

CAC Member Appointment To Committee Pre and Post HB248 – July 2017

Appointment Process (Pre HB 248)

- Appointed to county committee
- Regional ombudsman trains CAC member
- Member NOT designated by the LTCO Office, NOT accountable to LTCO Office as a representative
- LTCO Office cannot remove CAC member from county committee even if removed as a CAC member

Appointment Process(Post HB 248)

- Application at the county commission
- Clerk notifies Regional Ombudsman
- Regional Ombudsman verifies whether nominee meets minimum requirement and is free of conflict of interest
- Regional ombudsman trains / member attests
 - SLTCO certifies and designates
 - Regional Ombudsman notifies county to appoint to committee
 - SLTCO can refuse, suspend, and remove designation of member

Upon de-designation, county shall rescind appointment to the committee within 14 business days.

Provide Training and Technical assistance to Community Advisory Committees

Legal Base

42 U.S.C. §3058g(h)(4)(A)

"The State agency shall require the Office to(4)(A) strengthen and update procedures for the training of the representatives of the Office, including unpaid volunteers, based on the 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....."

45 CFR §1324.13(c)(2)

"The Ombudsman shall establish procedures for training, for certification and continuing education of the representatives of the Office, based on model standards established by the Director of the Office of the Long-Term Care Ombudsman Programs as described in section 201(d) of the Act....."

N.C.G.S. §143B-181.19(b)(8)

"Provide training and technical assistance to the community advisory committees."

Community Advisory Committee Certification and Designation

The State Ombudsman shall designate and refuse, suspend or remove designation of volunteer representatives of the Office of the State Long-Term Care Ombudsman, including any community advisory committee appointees, in accordance with the Long-Term Care Ombudsman Program Policies and Procedures.

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

Community advisory committee members appointed must:

- meet the minimum requirements in accordance with the State Long-Term Care Ombudsman Program Policies and Procedures,
- have received initial training; and
- receive on-going training requirements in accordance with the Ombudsman Policies and Procedures

Eligible CAC members shall receive mandatory training developed by the Office of the State Long-Term Care Ombudsman regarding their accountability as it relates to their role as representatives of the Office of the State Long-Term Care Ombudsman and attest to their understanding of their role and commitment to the Ombudsman program. After the CAC member successfully completes training and signs an attestation, member will be certified and designated to function as a

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representative of the Office of the State Long-Term Care Ombudsman. Also, CAC members shall attend the mandatory quarterly training provided by the Regional Ombudsman.

Appointment of Community Advisory Committee Members

Process:

- Application is made by potential CAC to their Board of County Commissioners
- County clerks shall notify the Regional Ombudsman.
- Regional Ombudsman will evaluate whether nominee meets minimum requirements and are free of conflict per 45 CFR §1324.21
- Regional Ombudsman completes initial training, member attests to completion
 - Office of the State Long-Term Care Ombudsman certifies and designates the individual
 - Regional Ombudsman will notify county to appoint to committee
- Office of the State Office Long-Term Care Ombudsman can refuse, suspend, and remove designation of member; and upon de-designation, Board of County Commissioners shall automatically rescind appointment to the committee.

County Commissioners will receive applications/nominations of county citizens to participate on each community advisory committee. The board of county commissioners will recommend potential community advisory committee members to the Regional Ombudsman.

Nominations will be forwarded from the clerk of the board to the Regional Ombudsman. The Regional Ombudsman will evaluate whether the nominees meet the minimum qualifications for appointment, are free of conflict, and are willing to meet the requirements of the program. Interested applicants may also contact the Regional Ombudsman directly.

Regional Ombudsmen will either accept or decline nominations based on the standard requirements. If a nomination is declined, a written explanation will be sent to the nominee and the clerk.

Accepted nominees will advance to certification training within 90 days. Regional Ombudsmen shall provide certification training on a regular basis. CAC members are mandated to complete initial and ongoing training by Regional Ombudsmen in accordance with the Ombudsman Policies and Procedures.

After the successful completion of the certification training, nominees will attest to their understanding of their role and commitment to the Ombudsman program. Regional Ombudsmen will forward the names of nominees who sign their attestation document along with the date of expiration for their term to the Office of the State Long-Term Care Program.

