

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1), (2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVI and XIX of the Act are classified generally to subchapters XVI (§1381 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Food and Nutrition Act of 2008, referred to in subsec. (a)(3), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 706 of Pub. L. 89-73 was classified to section 3045e of this title prior to repeal by Pub. L. 95-478.

AMENDMENTS

2008—Subsec. (a)(3). Pub. L. 110-246, §4002(b)(1)(B), (2)(BB), substituted “Food and Nutrition Act of 2008” for “Food Stamp Act of 1977”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(B), (2)(BB) of Pub. L. 110-246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as a note under section 1161 of Title 2, The Congress.

SUBPART II—OMBUDSMAN PROGRAMS

§ 3058f. Definitions

As used in this subpart:

(1) Office

The term “Office” means the office established in section 3058g(a)(1)(A) of this title.

(2) Ombudsman

The term “Ombudsman” means the individual described in section 3058g(a)(2) of this title.

(3) Local Ombudsman entity

The term “local Ombudsman entity” means an entity designated under section 3058g(a)(5)(A) of this title to carry out the duties described in section 3058g(a)(5)(B) of this title with respect to a planning and service area or other substate area.

(4) Program

The term “program” means the State Long-Term Care Ombudsman program established in section 3058g(a)(1)(B) of this title.

(5) Representative

The term “representative” includes an employee or volunteer who represents an entity designated under section 3058g(a)(5)(A) of this title and who is individually designated by the Ombudsman.

(6) Resident

The term “resident” means an individual who resides in a long-term care facility.

(Pub. L. 89-73, title VII, §711, as added Pub. L. 102-375, title VII, §702, Sept. 30, 1992, 106 Stat. 1275; amended Pub. L. 114-144, §8(b), Apr. 19, 2016, 130 Stat. 347.)

AMENDMENTS

2016—Par. (6). Pub. L. 114-144 struck out “older” before “individual”.

§ 3058g. State Long-Term Care Ombudsman program**(a) Establishment****(1) In general**

In order to be eligible to receive an allotment under section 3058b of this title from funds appropriated under section 3058a of this title and made available to carry out this subpart, a State agency shall, in accordance with this section—

(A) establish and operate an Office of the State Long-Term Care Ombudsman; and

(B) carry out through the Office a State Long-Term Care Ombudsman program.

(2) Ombudsman

The Office shall be headed by an individual, to be known as the State Long-Term Care Ombudsman, who shall be selected from among individuals with expertise and experience in the fields of long-term care and advocacy. The Ombudsman shall be responsible for the management, including the fiscal management, of the Office.

(3) Functions

The Ombudsman shall serve on a full-time basis, and shall, personally or through representatives of the Office—

(A) identify, investigate, and resolve complaints that—

(i) are made by, or on behalf of, residents, including residents with limited or no decisionmaking capacity and who have no known legal representative, and if such a resident is unable to communicate consent for an Ombudsman to work on a complaint directly involving the resident, the Ombudsman shall seek evidence to indicate what outcome the resident would have communicated (and, in the absence of evidence to the contrary, shall assume that the resident wishes to have the resident’s health, safety, welfare, and rights protected) and shall work to accomplish that outcome; and

(ii) relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of—

(I) providers, or representatives of providers, of long-term care services;

(II) public agencies; or

(III) health and social service agencies;

(B) provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents;

(C) inform the residents about means of obtaining services provided by providers or

agencies described in subparagraph (A)(ii) or services described in subparagraph (B);

(D) ensure that the residents have regular, timely, private, and unimpeded access to the services provided through the Office and that the residents and complainants receive timely responses from representatives of the Office to complaints;

(E) represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(F) provide administrative and technical assistance to entities designated under paragraph (5) to assist the entities in participating in the program;

(G)(i) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State;

(ii) recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and

(iii) facilitate public comment on the laws, regulations, policies, and actions;

(H)(i) provide for training representatives of the Office;

(ii) promote the development of citizen organizations, to participate in the program; and

(iii) provide technical support for, actively encourage, and assist in the development of resident and family councils to protect the well-being and rights of residents;

(I) when feasible, continue to carry out the functions described in this section on behalf of residents transitioning from a long-term care facility to a home care setting; and

(J) carry out such other activities as the Assistant Secretary determines to be appropriate.

