

**SENATE . . . . . No. 2206**

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**The Commonwealth of Massachusetts**

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SENATE, October 24, 1983.

The committee on Ways and Means, to whom was committed the Senate Bill to establish a nursing home ombudsman program (Senate, No. 1958), reports recommending that the same ought to pass, with an amendment, substituting a new draft with the same title (Senate, No. 2206).

For the Committee,

PETER C. WEBBER

## The Commonwealth of Massachusetts

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

### 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 Chapter 19A of the General Laws, as most recently amend-  
2 ed by section 63 of chapter 393 of the acts of 1979, is hereby  
3 amended by inserting after section 26 the following sec-  
4 tions: —

5 *Section 27.* For the purpose of sections twenty-seven  
6 through thirty-six the following words and terms shall, un-  
7 less the context requires otherwise, have the following mean-  
8 ings: —

9 (1) "act", any action or decision made by an owner, em-  
10 ployee or agent of a long term care facility, or by a govern-  
11 ment agency or any condition within a long term care facility  
12 which affects the provision of service to residents.

13 (2) "long term care facility", any facility licensed by the  
14 department of public health pursuant to the provisions of  
15 section 71 of chapter 111.

16 (3) "resident", any person who is receiving treatment or  
17 care in any long term care facility in any of its aspects in-  
18 cluding, but not limited to, application or admission, reten-  
19 tion, confinement, commitment, period of residence, transfer,  
20 discharge and instances directly related to such status.

21 (4) "designee", any State Nursing Home Ombudsman, a  
22 member of his/her staff, or any director of a local nursing  
23 home ombudsman program, provided, however, that said di-  
24 rectors have been certified by the State Nursing Home Om-  
25 budsman, as hereinafter described.

26 (5) "administrative action", any action taken to resolve  
27 issues through negotiation and mediation within the facil-  
28 ity.

29 (6) "government agency", any federal or state agency re-  
30 sponsible for the administration of benefits to the elderly.

31 *Section 28.* The secretary shall, subject to appropriation or

32 the receipt of federal funds, establish a statewide long term  
33 care facility residents and of receiving, investigating and re-  
34 solving through administrative action complaints filed by  
35 residents of long term care facilities, individuals acting on  
36 their behalf or any individual organization or government  
37 agency that has reason to believe that a long term care facil-  
38 ity, organization or government agency has engaged in activi-  
39 ties, practices or omissions that constitute violation of appli-  
40 cable statutes or regulations or that may have an adverse ef-  
41 fect upon the health, safety, welfare or rights of residents of  
42 long term care facilities. The secretary shall appoint an om-  
43 budsman to act as the director of the ombudsman program  
44 who shall be a person qualified by training and experience  
45 to perform the duties of the office. Said ombudsman shall  
46 not be subject to the provisions of section nine A of chapter  
47 thirty or chapter thirty-one.

48 *Section 29.* Any person employed by or associated with the  
49 ombudsman or any designated local ombudsman program, or  
50 representative of a community group offering legal services  
51 or free advocacy assistance, certified by the Secretary of the  
52 Department of Elder Affairs, under the provisions of Section  
53 20 (a) or (h) of this chapter, shall be permitted access at  
54 reasonable hours, including at least the hours of 10:00 a.m. to  
55 8:00 p.m. each day, to any consenting individual resident of  
56 any facility, but only if there is neither a commercial purpose  
57 nor affect to such access and if the purpose is to do any of the  
58 following: —

59 1. Visit, talk with and make personal, social and legal serv-  
60 ices available to all residents;

61 2. Inform residents of their rights and entitlements and their  
62 correspondent obligations, under federal and state laws, by  
63 means of educational materials and discussion in groups and  
64 with individual residents;

65 3. Assist residents in asserting their legal rights regarding  
66 claims for public assistance, medical assistance and social se-  
67 curity benefits, or assist residents in action against agencies  
68 responsible for these programs, as well as in all other matters  
69 in which residents are aggrieved. Assistance may include ad-  
70 vising litigation; or

71 4. Engage in other methods of assisting, advising and rep-

72 resenting residents so as to extend to them full enjoyment of  
73 their rights.