The State Long-Term Care Ombudsman will designate the nominee as a representative of the Office by issuing a certificate within 15 days of notification by the Regional Ombudsman. Certificates will be generated by the Office of the State Long-Term Care Ombudsman and mailed to the CAC member. Regional Ombudsman will be notified of each designation. Regional Ombudsman will notify the clerk of the board that the nominee is eligible for appointment to the community advisory committee.

Suspension of Designation

Designation of a CAC member can be temporarily suspended by the State Long-Term Care Ombudsman if the actions of the CAC member are out of compliance with the Ombudsman Program Policies and Procedures or N.C. G.S. §§131D-31 or 131E-128. Grounds for recommending immediate suspension of designation pending a quality assurance review may include but not limited to:

1. Complaints related to committee or member's visit to a facility.
2. Non-compliance with Ombudsman Program Policies and Procedures.
3. Non-attendance at meetings
4. Intentional failure to reveal a conflict of interest.
5. Intentional misrepresentation of the representative's designated authority or the mandated responsibilities s/he has agreed to perform.....
6. If member's actions negatively impacted either resident(s) or the successful operation of the community advisory committee

The Regional Long-Term Care Ombudsman assigned to work with the identified community advisory committee will meet with the community advisory committee member(s) for a discussion about the allegations received and gather factual information from the community advisory committee member(s) related to the complaint(s).

After a quality review to determine whether the allegation(s) made is/are a violation of the Ombudsman Program Policies and Procedures or G.S. §§131D-31 or 131E-128 as outlined above, the Regional Ombudsman will send a written recommendation for suspension of designation to the Office of the State Long-Term Care Ombudsman. NOTE: Based on the severity of the complaint, a Regional Ombudsman has the discretion to recommend either a suspension or removal of designation .

Process for reinstatement of designation

- a. If the Regional Ombudsman decides that the community advisory committee member(s) was/were in compliance with the law and Ombudsman Program Policies and Procedures, then the complainant will be notified in writing that no further action will be taken by the Regional Ombudsman. This outcome will be communicated to the community advisory committee member(s). The Regional Ombudsman will maintain written documentation of facts established that support this decision.
- b. If it is determined that the committee members' actions were out of compliance with the Ombudsman Program Policies and Procedures or N.C.G.S. §§131D-31 or 131E-128, then the Regional Ombudsman will explain the findings and outline proposed remedial actions to the community advisory committee member(s).

(1) Remedial strategies may include, but are not limited to the following: conduct addition training about the duties of a community advisory committee member, offer additional

technical assistance and consultation during facility visits and/or request that the community advisory committee member(s) transfer to a different subcommittee so they no longer visit the facility where the alleged inappropriate action occurred.

- (2) Based on findings, the Regional Ombudsman will send a written recommendation to the State Long-Term Care Ombudsman for reinstatement of designation.

Removal of Designation

Criteria for removal of designation of a CAC member may include but not limited to:

- 1. Failure to follow policies and procedures and training provided.....
- 2. Intentional failure to reveal a conflict of interest.
- 3. Intentional misrepresentation of the representative’s designated authority or the mandated responsibilities s/he has agreed to perform.....
- 4. Failure to adhere to applicable Federal, state laws, regulations and policies (Older Americas Act, 45 C.F.R. §§1321 and 1324, N.C.G.S.143B-181.15-25.
- 5. Falsification of records, destruction of Program records or gross failure to maintain required documentation and records.

If a CAC member has violated their duties or policies and procedures of the Ombudsman program, their designation can be automatically removed by the State Ombudsman. After a quality review as outlined above under the “suspension of designation”, the Regional Ombudsman will send a written recommendation for removal of designation to the Office of the State Long-Term Care Ombudsman.

The Office of the State Long-Term Care Ombudsman will notify the Regional Ombudsman and the CAC member regarding the final decision to remove designation. The Regional Ombudsman will notify the clerk of the removal of designation. The county board of commissioners shall automatically rescind appointment of the member to committee.



