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OFFICE OF THE
SECRETARY

MURIEL BOWSER
MAYOR
SEP 29 2017

The Honorable Phil Mendelson, Chair
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for consideration and enactment by the Council is the “Long-Term Care Ombudsman Program Amendment Act of 2017.” If enacted, the proposed legislation will amend sections of the D.C. Official Code which govern the District of Columbia Long Term Care Ombudsman Program. This proposed Amendment is the result of a collaborative process with the U.S. Department of Health and Human Services’ Administration for Community Living, which identified several areas of the D.C. Official Code which appear to be in conflict with provisions of the Older Americans Act of 1965 and 45 C.F.R. § 1324. The proposed Amendment ensures that the Ombudsman has sufficient authority to make determinations and recommendations, updates provisions governing organization and personal conflicts of interest, and aligns abuse reporting requirements in the D.C. Official Code with the federal rule.

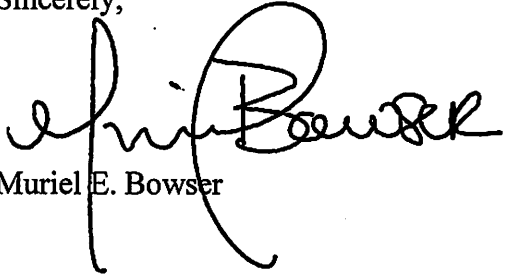
The proposed amendment will clarify that under D.C. Official Code § 7-702.04, the Ombudsman has sufficient authority to carry out its responsibility to analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, and regulations, and to make specific determinations and recommendations consistent with 45 C.F.R. §1324.11(e)(5). Under § 7-702.04, the Ombudsman is currently required to make recommendations and determinations through the Office on Aging, which appears to be a barrier to the full implementation of the federal rule.

To further align the D.C. Official Code with the federal rule, the proposed Amendment will grant the Ombudsman sufficient authority under D.C. Official Code §§ 7-702.02 and 7-702.04 to designate and refuse, suspend or remove designation of representatives of the Office when a conflict of interest cannot be adequately removed or remedied. In addition, D.C. Official Code § 7-702.03 will be amended to more comprehensively address individual and organizational conflicts of interest when appointing the Ombudsman.

The proposed Amendment will also exclude the Ombudsman and representatives of the Office from certain abuse reporting requirements, consistent with 45 C.F.R. §1324.11(e)(3)(iv), when such reporting would disclose identifying information of a complainant or resident without appropriate consent or court order.

I urge the Council to take prompt and favorable action on the enclosed legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Muriel E. Bowser". The signature is written in black ink and is positioned above the printed name.

Muriel E. Bowser



Chairman Phil Mendelson
at the request of the Mayor

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6 A BILL
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10 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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13 To amend the District of Columbia Long-Term Care Ombudsman Program Act of 1988 to
14 provide the Long-Term Care Ombudsman with authority to lead the Long-Term Care
15 Ombudsman Program in coordination with the Director of the Office on Aging; to
16 provide authority for the Long-Term Care Ombudsman to make determinations and
17 recommendations pertaining to residents' health, safety, welfare or rights; to clarify the
18 responsibilities of the Long-Term Care Ombudsman; to prohibit certain individuals from
19 serving as the Long-Term Care Ombudsman; to align provisions of District law with 45
20 C.F.R. § 1324 *et seq.*; and to align the abuse-reporting provisions for the Long-Term Care
21 Ombudsman and representatives of the Office of the Long-Term Care Ombudsman with
22 federal law.

23 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
24 act may be cited as the "Long-Term Care Ombudsman Program Amendment Act of 2017".

25 Sec. 2. The District of Columbia Long-Term Care Ombudsman Program Act of 1988,
26 effective March 16, 1989 (D.C. Law 7-218; D.C. Official Code § 7-701.01 *et seq.*), is amended
27 as follows:

28 (a) Section 101 (D.C. Official Code § 7-701.01) is amended as follows:

29 (1) Paragraph (7A) is amended by inserting the phrase "and supports" after the
30 phrase "means services".

31 (2) Paragraph (8) is amended to read as follows:

32 “(8) ”Ombudsman” means the individual appointed or employed in accordance
33 with section 202(a) to fulfill the functions and responsibilities set forth in section 205.” in its
34 place.

35 (3) Paragraph (11) is amended by inserting the phrase “and all representatives of
36 the office” after the phrase “established by section 201”.

37 (b) Section 202 (D.C. Official Code § 7-702.02) is amended as follows:

38 (1) Subsection (a) is amended to read as follows:

39 “(a) The Long-Term Care Ombudsman Program (“Program”) shall be administered by a
40 full-time ombudsman (“Ombudsman”) who shall be appointed by the Director of the Office of
41 Aging (“Director”), except as provided in subsection (b) of this section. The Ombudsman shall
42 lead and manage the Program in coordination with the Director of the Office on Aging
43 (“Director”) or his or her designee and, as applicable, with any other agency carrying out the
44 Program.”.

45 (2) Subsection (b) is amended by inserting the sentence “Before contracting with
46 a nonprofit provider, the Director shall ensure that the provider does not have organizational
47 conflicts in compliance with 45 C.F.R. § 1324.21(b)(3).” after the phrase “advocating for the
48 rights of older persons and residents.”

