

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 347

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO THE OFFICE OF OMBUDSMAN FOR THE ELDERLY; AMENDING SECTION
2 39-5303, IDAHO CODE, TO REVISE PROVISIONS REGARDING DUTY TO REPORT
3 CASES OF ABUSE, NEGLECT OR EXPLOITATION OF VULNERABLE ADULTS; AND
4 AMENDING SECTION 67-5009, IDAHO CODE, TO REVISE PROVISIONS REGARDING
5 THE OFFICE OF OMBUDSMAN FOR THE ELDERLY.
6

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Section 39-5303, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 39-5303. DUTY TO REPORT CASES OF ABUSE, NEGLECT OR EXPLOITATION OF
11 VULNERABLE ADULTS. (1) Any physician, nurse, employee of a public or pri-
12 vate health facility, or a state licensed or certified residential facility
13 serving vulnerable adults, medical examiner, dentist, ~~ombudsman for the~~
14 ~~elderly~~, osteopath, optometrist, chiropractor, podiatrist, social worker,
15 police officer, pharmacist, physical therapist, or home care worker who
16 has reasonable cause to believe that a vulnerable adult is being or has been
17 abused, neglected or exploited shall immediately report such information
18 to the commission. Provided however, that nursing facilities defined in
19 section 39-1301(b), Idaho Code, and employees of such facilities shall
20 make reports required under this chapter to the department. When there is
21 reasonable cause to believe that abuse or sexual assault has resulted in
22 death or serious physical injury jeopardizing the life, health or safety of
23 a vulnerable adult, any person required to report under this section shall
24 also report such information within four (4) hours to the appropriate law
25 enforcement agency.

26 (2) Failure to report as provided under this section is a misdemeanor
27 subject to punishment as provided in section 18-113, Idaho Code. If an em-
28 ployee at a state licensed or certified residential facility fails to report
29 abuse or sexual assault that has resulted in death or serious physical injury
30 jeopardizing the life, health or safety of a vulnerable adult as provided un-
31 der this section, the department shall also have the authority to:

- 32 (a) Revoke the facility's license and/or contract with the state to
33 provide services;
34 (b) Deny payment;
35 (c) Assess and collect a civil monetary penalty with interest from the
36 facility owner and/or facility administrator;
37 (d) Appoint temporary management;
38 (e) Close the facility and/or transfer residents to another certified
39 facility;
40 (f) Direct a plan of correction;
41 (g) Ban admission of persons with certain diagnoses or requiring spe-
42 cialized care;

- 1 (h) Ban all admissions to the facility;
 2 (i) Assign monitors to the facility; or
 3 (j) Reduce the licensed bed capacity.

4 Any action taken by the department pursuant to this subsection shall be ap-
 5 pealable as provided in chapter 52, title 67, Idaho Code.

6 (3) Any person, including any officer or employee of a financial insti-
 7 tution, who has reasonable cause to believe that a vulnerable adult is being
 8 abused, neglected or exploited may report such information to the commission
 9 or its contractors.

10 (4) The commission and its contractors shall make training available
 11 to officers and employees of financial institutions in identifying and re-
 12 porting instances of abuse, neglect or exploitation involving vulnerable
 13 adults.

14 (5) Any person who makes any report pursuant to this chapter, or who
 15 testifies in any administrative or judicial proceeding arising from such re-
 16 port, or who is authorized to provide supportive or emergency services pur-
 17 suant to the provisions of this chapter, shall be immune from any civil or
 18 criminal liability on account of such report, testimony or services provided
 19 in good faith, except that such immunity shall not extend to perjury, reports
 20 made in bad faith or with malicious purpose nor, in the case of provision
 21 of services, in the presence of gross negligence under the existing circum-
 22 stances.

23 (6) Any person who makes a report or allegation in bad faith, with mal-
 24 ice or knowing it to be false, shall be liable to the party against whom the
 25 report was made for the amount of actual damages sustained or statutory dam-
 26 ages in the amount of five hundred dollars (\$500), whichever is greater, plus
 27 attorney's fees and costs of suit. If the court finds that the defendant
 28 acted with malice or oppression, the court may award treble actual damages or
 29 treble statutory damages, whichever is greater.

30 SECTION 2. That Section 67-5009, Idaho Code, be, and the same is hereby
 31 amended to read as follows:

32 67-5009. OFFICE OF OMBUDSMAN FOR THE ELDERLY. The office of ombudsman
 33 for the elderly is hereby created within the commission. The ombudsman shall
 34 be able to independently make determinations and establish positions of the
 35 office without necessarily representing the determinations or positions of
 36 the commission. The ombudsman shall be responsible for receiving, investi-
 37 gating and resolving or closing complaints made by or on behalf of residents
 38 of long-term care facilities or persons aged sixty (60) years or older liv-
 39 ing in the community. No representative of the office shall be liable for
 40 the good faith performance of official duties, and willful interference with
 41 representatives of the office is unlawful. Long-term care facilities are
 42 prohibited from interference, reprisals or retaliation against a resident,
 43 ~~or~~ employee or other person filing a complaint with, or furnishing informa-
 44 tion to, the office.