DEPARTMENT OF HEALTH AND HUMAN SERVICES
 DIVISION OF AGING AND ADULT SERVICES
 OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN

**NOTIFICATION REQUESTING REMOVAL OF
 COMMUNITY ADVISORY COMMITTEE MEMBER(S)**

TO: Clerk/County Manager _____
 FROM: _____ Regional Ombudsman, Region _____
 Volunteer: _____
 Date: _____
 County Committee Assignment: ___ Adult Care Home ___ Nursing Home ___ Joint
 Date of Appointment _____

Reason for Request

Volunteers are a vital part of the services that support older adults in your county. However, the volunteer indicated above is not eligible for continued service for the following reason:

_____ Conflict of Interest

1. G.S. 131 E-128 (f) Nursing Home
2. G.S. 131 D-31 (g) Adult Care Home
3. 45 CFR §1324.21

_____ Failure to attend required on-going training complete required orientation and training

1. G.S. 131 E- 128 (g) Nursing Home
2. G.S. 131 D- 31 (h) Adult Care Home

Dates offered: _____

_____ Other (Non-attendance at quarterly meetings and facility visits)

1. As determined by the Long-Term Care Ombudsman Program Policies and Procedures
2. As determined by the committee by-laws.
3. As determined by resignation of the member
4. As determined by removal of designation by the Office of the State Long-Term Care Ombudsman

This is an official notification to the Board of Commissioners to remove individual from service on the above-mentioned committee (HB 248, July 2017). Should you have any questions, please contact _____, Regional Ombudsman, xxx-xxx-xxxx. Thank you in advance for your prompt attention to this matter.

693 Taylor Drive, Raleigh, NC 27603 / applicable address

Phone: xxx-xxx-xxxx Fax: xxx-xxx-xxxx

www.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 248
PROPOSED COMMITTEE SUBSTITUTE H248-PCS30357-SH-14

Short Title: Support for Older Adults & DHHS Study.

(Public)

Sponsors:

Referred to:

March 6, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO RECOMMEND THAT THE COCHAIRS FOR THE JOINT LEGISLATIVE
3 OVERSIGHT COMMITTEE ON HEALTH AND HUMAN SERVICES CONSIDER A
4 SUBCOMMITTEE ON AGING; TO MAKE CHANGES TO THE ADULT CARE HOME
5 AND NURSING HOME ADVISORY COMMITTEES TO CONFORM TO THE
6 ADMINISTRATION FOR COMMUNITY LIVING RULES AND RECENT CHANGES
7 TO THE STATE LONG-TERM CARE OMBUDSMAN PROGRAM; AND TO DIRECT
8 THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY THE HOPE
9 ACT AND RELATED FEDERAL REGULATIONS AND TO MAKE
10 RECOMMENDATIONS TO THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE
11 ON HEALTH AND HUMAN SERVICES.

12 The General Assembly of North Carolina enacts:

13 **SECTION 1.(a)** Pursuant to the authority in G.S. 120-208.2(d), the cochairs for the
14 Joint Legislative Oversight Committee on Health and Human Services may consider appointing
15 a Subcommittee on Aging to examine the State's delivery of services for older adults in order to
16 (i) determine their service needs and to (ii) make recommendations to the Oversight Committee
17 on how to address those needs. North Carolina currently ranks ninth in the nation for the size of
18 the age 60 and older population and tenth in the nation for the age 85 and older population.
19 From 2015 to 2035, the age 65 and older population is projected to increase sixty-seven percent
20 (67%) and the age 85 and older population is projected to increase one hundred two percent
21 (102%). By 2019, North Carolina will have more people that are 60 years of age and older than
22 children age 0-17. It is recommended that the Subcommittee examine the range of programs
23 and services for older adults throughout the continuum of care. The Subcommittee is
24 encouraged to seek input from a variety of stakeholders and interest groups including: the
25 Division of Aging and Adult Services and the Division of Social Services, Department of
26 Health and Human Services; the North Carolina Coalition on Aging; the North Carolina Senior
27 Tarheel Legislature, and the Governor's Advisory Council on Aging.

28 **SECTION 1.(b)** If a Subcommittee on Aging is appointed, the Subcommittee shall
29 submit an interim report of its findings and recommendations, including any proposed
30 legislation, to the Joint Legislative Oversight Committee on Health and Human Services on or
31 before March 1, 2018, and shall submit a final report of its findings and recommendations,
32 including any proposed legislation, on or before November 1, 2018, at which time it shall
33 terminate unless reappointed by the cochairs of the Oversight Committee under the authority
34 granted in G.S. 120-208.2(d).