49 (3) Subsection (d) is amended by striking the phrase “The primary responsibility”
50 and inserting the phrase “In addition to the functions set forth in 45 C.F.R. § 1324.13, the
51 primary responsibility” in its place.

52 (c) Section 203 (D.C. Official Code § 7-702.03) is amended by adding new
53 subsections (d) and (e) to read as follows:

54 “(d) No individual who has direct involvement in the licensing or certification of any
55 long-term care facility shall be appointed or employed to serve as the Ombudsman.”

56 (2) A new subsection (e) is added to read as follows:

57 “(e) No individual who has been employed by or participated in the management of a
58 long-term care facility within the previous 12 months shall be appointed or employed to serve as
59 the Ombudsman.”

60 (d) Section 204(a) (D.C. Official Code § 7-702.04(a)) is amended as follows:

61 (1) Paragraph (4) is amended to read as follows:

62 “(4) Develop and submit an annual report to the Office on Aging and those
63 entities required by 45 C.F.R. § 1324.13(g). The annual report shall include an analysis of
64 Program data, documented complaints received and resolved, and recommended policy,
65 regulatory, or legislative changes;”.

66 (2) Paragraph (5) is amended by striking the phrase “on behalf of the Office on
67 Aging and with the approval of the Director” and inserting the phrase “as necessary” in its place.

68 (3) Paragraph (12) is amended to read as follows:

69 “(12) Analyze, provide comments, and monitor the development and
70 implementation of District and federal laws, rules, regulations and other governmental policies
71 pertaining to the health, safety, welfare and rights of residents, and recommend any changes in
72 such laws, rules, regulations, policies, and actions that the Ombudsman deems appropriate;”.

73 (4) Paragraph (13) is amended by:

74 (A) Inserting the phrase “determinations and” after the word “Make”;

75 (B) Striking the phrase “, through the Office on Aging,”; and

76 (C) Inserting the phrase “, in compliance with the disclosure requirements
77 set forth in section 712(d) of the Older Americans Act of 1965, approved September 30, 1992
78 (106 Stat. 1195; 42 U.S.C. § 3058g(d)), and 45 C.F.R. § 1324.11(e)(3);” after the phrase “health,
79 safety, welfare or rights”.

80 (5) Paragraph (14) is amended by inserting the phrase “, in compliance with the
81 disclosure requirements set forth in section 712(d) of the Older Americans Act of 1965,
82 approved September 30, 1992 (106 Stat. 1195; 42 U.S.C. § 3058g(d)), and 45 C.F.R. §
83 1324.11(e)(3);” after the phrase “District law, regulation, or rule”.

84 (6) Paragraph (16) is amended to read as follows:

85 “(16) Provide technical assistance and ongoing support as requested by resident
86 and family councils to protect the well-being and rights of residents;”.

87 (7) Paragraph (18) is amended by striking the word “and” at the end.

88 (8) Paragraph (19) is amended by striking the period at the end and inserting the
89 phrase “; and” in its place.

90 (9) A new paragraph (20) is added to read as follows:

91 “(20) Carry out such other responsibilities as may be required by 45 C.F.R. §§
92 1324.13 and 1324.19.”.

93 Sec. 3. Fiscal impact statement.

94 The Council adopts the fiscal impact statement in the committee report as the fiscal
95 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
96 approved December 24, 1973 (87 Stat 813; D.C. Official Code § 1-206.02(c)(3)).

97 Sec. 5. Effective date.

98 This act shall take effect following approval by the Mayor (or in the event of the veto by
99 the Mayor, action by the Council to override the veto), a 30-day period of Congressional review
100 as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
101 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
102 Columbia Register.


Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: August 30, 2017

SUBJECT: Fiscal Impact Statement – Long-Term Care Ombudsman Program
Amendment Act of 2017

REFERENCE: Draft Bill sent to the Office of Revenue Analysis on August 25, 2017

Conclusion

Funds are sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the bill.

Background

The bill updates sections of the D.C. Code¹ pertaining to the long-term care ombudsman program within the D.C. Office on Aging (DCOA) that is managed by AARP's Legal Counsel for the Elderly. The purpose of the updates is to make sure the D.C. Code complies with the federal Older Americans Act of 1965.² The updates clarify that the decisions of the ombudsman do not have to be approved by DCOA. They also ensure that the ombudsman and staff in his or her office do not have conflicts of interest that might affect the cases they work on. These updates align the D.C. Code with current practice.

Financial Plan Impact

Funds are sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the bill. The bill has no fiscal impact since it will align D.C. Code with current practice and will not affect how DCOA operates.

¹ Specifically, the District of Columbia Long-Term Care Ombudsman Program Act of 1988, effective March 16, 1989 (D.C. Law 7-218; D.C. Official Code § 7-701.01 et seq.).

² Approved July 14, 1965 (Public Law 89-73; 42 U.S.C. §3001 et seq.).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

KARL A. RACINE
ATTORNEY GENERAL



LEGAL COUNSEL DIVISION

MEMORANDUM

TO: Alana Intrieri
Executive Director
Office of Policy and Legislative Affairs

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: September 7, 2017

SUBJECT: Legal Sufficiency Review of Draft Legislation, the "Long-Term Care
Ombudsman Program Amendment Act of 2017"
(AE-17-504)

This is to Certify that this Office has reviewed the above-referenced legislation and has found it to be legally sufficient. If you have questions regarding this certification, please do not hesitate to contact me at 724-5524.


Janet M. Robins