

HOUSE No. 6001

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 8, 1982.

The committee on Human Services and Eldery Affairs, to whom were referred so much of the recommendations of the Department of Elder Affairs (House, No. 61) as relates to establishing a nursing home ombudsman program (accompanied by bill, House, No. 63), the petition (accompanied by bill, House, No. 369) of William J. Flynn, Jr., for legislation to establish an ombudsman unit within the Department of Elder Affairs, the petition (accompanied by bill, House, No. 371) of William J. Flynn, Jr., for legislation to establish a nursing home ombudsman unit within the Department of Elder Affairs, and the petition (accompanied by bill, House, No. 2112) of Gregory William Sullivan that the Department of Elder Affairs be directed to establish an ombudsman unit to provide elderly persons with information and assistance in obtaining placement in chronic care hospitals, nursing homes and other facilities, reports recommending that the accompanying bill (House, No. 6001) ought to pass.

For the committee,

GREGORY WILLIAM SULLIVAN.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Two.

AN ACT TO ESTABLISH A NURSING HOME OMBUDSMAN PROGRAM.

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 most recent-
2 ly amended by section 63 of chapter 393 of the acts of 1979, is
3 hereby further amended by adding at the end thereof the following:

4 *Section 14.* For the purpose of this chapter the following words
5 and terms shall, unless the context otherwise requires, have the
6 following meanings:

7 (1) "act", any action or decision made by an owner, employee or
8 agent of a long term care facility, or by a government agency or any
9 condition within a long term care facility which affects the provi-
10 sion of service to residents.

11 (2) "long term care facility", any facility licensed by the depart-
12 ment of public health pursuant to the provisions of section 71 of
13 chapter 111.

14 (3) "resident", any person who is receiving treatment or care in
15 any long term care facility in any of its aspects including, but not
16 limited to, application or admission, retention, confinement, com-
17 mitment, period of residence, transfer, discharge and instances
18 directly related to such status.

19 *Section 15.* The secretary shall establish a statewide long term
20 care ombudsman program for the purpose of receiving, investigat-
21 ing and resolving complaints filed by residents of long term care
22 facilities, individuals acting on their behalf or any individual,
23 organization or government agency that has reason to believe that
24 a long term care facility, organization or government agency has
25 engaged in activities, practices or omissions that constitute viola-
26 tions of applicable statutes or regulations or that may have an
27 adverse effect upon the health, safety, welfare or rights of residents
28 of long term care facilities. The secretary shall appoint an ombuds-

29 man to act as the director of the ombudsman program who shall be
30 a person qualified by training and experience to perform the duties
31 of the office. Said ombudsman shall not be subject to the provi-
32 sions of section nine A of chapter thirty or chapter thirty-one.

33 *Section 16.* The ombudsman shall establish a uniform state-
34 wide procedure by which the ombudsman shall receive compliants
35 from residents, relatives of said residents, legal guardian, conserva-
36 tor or representative payee, interested citizens, officials or govern-
37 ment agencies having an interest in the matter.

38 The ombudsman or his or her designee shall investigate and
39 resolve complaints made by or for residents of long term care
40 facilities regarding an act that may adversely affect their health,
41 safety, welfare or rights. In conducting an investigation the om-
42 budsman or his or her designee may (a) make unscheduled on-site
43 inspections of any long term care facility, and (b) visit privately
44 with any resident with the consent of said resident. The ombuds-
45 man, but not a designee, may (a) inspect any book, records and files
46 of the long term care facility, and (b) with written consent of the
47 resident, inspect the personal and medical records of said resident.
48 The secretary is authorized to contract for the investigation of
49 complaints.

50 The secretary shall establish procedures to protect the confiden-
51 tiality of residents' records and files. Such procedures shall meet
52 the following requirements: (1) no information or records main-
53 tained by the ombudsman program shall be disclosed unless the
54 ombudsman or his or her designee authorizes the disclosure; and
55 (2) the ombudsman or his or her designee shall not disclose the
56 identity of any complainant or resident unless the complainant or
57 resident, or a legal representative of either, consents in writing to
58 the disclosure and specifies to whom the identity may be disclosed
59 or a court orders the disclosure.

60 The ombudsman or his or her designee may initiative his or her
61 own investigation of any long term care facility independent of the
62 receipt of specific complaint.