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

36 "§ 131D-31. **Adult care home community advisory committees.**



* H 2 4 8 - P C S 3 0 3 5 7 - S H - 1 4 *

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

8 (b) Establishment and Appointment of Committees. –

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

14 (2) In a county with four or more adult care homes with 10 or more beds, the
15 committee shall have one additional member for each adult care home with
16 10 or more beds in excess of three, and may have up to five additional
17 members at the discretion of the county commissioners, not to exceed a
18 maximum of 25 members. In each county with four or more adult care
19 homes with 10 or more beds, the committee shall establish a subcommittee
20 of no more than five members and no fewer than three members from the
21 committee for each adult care home in the county. Each member must serve
22 on at least one subcommittee.

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

27 (4) The boards of county commissioners are encouraged to appoint the Adult
28 Care Home Community Advisory Committees. Of the members, a minority
29 (not less than one-third, but as close to one-third as possible) shall be chosen
30 from among persons nominated by a majority of the chief administrators of
31 adult care homes in the county. If the adult care home administrators fail to
32 make a nomination within 45 days after written notification has been sent to
33 them requesting a nomination, these appointments may be made without
34 nominations. If the county commissioners fail to appoint members to a
35 committee ~~by July 1, 1983,~~ the appointments shall be made by the ~~Assistant~~
36 ~~Secretary for Aging, Department of Health and Human Services, Office of~~
37 ~~the State Long-Term Care Ombudsman~~ no sooner than 45 days after
38 nominations have been requested from the adult care home ~~administrators,~~
39 ~~but no later than October 1, 1983.~~ administrators. In making appointments,
40 the ~~Assistant Secretary for Aging~~ Office of the State Long-Term Care
41 Ombudsman shall follow the same appointment process as that specified for
42 the County Commissioners.

43 (5) Notwithstanding any other provision of this Article, appointment to an Adult
44 Care Home Community Advisory Committee is contingent upon designation
45 of the appointee by the Office of the State Long-Term Care Ombudsman in
46 accordance with G.S. 143B-181.18. A designated appointee is directly
47 accountable to the State Long-Term Care Ombudsman Program in order to
48 perform the duties as a representative of the Office of the State Long-Term
49 Care Ombudsman. Removal of the appointee's designation by the Office of
50 the State Long-Term Care Ombudsman automatically rescinds the
51 appointment to the Adult Care Home Community Advisory Committee.

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

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

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

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

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

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

48 (h) Training, Certification and Designation. ~~Training.~~ The Office of the State
49 Long-Term Care Ombudsman ~~Division of Aging, Department of Health and Human Services,~~
50 shall develop training materials, which shall be distributed to each committee member. training
51 requirements for certification and designation in accordance with 45 C.F.R. § 1324.13(c)(2).

1 Each committee member must receive certification training as specified by the State
2 Long-Term Care Ombudsman Program Policies and Procedures and be designated as
3 representatives of the State Long-Term Care Ombudsman Program Division of Aging prior to
4 exercising any power under G.S. 131D-32. The State Long-Term Care Ombudsman Program
5 Division of Aging, Department of Health and Human Services, shall provide the committees
6 with information, guidelines, training, and consultation to direct them in the performance of
7 their duties.

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

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

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

19 "**§ 131E-128. Nursing home advisory committees.**

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

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

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

41 (3) Boards of county commissioners are encouraged to appoint the Nursing
42 Home Community Advisory Committees. Each committee shall be
43 appointed by the board of county commissioners. Of the members, a
44 minority (not less than one-third, but as close to one-third as possible) must
45 be chosen from among persons nominated by a majority of the chief
46 administrators of nursing homes in the county and of the governing bodies of
47 the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate
48 nursing homes. If the nursing home administrators and the governing bodies
49 of the hospitals licensed under Article 5 of G.S. Chapter 131E, which
50 operate nursing homes fail to make a nomination within 45 days after written
51 notification has been sent to them by the board of county commissioners

1 requesting a nomination, these appointments may be made by the board of
2 county commissioners without nominations.