45 For the purposes of implementing the provisions of this section, the
 46 commission is hereby authorized as follows:

47 The administrator shall hire the state ombudsman for the elderly who
 48 shall be a person with the necessary educational background commensurate
 49 with the duties and responsibilities of the office of ombudsman and shall

1 be a classified employee subject to the provisions of chapter 53, title 67,
2 Idaho Code.

3 The ombudsman may delegate to designated local ombudsmen any duties
4 deemed necessary to carry out the purposes of the provisions of this section.

5 The ombudsman shall establish procedures for receiving and processing
6 complaints, conducting investigations and reporting his findings. He shall
7 have jurisdiction to investigate administrative acts or omissions of long-
8 term care facilities or state or county departments or agencies providing
9 services to older people. An administrative act of a long-term care facility
10 or state or county department or agency may become an appropriate subject for
11 the ombudsman to investigate under certain circumstances. For example, the
12 ombudsman may investigate such an act if it might be contrary to law, unrea-
13 sonable, unfair, oppressive, capricious or discriminatory. The ombudsman
14 may make a finding for an appropriate resolution to the subject matter of the
15 investigation.

16 The ombudsman shall investigate any complaint ~~which~~ that he determines
17 to be an appropriate subject for investigation under this section and will
18 work to resolve the complaint to the satisfaction of the resident or the res-
19 ident's representative.

20 ~~When the ombudsman investigates a complaint, he shall notify the com-~~
21 ~~plainant, if any, of the investigation and shall also notify the long-term~~
22 ~~care facility or the state or county department or agency affected by the~~
23 ~~investigation of his intent to investigate. However, if no investiga-~~
24 ~~tion takes place, he shall inform the complainant of the reasons therefor.~~
25 ~~Records obtained by the ombudsman shall be subject to disclosure according~~
26 ~~to chapter 1, title 74, Idaho Code.~~

27 In an investigation of any complaint or administrative act of any long-
28 term care facility or state or county department or agency providing ser-
29 vices to older people, the ombudsman may undertake, but not be limited to,
30 any of the following actions:

31 (a) Make the necessary inquiries and obtain such information he deems
32 necessary.

33 (b) Hold private hearings.

34 (c) Enter during regular business hours, ~~a long-term care facility or~~
35 ~~state or county department or agency's premises, or enter at any time a long-~~
36 ~~term care facility.~~

37 Following the investigation and upon his determination that particular
38 subject matter should be further considered by the long-term care facility
39 or state or county department or agency, an administrative act should be mod-
40 ified or canceled, a statute or regulation on which an administrative act
41 is based should be altered, reasons should be given for an administrative
42 act, or some other action should be taken by a long-term care facility or
43 state or county department or agency, he shall report his opinions and rec-
44 ommendations to the respective parties. The ombudsman may request the par-
45 ties affected by such opinions or recommendations to notify him within the
46 specified time of any action taken by such parties on his recommendation.
47 ~~Following an investigation, the ombudsman shall consult with the particu-~~
48 ~~lar parties before issuing any opinion or recommendation that is critical to~~
49 ~~such parties.~~

1 The ombudsman shall notify, ~~the complainant~~ in writing or verbally,
2 the resident or the resident's representative within a reasonable time from
3 the date the investigation is terminated of any actions taken by him and the
4 long-term care facility, or state or county department or agency to resolve
5 any issues raised by the complaint.

6 The ombudsman, on December 1 of each year, shall submit to the governor,
7 the speaker of the house, president of the senate, the department of health
8 and welfare ~~bureau~~ division of licensing and certification, the president
9 of the Idaho hospital association and the president of the Idaho health care
10 association a report of the activities of the ombudsman for the elderly dur-
11 ing the prior fiscal year. This report shall include, but not be limited to,
12 the number and general patterns of complaints received by the ombudsman, the
13 action taken on such complaints, the results of such action, and any opin-
14 ions or recommendations which further the state's capability in providing
15 for statutory resolution of complaints.

16 Nothing in this section shall be construed to be a limitation of the pow-
17 ers and responsibilities assigned by law to other state or county depart-
18 ments or agencies.

19 Records obtained by the ombudsman shall be subject to disclosure ac-
20 cording to chapter 1, title 74, Idaho Code.