lobbying prohibitions under  
10 requirements to conduct systems advocacy on behalf of long-term care  
11 residents.

12 (13) Determine the use of the fiscal resources as required by 42 U.S.C. § 3001 et  
13 seq. and regulations promulgated thereunder."

14 **SECTION 3.** The Department of Health and Human Services shall examine P.L.  
15 113-51, HIV Organ Policy Equity (HOPE) Act, and the Final Safeguards and Research Criteria  
16 publication by the U.S. Department of Health and Human Services and National Institutes of  
17 Health to determine public health safeguards, regulations, and statutory changes necessary for  
18 consideration by the General Assembly. The Department shall submit a report of findings and  
19 recommendations, including any necessary statutory changes, to the Joint Legislative Oversight  
20 Committee on Health and Human Services on or before January 1, 2018.

21 **SECTION 4.** This act is effective when it becomes law.