

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 526, at the Statehouse at 3:30 a. m./p. m., on February 8, 19 79.

All members were present except:

The next meeting of the Committee will be held at 3:30 a. m./p. m., on February 12, 19 79.

These minutes of the meeting held on February 7, 19 79 were considered, corrected and approved.

JOSEPH J. HOAGLAND

Chairman

The conferees appearing before the Committee were:

Representative Glover, Co-Sponsor of HB 2167
Jim McCormack, Kansas Department on Aging
Petey Cerf, President of KINH
Dick Hummel, Legislative Representative, Health Care Providers, Inc.
Joe Harkins, Acting Secretary, Dept. of Health & Environment
Max Moses, Kansas County and District Attorneys Association
Gene Olander, District Attorney - Topeka, Kansas

In the absence of Chairman Hoagland, Representative Douville chaired the committee meeting. He introduced Rep. Glover, co-sponsor of HB 2167, who briefly explained the bill to the members.

Jim McCormack, Kansas Department on Aging then read a statement for Barbara J. Sabol, Secretary of the Department of Aging, indicating the department's support of HB 2167. (SEE ATTACHMENT # 1).

Petey Cerf, President of Kansans for Improvement of Nursing Homes, Inc. then testified briefly in favor of HB 2167. (SEE ATTACHMENT # 2).

Dick Hummel, Legislative Representative of the Health Care Providers, Inc. testified next in opposition to HB 2167. He indicated they do not believe this legislation is necessary since there is already a complaint system at the present time. (SEE ATTACHMENT # 3).

Joe Harkins, Department of Health and Environment, testified next. They are not opposed to the intent of the bill, but rather they oppose the procedures of the bill. Mr. Harkins indicated they have four departments handling these complaints at the present time and they are working together to try to attempt to improve their system. He claimed this bill would add a fifth department (a local health department), to handle complaints, and that many of these local health departments are already understaffed (many have only one nurse) that would have to handle all the documentation involved in these complaints. Further, he claimed the health departments are not trained as investigators, or trained to hold the necessary hearings. Besides being very time consuming, Mr. Harkins claimed it would be very costly. The department is sympathetic with the problems this bill addresses, but opposes HB 2167.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Max Moses, Kansas County and District Attorneys Association testified in support of HB 2188 and introduced Gene Olander, District Attorney. Mr. Olander explained that the bill would amend the present 10¢ a mile travel fee for witnesses. The bill would change the fee to the rate of 15¢ per mile.

Representative Douville asked for approval of the minutes of the last meeting. They were approved. Meeting adjourned at 4:30 p.m.

MEMO FROM THE KANSAS DEPARTMENT ON AGING

DATE: February 7, 1979

TO: House Public Health & Welfare Committee FROM: Barbara J. Sabol, Secretary

RE: HB 2167

Thank you for this opportunity for the Department on Aging to express its general support for HB 2167. We believe that mandatory reporting of abuse of residents of nursing homes is needed.

There are about 21,600 persons residing in Kansas nursing homes. Although exact data on the ages of these persons is not available, the best estimate we have is that at least 90% are age 60 or over. It is generally estimated that approximately one-third of the residents in nursing homes have no one from the outside who contacts them. Our Department has a Nursing Home Ombudsman who serves as an advocate for nursing home residents. During 1978 she received over 200 contacts concerning problems in nursing homes. Her experience and the experience of Nursing Home Ombudsmen in other states is that almost all complaints come from families or from concerned persons, not directly from resident themselves.

Most people who need nursing home care are inherently vulnerable. Either they are no longer capable of voicing their own distress because of physical or mental ailments or they fear retaliation from those upon whom they must depend for their basic physical needs. They must rely upon professionals and concerned friends who observe their condition to report abuse. This bill would not only require reporting by certain professionals, but also provide protection against liability and loss of job. We know that once this protection was provided for certain professionals in reporting alleged abuse of children, such reports increased substantially and our ability to provide vital protection for abused children improved greatly. We expect that the same result will occur if you mandate reporting of abuse, neglect and exploitation of vulnerable adults.