(4) Contracts and arrangements

(A) In general

Except as provided in subparagraph (B), the State agency may establish and operate the Office, and carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization.

(B) Licensing and certification organizations; associations

The State agency may not enter into the contract or other arrangement described in subparagraph (A) with—

(i) an agency or organization that is responsible for licensing or certifying long-term care services in the State; or

(ii) an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals.

(5) Designation of local Ombudsman entities and representatives

(A) Designation

In carrying out the duties of the Office, the Ombudsman may designate an entity as

a local Ombudsman entity, and may designate an employee or volunteer to represent the entity.

(B) Duties

An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency—

(i) provide services to protect the health, safety, welfare¹ and rights of residents;

(ii) ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;

(iii) identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;

(iv) represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(v)(I) review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and

(II) facilitate the ability of the public to comment on the laws, regulations, policies, and actions;

(vi) support, actively encourage, and assist in the development of resident and family councils;

(vii) identify, investigate, and resolve complaints described in clause (iii) that are made by or on behalf of residents with limited or no decisionmaking capacity and who have no known legal representative, and if such a resident is unable to communicate consent for an Ombudsman to work on a complaint directly involving the resident, the Ombudsman shall seek evidence to indicate what outcome the resident would have communicated (and, in the absence of evidence to the contrary, shall assume that the resident wishes to have the resident's health, safety, welfare, and rights protected) and shall work to accomplish that outcome; and

(viii) carry out other activities that the Ombudsman determines to be appropriate.

(C) Eligibility for designation

Entities eligible to be designated as local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall—

(i) have demonstrated capability to carry out the responsibilities of the Office;

(ii) be free of conflicts of interest and not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves;

(iii) in the case of the entities, be public or nonprofit private entities; and

¹ So in original. Probably should be followed by a comma.

(iv) meet such additional requirements as the Ombudsman may specify.

(D) Policies and procedures

(i) In general

The State agency shall establish, in accordance with the Office, policies and procedures for monitoring local Ombudsman entities designated to carry out the duties of the Office.

(ii) Policies

In a case in which the entities are grantees, or the representatives are employees, of area agencies on aging, the State agency shall develop the policies in consultation with the area agencies on aging. The policies shall provide for participation and comment by the agencies and for resolution of concerns with respect to case activity.

(iii) Confidentiality and disclosure

The State agency shall develop the policies and procedures in accordance with all provisions of this part regarding confidentiality and conflict of interest.

(b) Procedures for access

(1) In general

The State shall ensure that representatives of the Office shall have—

(A) private and unimpeded access to long-term care facilities and residents;

(B)(i) appropriate access to review all files, records, and other information concerning a resident, if—

(I) the representative has the permission of the resident, or the legal representative of the resident; or

(II) the resident is unable to communicate consent to the review and has no legal representative; or

(ii) access to the files, records, and information as is necessary to investigate a complaint if—

(I) a legal guardian of the resident refuses to give the permission;

(II) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and

(III) the representative obtains the approval of the Ombudsman;

(C) access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities; and

(D) access to and, on request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities.

(2) Procedures

The State agency shall establish procedures to ensure the access described in paragraph (1).

(3) Health oversight agency

For purposes of section 264(c) of the Health Insurance Portability and Accountability Act

of 1996 (including regulations issued under that section) (42 U.S.C. 1320d-2 note), the Ombudsman and a representative of the Office shall be considered a “health oversight agency,” so that release of residents’ individually identifiable health information to the Ombudsman or representative is not precluded in cases in which the requirements of clause (i) or (ii) of paragraph (1)(B), or the requirements of paragraph (1)(D), are otherwise met.

