

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

H

D

HOUSE BILL 248  
Committee Substitute Favorable 4/19/17  
Senate Health Care Committee Substitute Adopted 6/14/17  
Proposed Conference Committee Substitute H248-PCCS40641-SH-1

Short Title: Ombudsman Changes & DHHS Study.

(Public)

Sponsors:

Referred to:

March 6, 2017

A BILL TO BE ENTITLED

AN ACT 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)** 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. –

(1) A community advisory committee shall be established in each county that has at least one licensed adult care home, shall serve all the homes in the county, and shall work with each of these homes for the best interests of the residents. In a county that has one, two, or three adult care homes with 10 or more beds, the committee shall have five members.

(2) In a county with four or more adult care homes with 10 or more beds, the committee shall have one additional member for each adult care home with 10 or more beds in excess of three, and may have up to five additional members at the discretion of the county commissioners, not to exceed a maximum of 25 members. In each county with four or more adult care homes with 10 or more beds, the committee shall establish a subcommittee of no more than five members and no fewer than three members from the committee for each adult care home in the county. Each member must serve on at least one subcommittee.



\* H 2 4 8 - P C C S 4 0 6 4 1 - S H - 1 \*

1 (3) In counties with no adult care homes with 10 or more beds, the committee  
2 shall have five members. Regardless of how many members a particular  
3 community advisory committee is required to have, at least one member of  
4 each committee shall be a person involved in the area of mental retardation.

5 (4) The boards of county commissioners are encouraged to appoint the Adult  
6 Care Home Community Advisory Committees. Of the members, a minority  
7 (not less than one-third, but as close to one-third as possible) shall be chosen  
8 from among persons nominated by a majority of the chief administrators of  
9 adult care homes in the county. If the adult care home administrators fail to  
10 make a nomination within 45 days after written notification has been sent to  
11 them requesting a nomination, these appointments may be made without  
12 nominations. If the county commissioners fail to appoint members to a  
13 ~~committee by July 1, 1983,~~ committee, the appointments shall be made by  
14 the ~~Assistant Secretary for Aging, Department of Health and Human~~  
15 ~~Services, Office of the State Long-Term Care Ombudsman~~ no sooner than  
16 45 days after nominations have been requested from the adult care home  
17 ~~administrators, but no later than October 1, 1983,~~ administrators. In making  
18 appointments, the ~~Assistant Secretary for Aging~~ Office of the State  
19 ~~Long-Term Care Ombudsman~~ shall follow the same appointment process as  
20 that specified for the County Commissioners.

21 (5) Notwithstanding any other provision of this Article, appointment to an Adult  
22 Care Home Community Advisory Committee is contingent upon designation  
23 of the appointee by the Office of the State Long-Term Care Ombudsman in  
24 accordance with G.S. 143B-181.18. A designated appointee is directly  
25 accountable to the State Long-Term Care Ombudsman Program in order to  
26 perform the duties as a representative of the Office of the State Long-Term  
27 Care Ombudsman. Removal of the appointee's designation by the Office of  
28 the State Long-Term Care Ombudsman automatically rescinds the  
29 appointment to the Adult Care Home Community Advisory Committee.

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

35 (c) Joint Nursing and Adult Care Home Community Advisory Committees. –  
36 Appointment to the Nursing Home Community Advisory Committees shall preclude  
37 appointment to the Adult Care Home Community Advisory Committees except where written  
38 approval to combine these committees is obtained from the ~~Assistant Secretary for Aging,~~  
39 ~~Department of Health and Human Services,~~ Office of the State Long-Term Care Ombudsman.  
40 Where this approval is obtained, the Joint Nursing and Adult Care Home Community Advisory  
41 Committee shall have the membership required of Nursing Home Community Advisory  
42 Committees and one additional member for each adult care home with 10 or more beds  
43 licensed in the county. In counties with no adult care homes with 10 or more beds, there shall  
44 be one additional member for every four other types of adult care homes in the county. In no  
45 case shall the number of members on the Joint Nursing and Adult Care Home Community  
46 Advisory Committee exceed 25. Each member shall exercise the statutory rights and  
47 responsibilities of both Nursing Home Committees and Adult Care Home Committees. In  
48 making appointments to this joint committee, the county commissioners shall solicit  
49 nominations from both nursing and adult care home administrators for the appointment of  
50 approximately (but no more than) one-third of the members.