Atch. 1

February 7, 1979

We would also like to point out that a similar system of reporting is needed for older adults who are not in nursing homes. Although the great majority of older persons either remain self-sufficient or have adequate support from families or friends, it is estimated nationally that 10% to 15% of persons over 60 are unable to care for themselves and have no help from friends or family. Between 1970 and 1976 the over-85 population increased by nearly 40 percent. As more persons survive into advanced age, the incidence of persons being alone and infirm increases. Also, families which formerly lived together, taking care of their own, are more likely today to be separated so widely that they cannot meet the needs of elderly relatives. These persons may suffer either from self-neglect or from abuse or exploitation by their children or others. No one knows for certain the number of elderly persons who suffer physical or emotional abuse, life-threatening neglect or financial exploitation. We have not had a system for identifying and addressing these problems. But persons in the field of aging and social work know that abuse of the elderly, particularly by their own children, is a significant and growing phenomenon.

We recommend you consider amending this bill to include the noninstitutionalized and to provide some system of protective services for those persons who need and consent to the services. Although SRS is currently providing such services through Title XX, a statutory scheme for addressing abuse should also prescribe a system of follow-up and assistance when needed. We commend your efforts to deal with the problem of abuse of nursing home residents.

BJS:pal



Kansans for Improvement of Nursing Homes, Inc.

927½ MASSACHUSETTS ST. #4

LAWRENCE, KANSAS 66044

842-3088 - Area Code 913

February 8, 1979

STATEMENT TO HOUSE JUDICIARY COMMITTEE RE HB 2167:

KINH is pleased to support HB 2167. We feel that it fills a real need, and we are certain that you will be hearing from others who agree. We are supporting HB 2167 for the following reasons:

1) It provides a legal mechanism for reporting and a process for handling serious complaints which involve physical abuse, mistreatment, or neglect. It would replace what we think is an incomplete, ineffective method of dealing with serious complaints. We think it would result in a greatly improved response.

2) HB 2167 would allay some of the fear of families or friends by removing any civil or criminal liability resulting from making a complaint or by giving testimony on a complaint if done in good faith. (Sec. 4)

The bill might be improved by providing for confidentiality of all names of individuals in the filed reports or investigations of the reports, which we believe would further allay the fear of families and friends that the nursing home resident will become the victim of reprisal.

3) HB 2167 would also allay the fear of employees that they will lose their jobs if they make a report. (Sec. 5)

In a Public Opinion Survey which KINH conducted last year, both families and employees expressed a fear of retaliation if they were to make a complaint; we thought that others exhibited this fear by refusing to discuss problems which they admitted to having. HB 2167 should protect people who have these very real and well-founded fears. The addition of a confidentiality provision, as suggested above, would further allay fears, although the Committee may feel that KSA 39-934 already deals adequately with this problem.

Atch. 2

4) HB 2167 also deals with the problem of individuals who can't or won't rock the boat--

a) Hospital and nursing home employees who are aware of the physical abuse, mistreatment, or neglect, but fail to report it because the health care facility has no policy for dealing with the problem, or because they might become liable for civil or criminal damages.

b) Families of Medicaid patients who may feel they have no right to complain because they are not paying for care.

c) Employees who feel more loyalty to the management of the home than to the well-being of the patients.

d) Individuals who have seen so much human suffering that they become calloused and indifferent.

e) Individuals who simply will not get involved.

KINH has come in contact with all of these categories of individuals. Whatever the reason for their silence, HB 2167 places on them a legal responsibility and provides a uniform procedure for reporting when they have knowledge of physical abuse, mistreatment, or neglect of any nursing home resident, and provides immunity from civil or criminal liability if acting in good faith.

We would suggest one additional provision:

"Notice of the requirements of this act and the agency to which a report is to be made under this act, shall be posted in a conspicuous place in every adult care home and medical care facility in the state."

In the aforementioned Public Opinion Survey, KINH interviewers questioned relatives as to where they made complaints; a large majority had no idea that the Department of Health and Environment regulates nursing homes; they did not know how to contact the Department; and they were totally unaware of the statutory authority which local health departments have in the regulation of nursing homes (KSA 39-928 & 935). Without the above provision, we believe that many serious complaints will continue to go unreported.