(c) Reporting system

The State agency shall establish a statewide uniform reporting system to—

(1) collect and analyze data relating to complaints and conditions in long-term care facilities and to residents for the purpose of identifying and resolving significant problems; and

(2) submit the data, on a regular basis, to—

(A) the agency of the State responsible for licensing or certifying long-term care facilities in the State;

(B) other State and Federal entities that the Ombudsman determines to be appropriate;

(C) the Assistant Secretary; and

(D) the National Ombudsman Resource Center established in section 3012(a)(18) of this title.

(d) Disclosure

(1) In general

The State agency shall establish procedures for the disclosure by the Ombudsman or local Ombudsman entities of files, records, and other information maintained by the program, including records described in subsection (b)(1) or (c) of this section.

(2) Identity of complainant or resident

The procedures described in paragraph (1) shall—

(A) provide that, subject to subparagraph (B), the files, records, and other information described in paragraph (1) may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files, records, and other information);

(B) prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files, records, or other information unless—

(i) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing;

(ii)(I) the complainant or resident gives consent orally; and

(II) the consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or

(iii) the disclosure is required by court order; and

(C) notwithstanding subparagraph (B), ensure that the Ombudsman may disclose information as needed in order to best serve residents with limited or no decisionmaking capacity who have no known legal represent-

ative and are unable to communicate consent, in order for the Ombudsman to carry out the functions and duties described in paragraphs (3)(A) and (5)(B) of subsection (a).

(e) Consultation

In planning and operating the program, the State agency shall consider the views of area agencies on aging, older individuals, and providers of long-term care.

(f) Conflict of interest

(1) Individual conflict of interest

The State agency shall—

(A) ensure that no individual, or member of the immediate family of an individual, involved in the designation of the Ombudsman (whether by appointment or otherwise) or the designation of an entity designated under subsection (a)(5), is subject to a conflict of interest;

(B) ensure that no officer or employee of the Office, representative of a local Ombudsman entity, or member of the immediate family of the officer, employee, or representative, is subject to a conflict of interest; and

(C) ensure that the Ombudsman—

(i) does not have a direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(ii) does not have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;

(iii) is not employed by, or participating in the management of, a long-term care facility or a related organization, and has not been employed by such a facility or organization within 1 year before the date of the determination involved;

(iv) does not receive, or have the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility;

(v) does not have management responsibility for, or operate under the supervision of an individual with management responsibility for, adult protective services; and

(vi) does not serve as a guardian or in another fiduciary capacity for residents of long-term care facilities in an official capacity (as opposed to serving as a guardian or fiduciary for a family member, in a personal capacity).

(2) Organizational conflict of interest

(A) In general

The State agency shall comply with subparagraph (B)(i) in a case in which the Office poses an organizational conflict of interest, including a situation in which the Office is placed in an organization that—

(i) is responsible for licensing, certifying, or surveying long-term care services in the State;

(ii) is an association (or an affiliate of such an association) of long-term care fa-

cilities, or of any other residential facilities for older individuals;

(iii) provides long-term care services, including programs carried out under a Medicaid waiver approved under section 1115 of the Social Security Act (42 U.S.C. 1315) or under subsection (b) or (c) of section 1915 of the Social Security Act (42 U.S.C. 1396n), or under a Medicaid State plan amendment under subsection (i), (j), or (k) of section 1915 of the Social Security Act (42 U.S.C. 1396n);

(iv) provides long-term care case management;

(v) sets rates for long-term care services;

(vi) provides adult protective services;

(vii) is responsible for eligibility determinations for the Medicaid program carried out under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

(viii) conducts preadmission screening for placements in facilities described in clause (ii); or

(ix) makes decisions regarding admission or discharge of individuals to or from such facilities.

(B) Identifying, removing, and remedying organizational conflict

(i) In general

The State agency may not operate the Office or carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization, in a case in which there is an organizational conflict of interest (within the meaning of subparagraph (A)) unless such conflict of interest has been—

(I) identified by the State agency;

(II) disclosed by the State agency to the Assistant Secretary in writing; and

(III) remedied in accordance with this subparagraph.

