

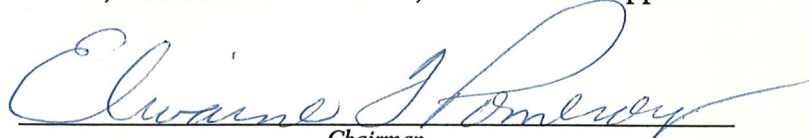
MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 10:00 a. m./~~xxx~~, on February 8, 19 79.

All members were present except: Senators Gaar and Gaines

The next meeting of the Committee will be held at 10:00 a. m./~~xxx~~, on February 9, 19 79.

~~These minutes of the meeting held on xxxxxxxxxxxxxxxxxxxxxxxx, 19xx were considered, corrected and approved.~~

  
Chairman

The conferees appearing before the Committee were:

- Senator Jan Meyers
- J. F. McCormack - Department on Aging
- Sister Janet Kennedy - Department on Aging
- Dick Hummel - Health Care Providers
- Judy Runnels - Kansas State Nurses Association
- Joe Harkins - Department of Health and Environment
- Wayne T. Stratton - Kansas Hospital Association
- Petey Cerf - Kansas Improvement of Nursing Homes

Staff present:

- Art Griggs - Revisor of Statutes
- Jerry Stephens - Legislative Research Department
- Wayne Morris - Legislative Research Department

Senate Bill No. 146 - Reporting abuse of certain persons.  
Senator Meyers testified in support of her bill. She presented background information as to why she introduced the bill. Committee discussion with her followed.

Mr. McCormack appeared before the committee and read Barbara Sabol's statement from the Department on Aging in support of the bill. A copy of that statement is attached hereto.

Sister Janet Kennedy, the nursing homes ombudsman, testified in support of the bill. She stated that this is important legislation; abuse is taking place in nursing homes. She stated she receives phone calls from employees of nursing homes who say they can't sleep at night because of the terrible situation in the facility where they work. One reason she supports this bill is because it will protect employees who fear retaliation.

Dick Hummel testified in opposition to the bill. A copy of his statement is attached hereto. He stated the bill is not necessary; the reporting system is functional. He stated his association supports SB 102 which is presently before the Senate Public

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.

CONTINUATION SHEET

Minutes of the Senate Committee on Judiciary February 8, 1979.

SB 146 continued -

Health and Welfare Committee which would provide for a study and evaluation of nursing homes. Committee discussion with him followed.

Judy Runnels testified that the Kansas Nurses Association support the concept of the bill.

Joe Harkins, the acting secretary of Health and Environment, testified that although his department worked with Senator Meyers on preparation of the bill, the department does not feel comfortable with this draft of the bill. His department is concerned with the problem of abuse of patients in nursing homes, but are also concerned with the problems that this bill would create. The bill would create an administrative problem that they think possibly won't work. Committee discussion with him followed.

Wayne Stratton, representing the Kansas Hospital Association, testified that the association has several reservations about the bill. The bill would create additional administrative problems in hospitals. He doesn't see any need for this type of protection for hospitalized patients. He stated that he feels that Section 3, dealing with immunity, should be made broader than it is in the bill.

Petey Cerf testified in support of the bill; a copy of her statement is attached hereto.

The chairman announced that there would be extra working sessions of the committee to deal with bills that we have previously heard; the extra sessions will be held at 1:15 tomorrow, at noon on Monday, Tuesday, and Wednesday of next week, and at 1:15 next Friday.

The meeting adjourned.

These minutes were read and approved  
by the committee on 2-26-79.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
J. F. McCormack	610 W 10 <sup>th</sup> Topeka	Ks DEPT on Aging
Judith Burns	Topeka	Ks State Nurses Assoc
David Kennedy	610 W 10 <sup>th</sup> Topeka	Ks Dept on Aging
Judy Hingrich	Topeka	Dept on Aging
Andy Hunter	2700 W 6	SRS
Elaine P. Crowther	Topeka	SRS
Kathryn Klasser	Topeka	Medical Services of SRS
Dick Hummel	Topeka	HEALTH CARE PROVIDERS
Joanna Hill	"	"
Jenny SAWHATER	TOPEKA	KS MEDICAL SOCIETY
Petty Carl	Lawrence	KINH
Martha Arty	Topeka	BNH
Helen Meister	Topeka	BNH
Carmen Middleton	Topeka	Bureau of Neg. Homes
Judy Tengink	Topeka	KWPC
Jack Shelton	Topeka	SDH & E
Joe Hulsman	"	"

MEMO FROM THE KANSAS DEPARTMENT ON AGING

DATE: February 7, 1979

TO: Senate Judiciary Committee

FROM: Barbara J. Sabol, Secretary

RE: SB 146

Thank you for this opportunity for the Department on Aging to express its support of SB 146. In our opinion the bill is well-designed because it addresses the problems of abuse, neglect and exploitation of both institutionalized and noninstitutionalized aged, blind and disabled adults. It not only mandates reporting of alleged abuse, but it also provides for follow-up protective services if needed and consented to by the vulnerable adult.