We reiterate that HB 2167 is needed; we very much appreciate the interest of Representatives Glover, Hoagland and Brewster in introducing this bill, and we respectfully ask that this Committee report it favorably to the House.

By Petey Cerf, President of KINH

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Health Care Providers, Inc.

P. O. Box 2171 Topeka, Kansas 66603

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TESTIMONY BEFORE THE HOUSE
JUDICIARY COMMITTEE

By Dick Hummel

Kansas Professional Nursing Home Administrators Association
Kansas Chapter, American College Nursing Home Administrators
Kansas Health Care Association, Inc.

February 8, 1979

HOUSE BILL NO. 2167

"AN ACT concerning adult care homes; requiring certain persons to report resident abuse; declaring certain acts to be unlawful and prescribing penalties therefor; providing for the amendment and the expungement of certain reports."

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Health Care Providers is a not-for-profit organization comprised of three nursing home associations, representing 95% of the state's 25,000 licensed adult care home beds.

We have not, do not, and will not condone the abuse, mistreatment or neglect of our elderly-infirm residents. Recognized is the fact that isolated instances may occur, followed by justice swiftly and surely metted out to the offender.

We do not believe H.B. 2167 is necessary, and we are confident reason and objectivity will prevail over the emotionalism and subjectivity of this measure. Please bear with us as we question, point-out and explain the:

- *necessity for this bill
- *existing reporting mechanisms
- *implications of this measure.

Atch. 3

NEEDED?

The Kansas State Department of Health and Environment, Bureau of Nursing Homes, responsible for the licensure of this state's 360 nursing homes, began compiling monthly complaint reports and their disposition in August 1978. These reports, August-December 1978, are submitted as Exhibit #I; and quickly summarized reflect:

Total Complaints Received	132
Referrals Made	135
Answers Received	109
Source of Complaint:	
1. Disgruntled Employee	22
2. Resident	11
3. Relative	54
Complaint Determined Not Valid	36

This reporting period represents 3,825,000 patient days of service. We feel this reporting system, although relatively new, is functional and will become more so if given a chance.

OTHER COMPLAINT MECHANISMS

In addition to the Department of Health, the State Nursing Home Ombudsman within the State Department on Aging, is responsible for receiving and expeditiously resolving complaints. (We understand the two agencies are beginning to coordinate their efforts in this area.) Furthermore, the Ombudsman Program has been given a strengthened and clear mandate in long-term care involvement with the passage of the Comprehensive Older Americans Act Amendments of 1978, P.L. 95-478 (Exhibit #2, "The Nursing Home Law Letter", October 1978, pages 1-2.)

IMPLICATIONS

The reporting mechanism and responsibilities outlined in the bill will result in a morass of problems. As we see it:

Mandated Report: Section 1 identifies those responsible for initiating a report, in addition to "any other person" in Section 2. Failure to comply carries the penalty of a Class B misdemeanor. Section C.

Subjectivity: Attention can be given to demonstrative, objective signs of physical abuse. Mistreatment or neglect however leaves room for definition, opinion and conjecture.

Liability in Reporting: Section 4 presumes "good faith" in reporting and grants immunity from civil or criminal liability.

CONCLUSION

If enacted, the way will be paved for every disgruntled employee, guilt-ridden family member and self-appointed consumer group expert to unleash a "witch-hunt" of unheralded proportions. Professional staff will be pitted against the other --- L.P.N. filing a report because the R.N. didn't, with the latter subject to a Class B misdemeanor.

In summary, we do not believe this legislation is necessary. A complaint handling process is in place, given more opportunity to be-

Testimony on H.B. 2167
By Dick Hummel
February 8, 1979
Page Four

come functional. Complaints are being received as reflected in Exhibit #I. Families and residents already have available the option to exercise civil proceedings if abuse, etc. is alleged.

Last of all, we ask for the fiscal impact of this bill, not only for the administrative mechanics, but also the projected secondary impact upon malpractice coverage for the affected professions.

WHO IS TO BLAME?