(ii) Action by Assistant Secretary

In a case in which a potential or actual organizational conflict of interest (within the meaning of subparagraph (A)) involving the Office is disclosed or reported to the Assistant Secretary by any person or entity, the Assistant Secretary shall require that the State agency, in accordance with the policies and procedures established by the State agency under subsection (a)(5)(D)(iii)—

(I) remove the conflict; or

(II) submit, and obtain the approval of the Assistant Secretary for, an adequate remedial plan that indicates how the Ombudsman will be unencumbered in fulfilling all of the functions specified in subsection (a)(3).

(g) Legal counsel

The State agency shall ensure that—

(1)(A) adequate legal counsel is available, and is able, without conflict of interest, to—

(i) provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; and

(ii) assist the Ombudsman and representatives of the Office in the performance of the

official duties of the Ombudsman and representatives; and

(B) legal representation is provided to any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the Ombudsman or such a representative; and

(2) the Office pursues administrative, legal, and other appropriate remedies on behalf of residents.

(h) Administration

The State agency shall require the Office to—

(1) prepare an annual report—

(A) describing the activities carried out by the Office in the year for which the report is prepared;

(B) containing and analyzing the data collected under subsection (c) of this section;

(C) evaluating the problems experienced by, and the complaints made by or on behalf of, residents;

(D) containing recommendations for—

(i) improving quality of the care and life of the residents; and

(ii) protecting the health, safety, welfare, and rights of the residents;

(E)(i) analyzing the success of the program including success in providing services to residents of board and care facilities and other similar adult care facilities; and

(ii) identifying barriers that prevent the optimal operation of the program; and

(F) providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers;

(2) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the State, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate;

(3)(A) provide such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding—

(i) the problems and concerns of individuals residing in long-term care facilities; and

(ii) recommendations related to the problems and concerns; and

(B) make available to the public, and submit to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities, each report prepared under paragraph (1);

(4) ensure that the Ombudsman or a designee participates in training provided by the National Ombudsman Resource Center established in section 3012(a)(18) of this title;

(5) strengthen and update procedures for the training of the representatives of the Office, including unpaid volunteers, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs, in consultation with representatives of citizen groups, long-term care providers, and the Office, that—

(A) specify a minimum number of hours of initial training;

(B) specify the content of the training, including training relating to—

(i) Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State;

(ii) investigative techniques; and

(iii) such other matters as the State determines to be appropriate; and

(C) specify an annual number of hours of in-service training for all designated representatives;

(6) prohibit any representative of the Office (other than the Ombudsman) from carrying out any activity described in subparagraphs (A) through (G) of subsection (a)(3) of this section unless the representative—

(A) has received the training required under paragraph (5); and

(B) has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office;

(7) coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses established under—

(A) subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.]; and

(B) the Protection and Advocacy for Mentally Ill Individuals Act of 1986² (42 U.S.C. 10801 et seq.);

(8) coordinate, to the greatest extent possible, ombudsman services with legal assistance provided under section 3026(a)(2)(C) of this title, through adoption of memoranda of understanding and other means;

(9) coordinate services with State and local law enforcement agencies and courts of competent jurisdiction; and

(10) permit any local Ombudsman entity to carry out the responsibilities described in paragraph (1), (2), (3), (7), or (8).

(i) Liability

The State shall ensure that no representative of the Office will be liable under State law for the good faith performance of official duties.

(j) Noninterference

The State shall—

(1) ensure that willful interference with representatives of the Office in the performance of the official duties of the representatives (as defined by the Assistant Secretary) shall be unlawful;

(2) prohibit retaliation and reprisals by a long-term care facility or other entity with re-

² See References in Text note below.

spect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of, the Office; and

(3) provide for appropriate sanctions with respect to the interference, retaliation, and reprisals.