There are about 21,600 persons residing in Kansas nursing homes. Although exact data on the ages of the 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 residents 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.

A similar system of protection is needed for some older adults who are not institutionalized. 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.

Although some states have enacted legislation to require reporting of elderly abuse and the provision of protective services, the majority have not yet dealt with the problem. Just as Kansas was a forerunner among states in the area of child abuse, we hope it will be a leader in the area of adult abuse, to assist in protecting those who cannot protect themselves. We commend your efforts to deal with the problem of elderly abuse and encourage your passage of this excellent bill.

BJS:pal

2-8-79

# Health Care Providers, Inc.

P.O. Box 2171 Topeka, Kansas 66603

Telephone 1-913-233-3343

TESTIMONY BEFORE THE SENATE  
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

SENATE BILL NO. 146

"AN ACT requiring the reporting of certain information relating to aged, blind and disabled persons; requiring the reporting of abuse, neglect or exploitation thereof; providing for protective services; declaring certain acts to be unlawful and providing penalties therefor."

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, neglect or exploitation of our elderly-infirm residents. Recognized is the fact that isolated instances may occur, with swift and sure justice metted out to any offender. However, we do not believe Senate Bill 146 is necessary, and hopefully reason and objectivity will prevail over the emotionalism and subjectivity of this issue. Please reason with us as we question, point-out and explain the:

\*necessity for this bill

\*existing reporting mechanisms

\*implications of this measure.

NEEDED?

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

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 developed in the bill will result in a morass of problems. As we see it:

Mandated Report: "Section 2" identifies those responsible for initiating a report, with the threat of a Class B misdemeanor for failing to comply.

Subjective Decisions: "Section 1 (7)" defines abuse to include "mental anguish".

"Section 1 (8)" defines neglect to include endangering "emotional well-being."

Attention can be given to demonstrative, objective signs of physical abuse, but the examples given clearly fall within the realm of subjectivity, opinion and conjecture.

Liability in Reporting: "Section 3" exempts a person filing a report (based upon suspicion that a transgression has happened) from any civil or criminal liability except for perjury, bad faith or malice.

### CONCLUSION

If enacted, the way will be paved for every disgruntled employee, guilt-ridden family member and self-appointed consumer expert to unleash a witch-hunt of unheralded proportions. Professions will be pitted against professions...L.P.N. filing a sus-



Testimony on SB 146  
By Dick Hummel  
February 8, 1979  
Page Four

pected report because the R.N. didn't. R.N. then subject to a Class B misdemeanor if report is substantiated.

In summary, we do not believe this legislation is necessary. A complaint mechanism is in place. Complaints are being received as reflected in our exhibit. Families and residents already can exercise civil proceedings if abuse or neglect are alleged.

Last of all we ask for the fiscal impact of this bill, not only the cost of funding the mechanics of it, but also the secondary impact upon malpractice coverage for the professions mentioned.

We also add for the Committee's information that SB 102, calling for an impartial study and evaluation of nursing homes, is before the Senate Public Health and Welfare Committee. We have given our total support to this measure and undertaking.

#### 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 S.B. 146 is approved, who are we to report as responsible for this neglect and mental anguish?

Thank you for this opportunity to comment on Senate Bill 146.