Depression takes hold of all of us in different degrees at different times. Roughly 50% of nursing home residents have neither family nor friends. Residents with families do not receive visits as often as they should, sometimes never. If H.B. 2167 is approved, who are we to report as responsible for this neglect and mental anguish?

Thank you for this opportunity to comment on House Bill No. 2167.

Complaints - Received since August - 1978

	August	September	October	November	December	TOTAL
NORTHEAST:						
From:						
Gov. Office	2	3	6	4	1	16
Open	<u>2</u>	<u>8</u>	<u>11</u>	<u>9</u>	<u>6</u>	<u>36</u>
Total	4	11	17	13	7	52
NORTH CENTRAL:						
Gov. Office	2	3	0	0	0	5
Open	<u>4</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>6</u>
Total	6	4	1	0	0	11
NORTHWEST:						
Gov. Office	1	1	0	0	0	2
Open	<u>1</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>3</u>
Total	2	2	0	1	0	5
SOUTHEAST:						
Gov. Office	3	5	2	0	0	10
Open	<u>4</u>	<u>1</u>	<u>3</u>	<u>1</u>	<u>0</u>	<u>9</u>
Total	7	6	5	1	0	19
SOUTH CENTRAL:						
Gov. Office	3	3	2	1	1	10
Open	<u>3</u>	<u>2</u>	<u>2</u>	<u>7</u>	<u>13</u>	<u>27</u>
Total	6	5	4	8	14	37
Southwest:						
Gov. Office	0	0	2	0	1	3
Open	<u>1</u>	<u>1</u>	<u>0</u>	<u>3</u>	<u>0</u>	<u>5</u>
Total	1	1	2	3	1	8
TOTAL	26	29	29	26	24	132

6 mo. avg.

22

Date	Nature of Complaint	Received From	Referrals Made	Answers Received	Valid	No. Valid
28th Sept 72	Nursing - 1 Sanitation - 1 Dietery - 1 Physical Plant - 1	Disgruntled employee - 1 Resident - 1	2	2		2
21st Oct	Nursing - 3 Physicians Service - 1 Administration - 1 Physical Plant - 1	Disgruntled employee - 3 SRS - 1	3 (no follow-up on 1)	3	2	1
1st Oct	Nursing 1	Disgruntled employee - 1	1			
4th Sept	Residents on streets - 1 Nursing - 2 Dietery - 2 Sanitation - 1 Physical Plant - 1	Local - 4	4	3	2	1
3rd Oct	Nursing - 2 Physicians Services - 1 Sanitation - 1 Physical Plant - 2	Relative - 2 Local - 1	3	1	1	
1st Oct	Patients Rights - 1	Relative - 1	1			
15th AL	Nursing - 9 Sanitation - 3 Dietery - 3 Physical Plant - 5 Physicians Services - 2 Administration - 1 Patient's Rights - 1 Residents on Streets - 1	Disgruntled employees - 5 Local - 4 Relatives - 4 SRS - 1	14	9	5	4

Area	Nature of Complaint	Received From	Referrals Made	Answers Received	Valid	No. Valid
North East 2	Dietary-1 Nursing-1 Administration-1	Relative-2	2	2	2	
North Central 2	Administration-1 Dietary-1 Physical Plant-1	Relative-1 Former employee-1	2	1	1	
North East 1	Nursing-1 Housekeeping-1 Administration-1	Local-1	1	1	1	
North East 3	Nursing-2 Dietary-2 Therapists-1	Relative-2 Anonymous-1	3	3	2	
North Central 3	Sanitation-2 Activities-1 Physical Plant-1 Nursing-2 Administration-1 Physician Service-1	Local-2 Relative-1	3	4	3	
North East 1						
TOTAL	Administration-4 Dietary-4 Physical Plant-2 Nursing-6 Therapist-1 Sanitation-1 Activities-1 Physician Service-1 Housekeeping-1	Relative-6 Former Employee-1 Local-3 Anonymous-1	11	11	9	2