(Pub. L. 89-73, title VII, §712, as added Pub. L. 102-375, title VII, §702, Sept. 30, 1992, 106 Stat. 1276; amended Pub. L. 103-171, §3(a)(9), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 106-402, title IV, §401(b)(9)(D), Oct. 30, 2000, 114 Stat. 1739; Pub. L. 106-501, title VII, §704, title VIII, §801(e)(2), Nov. 13, 2000, 114 Stat. 2289, 2293; Pub. L. 114-144, §8(c), Apr. 19, 2016, 130 Stat. 347.)

REFERENCES IN TEXT

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (b)(3), is section 264(c) of Pub. L. 104-191, which is set out as a note under section 1320d-2 of this title.

The Social Security Act, referred to in subsec. (f)(2)(A)(vii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (h)(7)(A), is Pub. L. 106-402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of title I of the Act is classified generally to part C (§15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in subsec. (h)(7)(B), was Pub. L. 99-319, May 23, 1986, 100 Stat. 478. Pub. L. 99-319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106-310, div. B, title XXXII, §3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

AMENDMENTS

2016—Subsec. (a)(2). Pub. L. 114-144, §8(c)(1)(A), inserted at end “The Ombudsman shall be responsible for the management, including the fiscal management, of the Office.”

Subsec. (a)(3)(A)(i). Pub. L. 114-144, §8(c)(1)(B)(i), added cl. (i) and struck out former cl. (i) which read as follows: “are made by, or on behalf of, residents; and”.

Subsec. (a)(3)(D). Pub. L. 114-144, §8(c)(1)(B)(ii), substituted “regular, timely, private, and unimpeded” for “regular and timely”.

Subsec. (a)(3)(H)(iii). Pub. L. 114-144, §8(c)(1)(B)(iii), inserted “, actively encourage, and assist in” after “provide technical support for” and struck out “and” after semicolon at end.

Subsec. (a)(3)(I), (J). Pub. L. 114-144, §8(c)(1)(B)(iv), (v), added subpar. (I) and redesignated former subpar. (I) as (J).

Subsec. (a)(5)(B)(vi). Pub. L. 114-144, §8(c)(1)(C)(i), inserted “, actively encourage, and assist in” after “support” and struck out “and” after semicolon at end.

Subsec. (a)(5)(B)(vii), (viii). Pub. L. 114-144, §8(c)(1)(C)(ii), (iii), added cl. (vii) and redesignated former cl. (vii) as (viii).

Subsec. (b)(1)(A). Pub. L. 114-144, §8(c)(2)(A)(i), substituted “private and unimpeded access” for “access”.

Subsec. (b)(1)(B)(i). Pub. L. 114-144, §8(c)(2)(A)(ii)(I)(aa), substituted “all files, records, and other information concerning” for “the medical and social records of” in introductory provisions.

Subsec. (b)(1)(B)(i)(II). Pub. L. 114-144, §8(c)(2)(A)(ii)(I)(bb), substituted “to communicate consent” for “to consent”.

Subsec. (b)(1)(B)(ii). Pub. L. 114-144, §8(c)(2)(A)(ii)(II), substituted “the files, records, and information” for “the records” in introductory provisions.

Subsec. (b)(3). Pub. L. 114-144, §8(c)(2)(B), added par. (3).

Subsec. (c)(2)(D). Pub. L. 114-144, §8(c)(3), substituted “3012(a)(18)” for “3012(a)(21)”.

Subsec. (d)(1). Pub. L. 114-144, §8(c)(4)(A), substituted “files, records, and other information” for “files”.

Subsec. (d)(2)(A). Pub. L. 114-144, §8(c)(4)(B)(i), substituted “files, records, and other information” for “files and records” in two places and struck out “and” after semicolon at end.

Subsec. (d)(2)(B). Pub. L. 114-144, §8(c)(4)(B)(ii)(I), substituted “files, records, or other information” for “files or records” in introductory provisions.

Subsec. (d)(2)(C). Pub. L. 114-144, §8(c)(4)(B)(ii)(II), (iii), added subpar. (C).

Subsec. (f). Pub. L. 114-144, §8(c)(5), added subsec. (f) and struck out former subsec. (f) which related to conflict of interest.