63 If the ombudsman or his or her designee determines that any act
64 of any long term care facility may adversely affect the health,
65 safety, welfare or rights of a resident of the facility, he or she shall
66 make specific recommendations for the elimination or correction

67 of such act. If the ombudsman or his or her designee determines
68 that an act of any long term care facility may constitute a violation
69 of any applicable federal or state statute or regulation, he shall
70 report such findings and conclusions to the regulatory agency or
71 agencies having jurisdiction to enforce said statute or regulation or
72 to the office of the attorney general. The ombudsman shall follow
73 up on all such reports to their state agencies.

74 Within a reasonable period of time after the completion of an
75 investigation the ombudsman shall notify the long term care facility
76 of his or her actions and findings. The ombudsman shall follow
77 up on all such reports to other state agencies and shall have access
78 to the files and records of said agencies, provided that said agency
79 shall protect the confidentiality of residents' records and files
80 pursuant to chapter sixty-six A.

81 *Section 17.* The ombudsman may contract with a local om-
82 budsman program to act on behalf of the ombudsman or his or her
83 designee in the receipt, investigation and resolution of complaints
84 within a geographic area as defined by the ombudsman. The
85 ombudsman may contract with any public agency or private non-
86 profit organization which has the capability of performing the
87 duties of an ombudsman provided that such designee shall not be
88 an agency or organization responsible for licensing or certifying
89 long term care facilities or an association or an affiliate or agent of
90 an association of long term care facilities, and provided further
91 that the ombudsman may contract with, to the extent practicable,
92 such agencies or organizations which have been established by
93 local initiative for the purposes set forth in this act. Such local
94 ombudsman programs shall operate in compliance with any rules
95 and regulations established by the secretary for the implementa-
96 tion of the ombudsman program. The ombudsman shall contract
97 with a local program in every area of the commonwealth provided
98 that the ombudsman shall carry out the responsibilities of the local
99 program in any area within which no local ombudsman program
100 has been established.

101 *Section 18.* In order to insure that the goals of the ombudsman
102 program are met the ombudsman shall:

103 (a) establish and conduct a training program for persons em-
104 ployed by or associated with the ombudsman or any designated

105 local ombudsman program who perform the duties and responsi-
106 bilities enumerated in section 16 regarding the receipt, investiga-
107 tion and resolution of complaint, and certify such persons upon
108 satisfactory completion of such training programs;

109 (b) monitor the development and implementation of federal,
110 state and local statutes, regulations and policies regarding long
111 term care facilities;

112 (c) provide information to public agencies regarding the prob-
113 lems of elderly persons in long term care facilities;

114 (d) provide that complete records shall be maintained of com-
115 plaints received, the actions taken, findings and recommendations
116 in response to such complaints and other action, finding or recom-
117 mendation of the ombudsman or his or her designee initiated
118 independent of a specific complaint;

119 (e) establish a statewide uniform reporting system to collect and
120 analyze information on complaints and conditions in long term
121 care facilities for the purpose of identifying and resolving signifi-
122 cant problems;

123 (f) file a report of the activities of the nursing home ombudsman
124 program and the ombudsman's recommendation concerning long
125 term care facilities and the protection of the rights of residents of
126 said facilities with the secretary, governor and the general court
127 within 120 days following the end of each fiscal year; and

128 (g) carry out other activities consistent with the requirements of
129 Title 42 of the United States Code, part 3027, section 307(a)(12)
130 and the provisions of this act.

131 *Section 19.* The secretary shall promulgate and from time to
132 time revise rules and regulations for the implementation of the
133 nursing home ombudsman program including, but not limited to,
134 the procedures for the receipt, investigation and resolution of
135 complaints.

136 *Section 20.* Nothing in this act shall be construed to be a limita-
137 tion of the powers and responsibilities assigned by law to other
138 departments or agencies.

1 SECTION 2. If any section, subsection, paragraph, sentence or
2 other part of this act is adjudged to be unconstitutional or invalid,
3 such judgment shall not affect, impair or invalidate the remainder

4 of this act, but shall be confined in its effect to the section, sub-
5 section, paragraph, sentence or other part directly involved in the
6 controversy in which said judgment shall have been rendered.

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