MONTHLY REPORTS OF NURSING HOME COMPLAINTS September 1978

Area	Nature of Complaint	Received From	Referrals Made	Answers Received	Valid	No. Valid
North East 8	Understaffed	2	Relative 4 Employee 3 Local 1	8	1	
	Nursing	4				
	Administration	2				
	Physical Plant	1				
	Dietary	2				
	-11					
North Central 1	Nursing	1	Relative 1	1		
	Administration	2				
	-2					
North West 1	Administration	1	Relative 1	1	1	
South East 1	Nursing	1	Employee 1	1		
	Dietary	1				
	-3					
South Central 2	Nursing	2	Employee 1 KINH 1	2		
	Administration	1				
	Sanitation	1				
	Physical Plant	1				
	-5					
South West 1	Understaffed	1	Local 1	1		
TOTAL 14	Understaffed	3	Relative 6	14	2	
	Nursing	8	Employee 5			
	Administration	6	Local 2			
	Dietary	3	KINH 1			
	Sanitation	1				
	Physical Plant	2				
	-23					

MONTHLY REPORTS OF NURSING HOME COMPLAINTS September 1978
(From Gov. office)

Area	Nature of Complaint	Received From	Referrals Made	Answers Received	Valid	Not Valid			
North East 3	Wandering away from home	1	Local 2	1		1			
	Physical Plant	2	Relative 1						
	Understaffed	1							
	Sanitation	1							
	-5								
North Central 3	Nursing	2	Anonymous 1	3		3			
	Administration	2	Relative 2						
	Understaffed	1							
	Housekeeping	1							
	Linen Shortage	1							
	Sanitation	1							
	-8								
North East 1	Restraints	1	Relative 1	1	1				
	-1								
South East 5	Understaffed	2	Relative 1	5	2	1			
	Dietary	1	Local 2						
	Physical Plant	1	Pharmacist 2						
	Nursing	1							
	Unit Dose of Pharmaceutical	2							
	-7								
South Central 3	Nursing	2	Resident 1	3	3	1			
	Abuse to Resident	1	Employee 1						
	Understaffed	1	Relative 1						
	Physical Plant	1							
	Sanitation	1							
	-6								
South West									
TOTAL 15	Wandering Away from Home	1	Local 4	15	10	3			
	Physical Plant	4	Relative 6						
	Understaffed	5	Anonymous 1						
	Sanitation	3	Pharmacy 2						
	Nursing	5	Resident 1						
	Administration	2	Employee 1						
	Housekeeping	1							
	Linen Shortage	1							
	Restraints	1							
	Dietary	1							
	Pharmaceuticals	2							
	Abuse to Resident	1							
	-27								

MONTHLY REPORTS OF NURSING HOME COMPLAINTS, October - 1978

Jan 5 - 1978

Area	Nature of Complaint	Received From	Referrals Made	Answers Received	Valid	Valid
North East	Resident	Local	6	7	5	2
	Nursing	Relative	2			
	Administration	Resident	2	Rec'd from referral	last mo.	no.
	Sanitation	Disgruntled Employee	2			
	Dietary		1			
	17	12	5	2	3	
North Central	Nursing	Local	1	1		
1						
North West						
North West	Dietary	Local	1	3	1	1
	Sanitation		1			
	Nursing		2			
	4	3	3	1	1	
North Central	Nursing	Local	1	1		1
	Sanitation	Relative	1	Rec'd from referral	last mo.	no.
	Physical Plant		1			
2	4	2	2	1		
North West						
TOTAL	Resident	Local	9	9	6	3
	Nursing	Relative	5			
	Administration	Resident	2	Last Month	3	3
	Sanitation	Disgruntled Employee	2			
	Dietary		2			
	Physical Plant		1			
		26	18			
			17			