74 Upon entering a facility, the person or representative shall  
75 notify facility personnel of his or her presence and, upon re-  
76 quest, shall produce identification. Prior to entering the room  
77 of an individual resident, the person or representative shall  
78 identify him or herself and explain the purpose of the visit.  
79 The person or representative shall have the right to visit pri-  
80 vately with the resident only after the resident has given per-  
81 mission for such a visit; shall, at all times, respect the con-  
82 fidentiality of all such communication; and shall not subject  
83 the resident to photographing, filming, video-taping, or au-  
84 diotaping without written permission of the resident or his/  
85 her legal representative. The facility may not release or dis-  
86 cuss information in a resident's medical records unless it has  
87 first obtained proper written consent as required by law from  
88 the resident or his/her legal representative.

89 *Section 30.* The State Nursing Home Ombudsman and each  
90 designee, as defined in Section 27 (4) hereof, shall have the  
91 right of entry into long term care facilities at any time con-  
92 sidered necessary and reasonable by the ombudsman or the  
93 designee for the purpose of: —

94 (a) Investigating and resolving through administrative ac-  
95 tion complaints made by residents or on their behalf;

96 (b) Interviewing residents, with their consent, in private;

97 (c) Offering the services of the ombudsman or designee to  
98 any resident, in private;

99 (d) Interviewing employees or agents of the long term care  
100 facility;

101 (e) Consulting regularly with the facility administration;

102 and (f) providing services authorized by law or by regula-  
103 tion.

104 The State Nursing Home Ombudsman and his or her desig-  
105 nee shall have access to any resident's records, and to records  
106 of any public agency necessary to the duties of the office, in-  
107 cluding records on patient abuse complaints, provided that  
108 the resident or his/her legal representative has given written  
109 authorization to allow such access to the State Nursing Home  
110 Ombudsman or his/her designee.

111 *Section 31.* The secretary shall establish procedures to pro-

112 tect the confidentiality of residents' records and files. Such  
113 procedures shall meet the following requirements: (1) no in-  
114 formation or records maintained by the ombudsman program  
115 shall be disclosed unless the ombudsman or his or her desig-  
116 nee authorizes the disclosure; and (2) the ombudsman or his  
117 or her designee shall not disclose the identity of any com-  
118 plainant or resident of the long term care facility involved  
119 in any complaint unless the complainant or resident or a legal  
120 representative of either, consents in writing to the disclosure  
121 and specifies to whom the identity may be disclosed or a court  
122 orders the disclosure.

123 The ombudsman or his or her designee may initiate his or  
124 her own investigation of any long term care facility inde-  
125 pendent of the receipt of specific complaint.

126 If the ombudsman or his or her designee determines that  
127 any act of any long term care facility may adversely affect  
128 the health, safety, welfare or rights of a resident of the fa-  
129 cility, he or she shall make specific recommendations for the  
130 elimination or correction of such act. If the ombudsman or  
131 his or her designee determines that an act of any long term  
132 care facility may constitute a violation of any applicable fed-  
133 eral or state statute or regulation, the ombudsman shall re-  
134 port such findings and conclusions to the regulatory agency  
135 or agencies having jurisdiction to enforce said statute or  
136 regulation or to the office of the attorney general. Said agen-  
137 cies shall protect the confidentiality of residents' records and  
138 files pursuant to chapter sixty-six A.

139 Within a reasonable period of time after the completion of  
140 an investigation the ombudsman shall notify the long term  
141 care facility of his or her actions and findings.