3 (4) Notwithstanding any other provision of this Article, appointment to a
4 nursing home community advisory committee is contingent upon
5 designation of the appointee by the Office of the State Long-Term Care
6 Ombudsman in accordance with G.S. 143B-181.18. A designated appointee
7 is directly accountable to the State Long-Term Care Ombudsman Program in
8 order to perform the duties as a representative of the Office of the State
9 Long-Term Care Ombudsman. Removal of the appointee's designation by
10 the Office of the State Long-Term Care Ombudsman automatically rescinds
11 the appointment to the nursing home community advisory committee.

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

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

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

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

2 (f) Each member must be a resident of the county which the committee serves. No
3 person or immediate family member of a person with a financial interest in a home served by a
4 committee, or employee or governing board member or immediate family member of an
5 employee or governing board member of a home served by a committee, or immediate family
6 member of a patient in a home served by a committee may be a member of a committee.
7 Membership on a committee shall not be considered an office as defined in G.S. 128-1 or
8 G.S. 128-1.1. Any county commissioner who is appointed to the committee shall be deemed to
9 be serving on the committee in an ex officio capacity. Members of the committee shall serve
10 without compensation, but may be reimbursed for the amount of actual expenses incurred by
11 them in the performance of their duties. The names of the committee members and the date of
12 expiration of their terms shall be filed with the Office of the State Long-Term Care
13 Ombudsman, Division of Aging, which shall supply a copy to the Division of Health Service
14 Regulation.

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

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

30 (2) Each committee shall quarterly visit the nursing home it serves. For each
31 official quarterly visit, a majority of the committee members shall be
32 present. In addition, each committee may visit the nursing home it serves
33 whenever it deems it necessary to carry out its duties. In counties with four
34 or more nursing homes, the subcommittee assigned to a home shall perform
35 the duties of the committee under this subdivision, and a majority of the
36 subcommittee members must be present for any visit.

37 (3) Each member of a committee shall have the right ~~between 10:00 A.M. and~~
38 ~~8:00 P.M.~~ to enter into the facility the committee serves in order to carry out
39 the members' responsibilities. In a county where subcommittees have been
40 established, this right of access shall be limited to homes served by those
41 subcommittees to which the member has been appointed.

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

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

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

1 (i) Any written communication made by a member of a nursing home advisory
2 committee within the course and scope of the member's duties, as specified in G.S. 131E-128,
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 or communications do not amount to
7 intentional wrongdoing.

8 To the extent that any nursing home advisory committee or any member thereof is covered
9 by 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.(c) G.S. 143B-181.18 reads as rewritten:

12 **"§ 143B-181.18. Office of State Long-Term Care Ombudsman Program/State**
13 **Ombudsman duties.**

14 The State Ombudsman shall perform the duties provided below:

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

- 1 (9) Prepare findings regarding public education and community involvement
2 efforts and innovative programs being provided in long-term care facilities.
- 3 (10) Provide information to public agencies, and through the State Ombudsman,
4 to legislators, and others regarding problems encountered by residents or
5 providers as well as recommendations for resolution.
- 6 (11) Provide leadership for statewide systems advocacy efforts of the Office on
7 behalf of long-term care residents, including independent determinations and
8 positions that shall not be required to represent the position of the State
9 agency or other agency within which the Ombudsman Program is
10 organizationally located. Provide coordination of systems advocacy efforts
11 with representatives of the Office as outlined in Ombudsman Policies and
12 Procedures.
- 13 (12) To the extent required to meet the requirement of the Older Americans Act
14 and regulations promulgated thereunder regarding allotments for Vulnerable
15 Elder Rights Protection Activities, the State Ombudsman and representatives
16 of the Office are excluded from any State lobbying prohibitions under
17 requirements to conduct systems advocacy on behalf of long-term care
18 residents.
- 19 (13) Determine the use of the fiscal resources as required by 42 U.S.C. § 3001 et
20 seq. and regulations promulgated thereunder."

21 **SECTION 3.** The Department of Health and Human Services shall examine Public
22 Law 113-51, HIV Organ Policy Equity (HOPE) Act, and the Final Safeguards and Research
23 Criteria publication by the U.S. Department of Health and Human Services and National
24 Institutes of Health to determine public health safeguards, regulations, and statutory changes
25 necessary for consideration by the General Assembly. The Department shall submit a report of
26 findings and recommendations, including any necessary statutory changes, to the Joint
27 Legislative Oversight Committee on Health and Human Services on or before January 1, 2018.

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