MONTHLY REPORTS OF NURSING HOME COMPLAINTS

October - 1978
 from: Governor's Office

Area	Nature of Complaint	Received From	Referrals Made	Answers Received	Valid	Not Valid	
North East	Nursing 6	Local 3	7				
	Dietary 5	Relative 1					
6	Administration 2	Resident 3	Last Mo. Referral Re 1	1			
	Physical Plant 1	7					
	Sanitation 1						
15							
North Central							
North West							
North East	Nursing 2	Resident 1	1	1	1		
	Administration 1	Disgruntled-employee-1					
2	Dietary 1	2	2		Rec'd Refer from last mo. 1		
	4						
North Central	Nursing 2	Relative 2	2	1	1		
	Physician's Serv 1						
	Physical Plant 1						
4							
North West	Nursing 2	Relative 2	2				
	Administration 1						
	Dietary 1						
	Sanitation 1						
	Laundry 1						
6							
TOTAL	Nursing 12	Local - 3	12	2	2		
	Dietary 7	Relative 5					
	Administration 4	Resident 4					
	Physical Plant 2	Disgruntled-employee 1					
	Sanitation 2	13					
	Physician's Serv. 1						
	Laundry 1						
29							
				Last Mo. referrals Received	6	3	3

MONTHLY REPORTS OF NURSING HOME COMPLAINTS November - 1978

Area	Nature of Complaint	Received From	Referrals Made	Answers Received	Valid	Valid
North East 9	Sanitation 1 Nursing 5 Administration 3 Physical plant 2 Dietary 2 Total 13	Local 4 Dis. employee 1 Resident 1 Relative 3 9	9	4	5	
North Central						
North West 1	Nursing 1 Administration 1 2	Dis. employee 1 1 1	1	1		1
North West 1	Nursing 1 1	Relative 1 1	1	1		1
North Central 7	Nursing 6 Dietary 1 Sanitation 1 Administration 1 9	Relative 4 Local 3 7	7	4	3	1
North West 3	Sanitation 1 Nursing 1 Physical services 1 3	Local 1 Relative 1 Resident 1 3	3	1	1	
TOTAL 21	Sanitation 3 Nursing 14 Administration 5 Dietary 3 Physician service 1 Physical plant 2 28	Local 8 Employee 2 Relative 9 Resident 2 21	21	11	10	2

MONTHLY REPORTS OF NURSING HOME COMPLAINTS - Governor's Office
November - 1978

Area	Nature of Complaint	Received From	Referrals Made	Answers Received	Valid	N Va
North East 4	Sanitation	1	4	4		
	Dietary	1				
	Administration	2				
	Nursing	1				
North Central						
North West						
South West						
South Central 1	Nursing	1	1	1		
South West						
TOTAL 5	Sanitation Dietary Administration Nursing Total	1 1 2 2 6	Anon. Resident Relative Local 5	1 1 2 1 5	5 5	

MONTHLY REPORTS OF NURSING HOME COMPLAINTS DECEMBER - 1978

Area	Nature of Complaint	Received From	Referrals Made	Answers Received	Valid	No. Valid
5	Dietary 1 Nursing 2 Sanitation 2 Administration 1 Total 6	Relative 3 Local 2 Disgruntled employee 1 6	6	6	5	1
6						
7						
8						
9	Nursing 10 Administration 5 Dietary 1 Sanitation 2 Total 18	Local 4 Personality Conflict 1 Relative 5 Regional 1 Employee 3 Total 14	13	8	5	3
10						
11	Dietary 2 Nursing 12 Sanitation 4 Administration 6	Relative 8 Local 6 Employee 4 Personality Conflict 1 Regional 1 Total 20	19	14	10	4
				Received from previous no. referalls 2		2

MONTHLY REPORTS OF NURSING HOME COMPLAINTS

DECEMBER - 1978

from Governor's Office

a	Nature of Complaint	Received From	Referrals Made	Answers Received	Valid	Not Valid
th st	Nursing 1	Anonymous 1				
th ral						
th t						
th t						
th al	Nursing 1	Disgruntled employee 1	1	1		1
th t	Nursing 3	Relative 3	3			
AL	Nursing 5	Relative 3 Anonymous 1 Employee 1	5	1 Received from previous mo. referrals 2		1 2

THE NURSING HOME LAW LETTER

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Issue No. 24

October, 1978

COMPREHENSIVE OLDER AMERICANS ACT AMENDMENTS OF 1978

Introduction

The Older Americans Act of 1965, 42 USC §§3001 et seq., is the focal point of federal attention for the problems of older people. The Act establishes the "aging network" — state and area agencies on aging, the Administration on Aging, and so forth. Since its enactment in 1965 as Public Law 89-73, the Older Americans Act has been amended eight times, most recently in October, with the passage of the Comprehensive Older Americans Act Amendments of 1978, Public Law 95-478. From the perspective of advocates for nursing home residents, two of the most significant provisions in the 1978 amendments concern the long-term care ombudsman program and the special projects in comprehensive long-term care.