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

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

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

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

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

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

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

48 **SECTION 1.(b)** G.S. 131E-128 reads as rewritten:

49 **"§ 131E-128. Nursing home advisory committees.**

50 (a) It is the purpose of the General Assembly that community advisory ~~committees~~  
51 committee members function as representatives of the Office of the State Long-Term Care

1 Ombudsman and through their designation work to maintain the intent of this Part the Nursing  
2 Home Resident's Bill of Rights within the nursing homes in this State, including nursing homes  
3 operated by hospitals licensed under Article 5 of G.S. Chapter 131E. It is the further purpose of  
4 the General Assembly that the committees promote community involvement and cooperation  
5 with nursing homes and an integration of these homes into a system of care for the elderly.

6 (b) (1) A community advisory committee shall be established in each county which  
7 has a nursing home, including a nursing home operated by a hospital  
8 licensed under Article 5 of G.S. Chapter 131E, shall serve all the homes in  
9 the county, and shall work with each home in the best interest of the persons  
10 residing in each home. In a county which has one, two, or three nursing  
11 homes, the committee shall have five members. In a county with four or  
12 more nursing homes, the committee shall have one additional member for  
13 each nursing home in excess of three, and may have up to five additional  
14 members per committee at the discretion of the county commissioners.

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

19 (3) ~~Each committee shall be appointed by the board of county commissioners.~~  
20 Boards of county commissioners are encouraged to appoint the Nursing  
21 Home Community Advisory Committees. Of the members, a minority (not  
22 less than one-third, but as close to one-third as possible) must be chosen  
23 from among persons nominated by a majority of the chief administrators of  
24 nursing homes in the county and of the governing bodies of the hospitals  
25 licensed under Article 5 of G.S. Chapter 131E, which operate nursing  
26 homes. If the nursing home administrators and the governing bodies of the  
27 hospitals licensed under Article 5 of G.S. Chapter 131E, which operate  
28 nursing homes fail to make a nomination within 45 days after written  
29 notification has been sent to them by the board of county commissioners  
30 requesting a nomination, these appointments may be made by the board of  
31 county commissioners without nominations.

32 (4) Notwithstanding any other provision of this Article, appointment to a  
33 nursing home community advisory committee is contingent upon  
34 designation of the appointee by the Office of the State Long-Term Care  
35 Ombudsman in accordance with G.S. 143B-181.18. A designated appointee  
36 is directly accountable to the State Long-Term Care Ombudsman Program in  
37 order to perform the duties as a representative of the Office of the State  
38 Long-Term Care Ombudsman. Removal of the appointee's designation by  
39 the Office of the State Long-Term Care Ombudsman automatically rescinds  
40 the appointment to the nursing home community advisory committee.

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

46 (c) Each committee member shall serve an initial term of one year. Any person  
47 reappointed to a second or subsequent term in the same county shall serve a three-year term.  
48 Persons who were originally nominees of nursing home chief administrators and the governing  
49 bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing  
50 homes, or who were appointed by the board of county commissioners when the nursing home  
51 administrators and the governing bodies of the hospitals licensed under Article 5 of

1 G.S. Chapter 131E, which operate nursing homes failed to make nominations, may not be  
2 reappointed without the consent of a majority of the nursing home chief administrators and the  
3 governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate  
4 nursing homes within the county. If the nursing home chief administrators and the governing  
5 bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing  
6 homes fail to approve or reject the reappointment within 45 days of being requested by the  
7 board of county commissioners, the commissioners may reappoint the member if they so  
8 choose.