142 *Section 32.* The ombudsman shall contract with a local  
143 ombudsman program to act on behalf of the ombudsman or  
144 his or her designee in the receipt, investigation and resolu-  
145 tion through administrative action of complaints within a  
146 geographic area as defined by the ombudsman. The ombuds-  
147 man shall contract with any public agency or private non-  
148 profit organization which has the capability of performing  
149 the duties of an ombudsman provided that such designee shall  
150 not be an agency or organization responsible for licensing or  
151 certifying long term care facilities or an association or an

152 affiliate or agent of an association of long term care facilities,  
153 and provided further that the ombudsman shall contract  
154 with, to the extent practicable, such agencies or organiza-  
155 tions which have been established by local initiative for the  
156 purposes set forth in this act. Such local ombudsman pro-  
157 grams shall operate in compliance with any rules and regu-  
158 lations established by the secretary for the implementation  
159 of the ombudsman program. The ombudsman shall contract  
160 with a local program in every area of the commonwealth  
161 provided that the ombudsman shall carry out the responsibili-  
162 ties of the local program in any area within which no local  
163 ombudsman program has been established.

164 *Section 33.* In order to insure that the goals of the om-  
165 budsman program are met the ombudsman shall: —

166 (a) establish and conduct a training program for persons  
167 employed by or associated with the ombudsman or any desig-  
168 nated local ombudsman program who perform the duties and  
169 responsibilities enumerated in section 18 regarding the re-  
170 ceipt, investigation and resolution through administrative ac-  
171 tion of complaints, and certify such persons upon satisfactory  
172 completion of such training programs;

173 (b) monitor the development and implementation of fed-  
174 eral, state and local statutes, regulations and policies regard-  
175 ing long term care facilities;

176 (c) provide information to public agencies regarding the  
177 problems of elderly persons in long term care facilities;

178 (d) provide that complete records shall be maintained of  
179 complaints received, the actions taken, findings and recom-  
180 medations in response to such complaints and other action,  
181 including the facilities' responses to serious complaints, find-  
182 ing or recommendation of the ombudsman or his or her des-  
183 ignee initiated independent of a specific complaint;

184 (e) establish a statewide uniform reporting system to col-  
185 lect and analyze data relating to complaints and conditions in  
180 mendations in response to such complaints and other action,  
187 resolving significant problem; with provisions for submission  
188 of such data to the one agency of the state responsible for  
189 licensing and certifying long term care facilities on a regular  
190 basis;

191 (f) file a report of the activities of the nursing home om-

192 budsman program and the ombudsman's recommendation con-  
193 cerning long term care facilities and the protection of the  
194 rights of residents of said facilities with the secretary, gov-  
195 ernor and the general court within 120 days following the  
196 end of each fiscal year; and

197 (g) carry out other activities consistent with the require-  
198 ments of Title 42 of the United States Code, part 3027, sec-  
199 tion 307 (a) (12) and the provisions of this act;

200 (h) establish and conduct a training program for persons  
201 employed by or associated with a community group offering  
202 free advocacy assistance to residents of long term care facili-  
203 ties, and certify such persons upon satisfactory completion of  
204 such training program.

205 *Section 34.* The secretary shall promulgate and from time  
206 to time revise rules and regulations for the implementation of  
207 the nursing home ombudsman program including, but not  
208 limited to, the procedures for the receipt, investigation and  
209 resolution through administrative action, of complaints.

210 *Section 35.* Nothing in this act shall be construed to be a  
211 limitation of the powers and responsibilities assigned by law  
212 to other departments or agencies. The Secretary of Elder  
213 Affairs shall establish an interagency agreement among the  
214 Department of Elder Affairs, Department of Public Health,  
215 and Office of the Attorney General to ensure a cooperative ef-  
216 fort in meeting the needs of the residents of long term care  
217 facilities.

218 *Section 36.* If any provision or clause of this chapter or  
219 application thereof to any person or circumstances is held in-  
220 valid, such invalidity shall not affect other provisions or ap-  
221 plication of the chapter which can be given effect without the  
222 invalid provision or application, and to this end the provisions  
223 of this chapter are declared to be severable.

199 Inherent factors and the organization's environment are  
 200 existing but form only factors and the presence of the  
 201 stable of results of self-interest with the organization. The  
 202 error and the general error factor (197) are factors in the  
 203 of each factor; and

204 The error and other positive consistent with the organization  
 205 of 1979 of the United States Code, Title 10, Sec.  
 206 1121, and the provisions in this act.

207 The stability and stability of the organization for persons  
 208 of or associated with a community group should  
 209 be considered in relation to the organization's stability.  
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