

By Mr. Pina of New Bedford, petition of Ronald A. Pina, Karen Swanson, Gregory William Sullivan, Carlton M. Viveiros and Manuel Raposa, Jr., for legislation to establish a nursing home ombudsman unit within the Department of Elder Affairs. Health Care.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Seventy-Six.

AN ACT TO CREATE A NURSING HOME OMBUDSMAN UNIT WITHIN THE DEPARTMENT OF ELDER AFFAIRS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Chapter 19A of the M.G.L.A. as inserted by Chapter 1168 of  
2 the Acts of 1973 is hereby amended by adding at the end of  
3 Section 2 the following new Section 2A.

4 *Section 2A.* There shall be in the Office of the Secretary a  
5 Nursing Home Ombudsman Unit. This Ombudsman Unit shall  
6 be responsible for receiving and resolving nursing home  
7 complaints, and for investigating the administrative acts and  
8 omissions of any agency responsible for overseeing nursing  
9 home care in the Commonwealth.

10 To accomplish the objectives hereinbefore set forth, the  
11 Department is hereby authorized as follows:—

12 (a) The Secretary may hire such staff for the Ombudsman  
13 Unit as shall be authorized by appropriation;

14 (b) The ombudsman shall establish procedures for receiving  
15 and processing complaints, conducting investigations, and  
16 reporting his findings;

17 (c) The ombudsman shall have jurisdiction to investigate the  
18 administrative acts or omissions of any nursing home or rest  
19 home or state department or agency and he may exercise his  
20 powers without regard to the finality of an administrative act.  
21 Any administrative act of a nursing home or rest home or state  
22 department or agency which might be:—

- 23 (1) Contrary to law;  
24 (2) Unreasonable, unfair, oppressive, capricious, or un-  
25 necessarily discriminatory, even though in accordance with law;  
26 (3) Based on a mistake of fact;  
27 (4) Based on improper or irrelevant grounds;  
28 (5) Unaccompanied by an adequate statement of reasons;  
29 (6) Performed in an inefficient manner; or  
30 (7) Otherwise erroneous

31 may become an appropriate subject for the ombudsman to  
32 investigate and ultimately find an appropriate resolution for the  
33 subject matter of the investigation.

34 The ombudsman shall investigate any complaint which he  
35 determines to be an appropriate subject for investigation under  
36 this section. In addition, the ombudsman may investigate on his  
37 own notion whenever he reasonably believes that an appropriate  
38 subject for investigation under this section exists.

39 Whenever the ombudsman decides to investigate a complaint,  
40 he shall notify the complainant, if any, of his decision and shall  
41 also notify the nursing home or the rest home or the state  
42 department or the agency affected by his decision of his intent to  
43 investigate. However, if the ombudsman decides not to  
44 investigate, he shall inform the complainant, if any, of the  
45 decision and the reasons therefor;

46 (d) In an investigation of any complaint or administrative act  
47 of any nursing home, rest home or state department or agency,  
48 the ombudsman may undertake any of the following actions, but  
49 not limited to the following:—

50 (1) Make the necessary inquiries and obtain such information  
51 as he deems necessary; and

52 (2) Hold private hearings; and

53 (3) Enter, without notice, to inspect a nursing home or rest  
54 home or state department or agency's premises; and

55 (4) The ombudsman shall be required to maintain a decorum  
56 of secrecy with respect to all matters in relation to the  
57 investigation, together with identities of the complainants or  
58 witnesses, except for such disclosures as may be necessary to  
59 enable the ombudsman to perform his duties and to support any

60 recommendations that may result from the investigation.  
61 Moreover, no disciplinary action shall be taken against any  
62 employee of a nursing home, rest home, state department or  
63 agency under investigation for any information given or  
64 disclosed in good faith to aid the ombudsman;

65 (e) Following the investigation by the ombudsman and upon  
66 his determination that:—

67 (1) A particular subject matter should be further considered  
68 by the nursing home, rest home or state department or agency;

69 (2) An administrative act should be modified or canceled;

70 (3) A statute or regulation on which an administrative act is  
71 based should be altered;

72 (4) Reasons should be given for an administrative act; or

73 (5) Some other action should be taken by the nursing home,  
74 rest home or state department or agency; he shall report his  
75 opinion and recommendations to the respective party. The  
76 ombudsman may request the party, affected by such opinions or  
77 recommendations, to notify him within a specified time of any  
78 action taken by such party on his recommendations.

79 Following an investigation, the ombudsman shall consult with  
80 the particular party before issuing any opinion or recommenda-  
81 tion that is critical of such party.

82 The ombudsman shall notify the complainant, if any, within a  
83 reasonable time from the date the investigation terminated, of  
84 any actions taken by him and the nursing home, rest home, or  
85 state department or agency to resolve any issues raised by the  
86 complaint;

87 (f) The ombudsman, on July 1st of each year, shall submit to  
88 the Secretary, the Governor, the President of the Senate and the  
89 Speaker of the House of Representatives a report of the  
90 activities of the Nursing Home Ombudsman Unit during the  
91 prior fiscal year. This report shall include, but not be limited to,  
92 the number and general patterns of complaints received by the  
93 Ombudsman Unit, the action taken on such complaints, the  
94 results of such action, the number and general pattern of  
95 administrative acts investigated, the action taken on such  
96 investigations, the results of such actions, and any opinions or  
97 recommendations which will further the Commonwealth's

98 capability in resolving nursing home complaints. This report  
99 shall be available to the public.  
100 Nothing in this section shall be construed to be a limitation of  
101 the powers and responsibilities assigned by law to other state  
102 departments or agencies.