9 (d) Any vacancy shall be filled by appointment of a person for a one-year term. Any  
10 person replacing a member nominated by the chief administrators and the governing bodies of  
11 the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes or a  
12 person appointed when the chief administrators and the governing bodies of the hospitals  
13 licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes failed to make a  
14 nomination shall be selected from among persons nominated by the administrators and the  
15 governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate  
16 nursing homes, as provided in subsection (b). If the county commissioners fail to appoint  
17 members to a committee, or fail to fill a vacancy, the appointment ~~may shall~~ be made or  
18 vacancy filled by the ~~Secretary or the Secretary's designee~~ Office of the State Long-Term Care  
19 Ombudsman no sooner than 45 days after the commissioners have been notified of the  
20 appointment or vacancy if nomination or approval of the nursing home administrators and the  
21 governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate  
22 nursing homes is not required. If nominations or approval of the nursing home administrators  
23 and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which  
24 operate nursing homes is required, the appointment ~~may shall~~ be made or vacancy filled by the  
25 ~~Secretary or the Secretary's designee~~ Office of the State Long-Term Care Ombudsman no  
26 sooner than 45 days after the commissioners have received the nomination or approval, or no  
27 sooner than 45 days after the 45-day period for action by the nursing home administrators and  
28 the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which  
29 operate nursing homes.

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

31 (f) Each member must be a resident of the county which the committee serves. No  
32 person or immediate family member of a person with a financial interest in a home served by a  
33 committee, or employee or governing board member or immediate family member of an  
34 employee or governing board member of a home served by a committee, or immediate family  
35 member of a patient in a home served by a committee may be a member of a committee.  
36 Membership on a committee shall not be considered an office as defined in G.S. 128-1 or  
37 G.S. 128-1.1. Any county commissioner who is appointed to the committee shall be deemed to  
38 be serving on the committee in an ex officio capacity. Members of the committee shall serve  
39 without compensation, but may be reimbursed for the amount of actual expenses incurred by  
40 them in the performance of their duties. The names of the committee members and the date of  
41 expiration of their terms shall be filed with the ~~Division of Aging,~~ Office of the State  
42 Long-Term Care Ombudsman, which shall supply a copy to the Division of Health Service  
43 Regulation.

44 (g) ~~The Division of Aging, Department of Health and Human Services, Office of the~~  
45 State Long-Term Care Ombudsman shall develop training ~~materials which shall be distributed~~  
46 ~~to each committee member and nursing home requirements for certification and designation in~~  
47 accordance with 45 C.F.R. § 1324.13(c)(2). Each committee member must receive certification  
48 training as specified by the Division of Aging State Long-Term Care Ombudsman Program  
49 Policies and Procedures and be designated as representatives of the State Long-Term Care  
50 Ombudsman Program prior to exercising any power under subsection (h) of this section. The  
51 ~~Division of Aging, Department of Health and Human Services, State Long-Term Care~~

1 Ombudsman Program shall provide the committees with information, guidelines, training, and  
2 consultation to direct them in the performance of their duties.

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

8 (2) Each committee shall quarterly visit the nursing home it serves. For each  
9 official quarterly visit, a majority of the committee members shall be  
10 present. In addition, each committee may visit the nursing home it serves  
11 whenever it deems it necessary to carry out its duties. In counties with four  
12 or more nursing homes, the subcommittee assigned to a home shall perform  
13 the duties of the committee under this subdivision, and a majority of the  
14 subcommittee members must be present for any visit.

15 (3) Each member of a committee shall have the right ~~between 10:00 A.M. and~~  
16 ~~8:00 P.M.~~ to enter into the facility the committee serves in order to carry out  
17 the members' responsibilities. In a county where subcommittees have been  
18 established, this right of access shall be limited to homes served by those  
19 subcommittees to which the member has been appointed.

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

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

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

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

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

39 **SECTION 1.(c)** G.S. 143B-181.18 reads as rewritten:

40 **"§ 143B-181.18. Office of State Long-Term Care Ombudsman Program/State**  
41 **Ombudsman duties.**

42 The State Ombudsman shall perform the duties provided below:

43 (1) Promote community involvement with long-term care providers and  
44 residents of long-term care facilities and serve as liaison between residents,  
45 residents' families, facility personnel, and facility administration.