Subsec. (h)(3)(A)(i). Pub. L. 114-144, §8(c)(6)(A), struck out “older” before “individuals”.

Subsec. (h)(4). Pub. L. 114-144, §8(c)(6)(D), added par. (4). Former par. (4) redesignated (5).

Pub. L. 114-144, §8(c)(6)(B), substituted “(4) strengthen and update” for text that had been amended by Pub. L. 106-501, §704(2)(A), which was executed to read “(4) strengthen and update”. See 2000 Amendment note below.

Subsec. (h)(5), (6). Pub. L. 114-144, §8(c)(6)(C), redesignated pars. (4) and (5) as (5) and (6), respectively. Former par. (6) redesignated (7).

Subsec. (h)(6)(A). Pub. L. 114-144, §8(c)(6)(E), substituted “paragraph (5)” for “paragraph (4)”.

Subsec. (h)(7). Pub. L. 114-144, §8(c)(6)(C), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (h)(7)(A). Pub. L. 114-144, §8(c)(6)(F), substituted “subtitle C of title I of the” for “subtitle C of the”.

Subsec. (h)(8), (9). Pub. L. 114-144, §8(c)(6)(C), redesignated pars. (7) and (8) as (8) and (9), respectively. Former par. (9) redesignated (10).

Subsec. (h)(10). Pub. L. 114-144, §8(c)(6)(G), substituted “(7), or (8)” for “(6), or (7)”.

Pub. L. 114-144, §8(c)(6)(C), redesignated par. (9) as (10).

2000—Subsec. (a)(1). Pub. L. 106-501, §801(e)(2), substituted “section 3058a of this title and made available to carry out this subpart” for “section 3058a(a) of this title” in introductory provisions.

Subsec. (a)(5)(C)(ii). Pub. L. 106-501, §704(1), inserted “and not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves” after “interest”.

Subsec. (h)(4). Pub. L. 106-501, §704(2)(A), substituted “strengthen and update” for “(A) not later than 1 year after September 30, 1992, establish” in introductory provisions, redesignated cls. (i) and (ii) of former subpar. (A) as subpars. (A) and (B), respectively, redesignated subcls. (I) to (III) of former subpar. (A)(ii) as cls. (i) to (iii), respectively, of subpar. (B), redesignated cl. (iii) of former subpar. (A) as subpar. (C) and struck out “and” at end, and struck out former subpar. (B) which read as follows: “require implementation of the procedures not later than 21 months after September 30, 1992;”. Amendment was executed to reflect the probable intent of Congress notwithstanding error in directory language misquoting original text to be struck out, which had been translated as reference to September 30, 1992.

Subsec. (h)(6)(A). Pub. L. 106-402 substituted “subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000” for “part A of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001 et seq.)”.

Subsec. (h)(8), (9). Pub. L. 106-501, §704(2)(B)–(D), added par. (8) and redesignated former par. (8) as (9).

1993—Subsecs. (a)(3)(D), (c)(2)(C), (h)(3)(B). Pub. L. 103-171, §3(a)(9)(B), substituted “Assistant Secretary” for “Commissioner”.

Subsec. (h)(4)(A). Pub. L. 103-171, §3(a)(9)(A), substituted "Director of the Office of Long-Term Care Ombudsman Programs" for "Associate Commissioner for Ombudsman Programs".

Subsec. (j)(1). Pub. L. 103-171, §3(a)(9)(B), substituted "Assistant Secretary" for "Commissioner".

§ 3058h. Regulations

The Assistant Secretary shall issue and periodically update regulations respecting—

- (1) conflicts of interest by persons described in subparagraphs (A) and (B) of section 3058g(f)(1) of this title; and
- (2) the relationships described in clauses (i) through (vi) of section 3058g(f)(1)(C) of this title.

(Pub. L. 89-73, title VII, §713, as added Pub. L. 102-375, title VII, §702, Sept. 30, 1992, 106 Stat. 1282; amended Pub. L. 103-171, §3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 114-144, §8(d), Apr. 19, 2016, 130 Stat. 351.)

