CHAPTER 38

Investigation of Health Facilities by Ombudsman

**SECTION 43‑38‑10.** Facility defined.

For purposes of this chapter “facility” means public health centers and tuberculosis, mental, chronic disease and all other types of public or private hospitals and related facilities such as outpatient facilities, rehabilitation facilities, nursing homes, intermediate care facilities, residential care facilities, facilities for persons with developmental disabilities and community mental health centers, including facilities for alcoholics and narcotic addicts but shall not include general hospitals which treat acute injuries or illnesses.

HISTORY: 1980 Act No. 416, Section 1.

CROSS REFERENCES

Ombudsman, for purposes of the Protection and Advocacy System for the Handicapped, as meaning the office provided for in this section, see Section 43‑33‑340.

**SECTION 43‑38‑20.** Long Term Care Ombudsman Program authorized to investigate complaints; release and disclosure of information from medical records; issuance of report and recommendations.

The Long Term Care Ombudsman Program is authorized to investigate any problem or complaint on behalf of any interested party or any client, patient, or resident of any facility as defined in this chapter. In carrying out the investigation, he may request and receive written statements, documents, exhibits, and other items pertinent to the investigation. These items include medical records of a general hospital in which a client, patient, or resident has been treated during the period under investigation. General hospitals are authorized to release the medical records to the ombudsman upon his written request without the necessity of patient authorization. Any files maintained by the ombudsman program shall be disclosed only at the discretion of the ombudsman having authority over the disposition of such files, except that the identity, disease, or illness of any complainant or resident of a long term care facility shall not be disclosed by such ombudsman unless:

(i) such complainant or resident, or his legal representative, consents in writing to such disclosure; or

(ii) such disclosure is required by court order. Following the investigation he may issue such report and recommendations as in his opinion will assist in improving the facility under investigation.

HISTORY: 1980 Act No. 416, Section 2; 1986 Act No. 531, eff June 18, 1986; 1993 Act No. 110, Section 8, eff three months after June 11, 1993.

CROSS REFERENCES

Department of Social Services must investigate allegations of child abuse or neglect where the child is in custody of, or is a resident of, a health facility, institution, or agency licensed by the Department of Health and Environmental Control or operated by the Department of Mental Health, see Section 63‑7‑1210 et seq.

Library References

Asylums and Assisted Living Facilities 18, 26.

Health 396.

Westlaw Topic Nos. 43, 198H.

C.J.S. Health and Environment Section 24.

C.J.S. Public and Private Institutional Care Facilities Sections 4 to 6.

**SECTION 43‑38‑30.** Cooperation of departments, officers, and agencies required.

All departments, officers, agencies and employees of the State shall cooperate with the ombudsman in carrying out his duties pursuant to the provisions of this chapter.

HISTORY: 1980 Act No. 416, Section 3.

CROSS REFERENCES

Department of Social Services must investigate allegations of child abuse or neglect where the child is in custody of, or is a resident of, a health facility, institution, or agency licensed by the Department of Health and Environmental Control or operated by the Department of Mental Health, see Section 63‑7‑1210 et seq.

Library References

Asylums and Assisted Living Facilities 18.

Westlaw Topic No. 43.

C.J.S. Public and Private Institutional Care Facilities Sections 4 to 6.

**SECTION 43‑38‑40.** Civil and criminal immunity for participants in judicial proceedings; presumption of good faith.

Any person required or permitted to report pursuant to this chapter or who participates in judicial proceedings resulting therefrom, acting in good faith, shall be immune from civil and criminal liability which might otherwise result by reason of such actions. In all such civil or criminal proceedings good faith shall be rebuttably presumed.

HISTORY: 1980 Act No. 416, Section 4.

Library References

Asylums and Assisted Living Facilities 26.

Westlaw Topic No. 43.

**SECTION 43‑38‑50.** Exception as to County Homes.

This chapter does not apply to any county operated County Home which is operated exclusively from county funds.

HISTORY: 1980 Act No. 416, Section 5.

Library References

Asylums and Assisted Living Facilities 18.

Westlaw Topic No. 43.

C.J.S. Public and Private Institutional Care Facilities Sections 4 to 6.

**SECTION 43‑38‑60.** Long Term Care Ombudsman Program to designate entities under Older American Act.

The Long Term Care Ombudsman Program may designate entities in accordance with the federal Older Americans Act.

HISTORY: 1993 Act No. 110, Section 4, eff three months after June 11, 1993.

CROSS REFERENCES

Allegations of abuse or neglect of a child in custody of health facility licensed by the Department of Health and Environmental Control or operated by the Department of Mental Health must be investigated by the Department of Social Services pursuant to this section, see Sections 63‑7‑1210 et seq.

Federal Aspects

Older Americans Act, see 42 U.S.C.A. Section 3001 et seq.