46 (2) Supervise the State Long-Term Care Ombudsman Program pursuant to rules  
47 adopted by the Secretary of the Department of Health and Human Services  
48 pursuant to G.S. 143B-10.

49 (3) Certify regional ombudsmen. Certification requirements shall include an  
50 internship, training in the aging process, complaint resolution, long-term

- 1 care issues, mediation techniques, recruitment and training of volunteers,  
2 and relevant federal, State, and local laws, policies, and standards.
- 3 (3a) Designate certified Regional Ombudsmen as representatives of the Office of  
4 the State Long-Term Care Ombudsman Office as well as refuse, suspend, or  
5 remove designation as a representative of the Office of the State Long-Term  
6 Care Ombudsman in accordance with the ~~Office of the State Long-Term~~  
7 Care Ombudsman Program Policies and Procedures.
- 8 (3b) Designate and refuse, suspend, or remove designation of volunteer  
9 representatives of the Office of the State Long-Term Care Ombudsman,  
10 including any community advisory committee appointees, in accordance  
11 with the State Long-Term Care Ombudsman Program Policies and  
12 Procedures.
- 13 (4) Attempt to resolve complaints made by or on behalf of individuals who are  
14 residents of long-term care facilities, which complaints relate to  
15 administrative action that may adversely affect the health, safety, or welfare  
16 of residents.
- 17 (5) Provide training and technical assistance to regional ombudsmen.
- 18 (6) Establish procedures for appropriate access by regional ombudsmen to  
19 long-term care facilities and residents' files, records, and other information,  
20 including procedures to protect the confidentiality of these files, records, and  
21 other information and to ensure that the identity of any complainant or  
22 resident will not be disclosed except as permitted under the Older Americans  
23 Act of 1965, as amended, 42 U.S.C. § 3001 et seq. and regulations  
24 promulgated thereunder.
- 25 (7) Analyze data relating to complaints and conditions in long-term care  
26 facilities to identify significant problems and recommend solutions.
- 27 (8) Prepare an annual report containing data and findings regarding the types of  
28 problems experienced and complaints reported by residents as well as  
29 recommendations for resolutions of identified long-term care issues.
- 30 (9) Prepare findings regarding public education and community involvement  
31 efforts and innovative programs being provided in long-term care facilities.
- 32 (10) Provide information to public agencies, and through the State Ombudsman,  
33 to legislators, and others regarding problems encountered by residents or  
34 providers as well as recommendations for resolution.
- 35 (11) Provide leadership for statewide systems advocacy efforts of the Office on  
36 behalf of long-term care residents, including independent determinations and  
37 positions that shall not be required to represent the position of the State  
38 agency or other agency within which the Ombudsman Program is  
39 organizationally located. Provide coordination of systems advocacy efforts  
40 with representatives of the Office as outlined in Ombudsman Policies and  
41 Procedures.
- 42 (12) To the extent required to meet the requirement of the Older Americans Act  
43 and regulations promulgated thereunder regarding allotments for Vulnerable  
44 Elder Rights Protection Activities, the State Ombudsman and representatives  
45 of the Office are excluded from any State lobbying prohibitions under  
46 requirements to conduct systems advocacy on behalf of long-term care  
47 residents.
- 48 (13) Determine the use of the fiscal resources as required by 42 U.S.C. § 3001 et  
49 seq. and regulations promulgated thereunder."

50 **SECTION 2.** The Department of Health and Human Services shall examine P.L.  
51 113-51, HIV Organ Policy Equity (HOPE) Act, and the Final Safeguards and Research Criteria

1 publication by the U.S. Department of Health and Human Services and National Institutes of  
2 Health to determine public health safeguards, regulations, and statutory changes necessary for  
3 consideration by the General Assembly. The Department shall submit a report of findings and  
4 recommendations, including any necessary statutory changes, to the Joint Legislative Oversight  
5 Committee on Health and Human Services on or before January 1, 2018.

6 **SECTION 3.** This act is effective when it becomes law.