AMENDMENTS

2016—Par. (1). Pub. L. 114-144, §8(d)(1), substituted "subparagraphs (A) and (B) of section 3058g(f)(1)" for "paragraphs (1) and (2) of section 3058g(f)".

Par. (2). Pub. L. 114-144, §8(d)(2), substituted "clauses (i) through (vi) of section 3058g(f)(1)(C)" for "subparagraphs (A) through (D) of section 3058g(f)(3)".

1993—Pub. L. 103-171 substituted "Assistant Secretary" for "Commissioner".

SUBPART III—PROGRAMS FOR PREVENTION OF ELDER ABUSE, NEGLECT, AND EXPLOITATION

§ 3058i. Prevention of elder abuse, neglect, and exploitation

(a) Establishment

In order to be eligible to receive an allotment under section 3058b of this title from funds appropriated under section 3058a of this title and made available to carry out this subpart, a State agency shall, in accordance with this section, and in consultation with area agencies on aging, develop and enhance programs to address elder abuse, neglect, and exploitation.

(b) Use of allotments

The State agency shall use an allotment made under subsection (a) of this section to carry out, through the programs described in subsection (a) of this section, activities to develop, strengthen, and carry out programs for the prevention, detection, assessment, and treatment of, intervention in, investigation of, and response to elder abuse, neglect, and exploitation, including—

- (1) providing for public education and outreach to identify and prevent elder abuse, neglect, and exploitation;
- (2) providing for public education and outreach to promote financial literacy and prevent identity theft and financial exploitation of older individuals;
- (3) ensuring the coordination of services provided by area agencies on aging with services instituted under the State adult protection service program, State and local law enforcement systems, and courts of competent jurisdiction;
- (4) promoting the development of information and data systems, including elder abuse

reporting systems, to quantify the extent of elder abuse, neglect, and exploitation in the State;

(5) promoting the submission of data on elder abuse, neglect, and exploitation for the appropriate database of the Administration or another database specified by the Assistant Secretary;

(6) conducting analyses of State information concerning elder abuse, neglect, and exploitation and identifying unmet service, enforcement, or intervention needs;

(7) conducting training for individuals, including caregivers described in part E of subchapter III, professionals, and paraprofessionals, in relevant fields on the identification, prevention, and treatment of elder abuse, neglect, and exploitation, with particular focus on prevention and enhancement of self-determination and autonomy;

(8) providing technical assistance to programs that provide or have the potential to provide services for victims of elder abuse, neglect, and exploitation and for family members of the victims;

(9) conducting special and on-going training, for individuals involved in serving victims of elder abuse, neglect, and exploitation, on the topics of self-determination, individual rights, State and Federal requirements concerning confidentiality, and other topics determined by a State agency to be appropriate;

(10) promoting the development of an elder abuse, neglect, and exploitation system—

- (A) that includes a State elder abuse, neglect, and exploitation law that includes provisions for immunity, for persons reporting instances of elder abuse, neglect, and exploitation, from prosecution arising out of such reporting, under any State or local law;
- (B) under which a State agency—

(i) on receipt of a report of known or suspected instances of elder abuse, neglect, or exploitation, shall promptly initiate an investigation to substantiate the accuracy of the report; and

(ii) on a finding of elder abuse, neglect, or exploitation, shall take steps, including appropriate referral, to protect the health and welfare of the abused, neglected, or exploited older individual;

(C) that includes, throughout the State, in connection with the enforcement of elder abuse, neglect, and exploitation laws and with the reporting of suspected instances of elder abuse, neglect, and exploitation—

- (i) such administrative procedures;
- (ii) such personnel, such as forensic specialists, trained in the special problems of elder abuse, neglect, and exploitation prevention and treatment;
- (iii) such training procedures;
- (iv) such institutional and other facilities (public and private); and
- (v) such related multidisciplinary programs and services, including programs and arrangements that protect against financial exploitation,

as may be necessary or appropriate to ensure that the State will deal effectively with