

By Mr. Flynn of Hanover, petition of William J. Flynn, 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-Nine.

**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 SECTION 1. Chapter 19A of the General Laws, as inserted  
2 by Chapter 1168 of the Acts of 1973, is hereby amended by  
3 adding at the end of 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. The Ombudsman Unit shall be  
6 responsible for receiving and resolving nursing home complaints,  
7 and for investigating the administrative acts and omissions of any  
8 agency responsible for the regulation of nursing home care in the  
9 Commonwealth.

10 For the purposes of implementing this section, the department  
11 is hereby authorized as follows:

12 The secretary may hire, subject to appropriation, staff for the  
13 Ombudsman Unit which shall be under the direction of an  
14 Ombudsman, who shall be an attorney experienced in the  
15 Ombudsman field. The position of Ombudsman shall not be  
16 subject to Chapter thirty-one nor shall he be subject to the  
17 provisions of section nine A of Chapter 30.

18 The Ombudsman shall establish procedures for receiving and  
19 processing complaints, conducting investigations, and reporting  
20 his findings; he shall have jurisdiction to investigate the  
21 administrative acts or omissions of any nursing home or rest  
22 home or state department or agency and may exercise his powers  
23 without regard to the finality of an administrative act. Any  
24 administrative act of a nursing home or rest home or state

25 department or agency which might be contrary to law,  
26 unreasonable, unfair, oppressive, capricious, or unnecessarily  
27 discriminatory even though in accordance with law, based on a  
28 mistake of fact, based on improper or irrelevant grounds,  
29 unaccompanied by an adequate statement of reasons, performed  
30 in an inefficient manner, or otherwise erroneous, may become an  
31 appropriate subject for the Ombudsman to investigate. The  
32 Ombudsman may make a finding for an appropriate resolution to  
33 the 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.

37 Whenever the Ombudsman investigates a complaint, he shall  
38 notify the complainant, if any, of the investigation and shall also  
39 notify the nursing home or the rest home or the state department  
40 or the agency affected by the investigation, of his intent to  
41 investigate. However, if no investigation takes place, he shall  
42 inform the complainant in writing of the reasons therefor.

43 In an investigation of any complaint or administrative act of  
44 any nursing home, rest home or state department or agency, the  
45 Ombudsman may undertake but shall not be limited to any of the  
46 following actions:

47 making the necessary inquiries and obtaining such information  
48 as he deems necessary;

49 holding private hearings;

50 entering without notice, to inspect a nursing home or rest home  
51 or state department or agency's premises.

52 Following the investigation by the Ombudsman and upon his  
53 determination that:

54 a particular subject matter should be further considered by the  
55 nursing home, rest home or state department or agency, an  
56 administrative act should be modified or canceled, a statute or  
57 regulation on which an administrative act is based should be  
58 altered, reasons should be given for an administrative act, or  
59 some other action should be taken by the nursing home, rest  
60 home or state department or agency; he shall report his opinions  
61 and recommendations to the respective party. The Ombudsman  
62 may request the party, affected by such opinions or recommen-  
63 dations, to notify him within a specified time of any action taken  
64 by such party on his recommendations.

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

68 The Ombudsman shall notify the complainant in writing within  
69 a reasonable time from the date the investigation terminated, of  
70 any such actions taken by him and the nursing home, rest home,  
71 or state department or agency to resolve any issues raised by the  
72 complaint.

73 The Ombudsman, on July 1st of each year, shall submit to the  
74 Secretary, the Governor, the President of the Senate and the  
75 Speaker of the House of Representatives a report of the activities  
76 of the Nursing Home Ombudsman Unit during the prior fiscal  
77 year. This report shall include, but not be limited to, the number  
78 and general patterns of complaints received by the Ombudsman  
79 Unit, the action taken on such complaints, the results of such  
80 action, the number and general pattern of administrative acts  
81 investigated, the action taken on such investigations, the results  
82 of such actions, and any opinions or recommendations which will  
83 further the commonwealth's capability in resolving nursing home  
84 complaints.

85 Nothing in this section shall be construed to be a limitation of  
86 the powers and responsibilities assigned by law to other state  
87 department or agencies.