1. Long-term care ombudsman program

In 1972, the Health Services and Mental Health Administration (HEW) awarded demonstration contracts to four states and one national aging organization to develop models for nursing home ombudsman programs at the state level. Two additional state demonstration projects were funded in 1973, the same year that the Administration on Aging (AoA) assumed authority for the Nursing Home Demonstration Program.

In 1975, AoA invited all state agencies on aging to submit proposals for one year grants to conduct ombudsman programs as model projects under the Older Americans Act. Many but not all states accepted the grants and hired a nursing ombudsman developmental specialist, frequently working out of the state office on aging. The program operated as a model project, subject to the discretionary funding of the Commissioner on Aging, and had no federal statutory authority, although some states enacted state laws to clarify the ombudsmen's roles. (See Nursing Home Law Letter, Issue No. 13, September, 1977 for a discussion of the state ombudsman laws in Connecticut and New Jersey).

The Comprehensive Older Americans Act Amendments of 1978 considerably strengthen the ombudsman program by requiring every state to have such a program; by giving the program explicit statutory authority; by specifically defining ombudsman functions and responsibilities; and by broadening the program's concern to all long-term care facilities.^{1/}

^{1/} "Long-term care facility" is defined in §302(3) as any skilled nursing facility [defined in §1861(j) of the Social Security Act], any intermediate care facility [defined in §1905(c) of the Social Security Act], any nursing home [defined in §1908(e) of the Social Security Act], and "any other similar adult care home."

In order to be eligible for grants under Title III of the Act, each state must submit a state plan for a three-year period which "provides[s] assurances" that it will "establish and operate" a long-term ombudsman program. §307(a)(12)(A). The state may operate the program directly or it may contract "with any public agency or other appropriate private nonprofit organization" so long as the contractee is "not responsible for licensing or certifying long-term care services" and is not an association of long-term care facilities.

The ombudsman program has statutorily defined responsibilities. It must:

(i) investigate and resolve complaints made by or on behalf of older individuals who are residents of long-term care facilities relating to administrative action which may adversely affect the health, safety, welfare, and rights of such residents;

(ii) monitor the development and implementation of Federal, State, and local laws, regulations, and policies with respect to long-term care facilities in that State;

(iii) provide information as appropriate to public agencies regarding the problems of older individuals residing in long-term care facilities;

(iv) provide for training volunteers and promote the development of citizen organizations to participate in the ombudsman program; and

(v) carry out such other activities as the Commissioner deems appropriate;

§307(a)(12)(A)(i)-(v).

Each state has three additional functions under this section. First, the state must "establish procedures for appropriate access by the ombudsman to long-term care facilities and patients' records." §307(a)(12)(B). Since ombudsmen have been known to have difficulty securing access to facilities and records, this provision should resolve many ambiguities of the past. The state must also develop procedures "to protect the confidentiality of such records" and of complainants and residents.

Second, the state must "establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions." §307(a)(12)(C). The purpose of the system is to identify and resolve "significant problems." Data collected are to be submitted to the state agency responsible for licensing and certification decisions and to the Commissioner of AoA, on a "regular basis."

Finally, the state must establish procedures to assure that ombudsman's files will be disclosed "only at the discretion of the ombudsman." However, the identity of complainants and residents may not be disclosed except with their written consent or if required by court order.

2. Special projects in comprehensive long-term care

A significant concern in the area of long-term care is the over-reliance on institutional services. The bias in federal health programs (Medicare and Medicaid) towards institutionalization has been repeatedly denounced.^{2/} Criticism of this bias can be expected

^{2/} See Nursing Home Law Letter, Issue No. 16, December, 1977. Footnote 1 on page 1 lists some of the many recent Congressional hearings held in recent years to consider the problem of over-institutionalization.