Complaints - Received since August - 1978

	August	September	October	November	December	TOTAL
<b>NORTHEAST:</b>						
From:						
Gov. Office	2	3	6	4	1	16
Open	2	8	11	9	6	36
Total	<u>4</u>	<u>11</u>	<u>17</u>	<u>13</u>	<u>7</u>	<u>52</u>
<b>NORTH CENTRAL:</b>						
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
<b>NORTHWEST:</b>						
Gov. Office	1	1	0	0	0	2
Open	1	1	0	1	0	3
Total	<u>2</u>	<u>2</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>5</u>
<b>SOUTHEAST:</b>						
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
<b>SOUTH CENTRAL:</b>						
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
<b>Southwest:</b>						
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
<b>TOTAL</b>	26	29	29	26	24	132
				6 mo. avg.		22

AUGUST, 1978

Area	Nature of Complaint	Received From	Referrals Made	Answers Received	Valid	No. Valid
th st 2	Nursing - 1 Sanitation - 1 Dietary - 1 Physical Plant - 1	Disgruntled employee - 1 Resident - 1	2	2		2
Local	Nursing - 3 Physicians Service - 1 Administration - 1 Physical Plant - 1	Disgruntled employee - 3 SRS - 1	3 (no follow-up on 1)	3	2	1
th st 1	Nursing 1	Disgruntled employee - 1	1			
th st 4	Residents on streets - 1 Nursing - 2 Dietary - 2 Sanitation - 1 Physical Plant - 1	Local - 4	4	3	2	1
Local 3	Nursing - 2 Physicians Services - 1 Sanitation - 1 Physical Plant - 2	Relative - 2 Local - 1	3	1	1	
th st 1	Patients Rights - 1	Relative - 1	1			
AL 15	Nursing - 9 Sanitation - 3 Dietary - 3 Physical Plant - 5 Physicians Services - 2 Administration - 1 Patient's Rights - 1 Residents on Streets - 1	Disgruntled employee - 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 West 1	Nursing-1 Housekeeping-1 Administration-1	Local-1	1	1	1	
South East 3	Nursing-2 Dietary-2 Therapists-1	Relative-2 Anonymous-1	3	3	2	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 West est						
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

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 Employee 5 Local 2 KINH 1	14	2	
	Nursing	8				
	Administration	6				
	Dietary	3				
	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	No. Valid			
North East 3	Wandering away from home	1	Local 2	3	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							
	-8								
North West 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)

Just B. S. S. S.

Area	Nature of Complaint	Received From	Referrals Made	Answers Received	Valid	Not Valid
North East 11	Resident 1	Local 6	11	7	5	2
	Nursing 6	Relative 2				
	Administration 6	Resident 2		Rec'd from referral	last	no.
	Sanitation 3	Disgruntled Employee 2		5	2	3
	Dietary 1					
	17	12				
North Central 1	Nursing 1	Local 1	1			
	1					
North West						
North West 3	Dietary 1	Local 1	3	1	1	
	Sanitation 1					
	Nursing 2	Relative 2				
	4	3	3			
North Central 2	Nursing 2	Local 1	2	1	1	1
	Sanitation 1	Relative 1				
	Physical Plant 1			Rec'd from referral	last	mo
	4	2	2	1	1	
North West						
TOTAL 7	Resident 1	Local 9	17	9	6	3
	Nursing 2	Relative 5				
	Administration 6	Resident 2				
	Sanitation 5	Disgruntled Employee 2				
	Dietary 2					
	Physical Plant 1					
	26	18				
			Last Month	6	3	3

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 Dietary 5 Administration 2 Physical Plant 1 Sanitation 1 15	Local 3 Relative 1 Resident 3 7	7 Last Mo. Referral Re 1	1		1
North Central						
North West						
South East	Nursing 2 Administration 1 Dietary 1 4	Resident 1 Disgruntled-employee-1 2	1 2	1 Rec'd Refer from last mo. 1	1	
South Central	Nursing 2 Physician's Serv 1 Physical Plant 1 4	Relative 2	2	1	1	
South West	Nursing 2 Administration 1 Dietary 1 Sanitation 1 Laundry 1 6	Relative 2	2			
TOTAL	Nursing 12 Dietary 7 Administration 4 Physical Plant 2 Sanitation 2 Physician's Serv. 1 Laundry 1 29	Local - 3 Relative 5 Resident 4 Disgruntled-employee 1 13	12	2 Last Mo. referral Received 6	2 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		
North West 1	Nursing 1 1	Relative 1 1	1	1		
North Central 7	Nursing 6 Dietary 1 Sanitation 1 Administration 1 9	Relative 4 Local 3 7	7	4	3	
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	

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	Sanitation 1 Dietary 1 Administration 2 Nursing 1	Anon. 1 Resident 1 Relative 1 Local 1	4	4		
North Central						
North West						
South East						
South Central	Nursing 1	Relative 1	1	1		
South West						
TOTAL	Sanitation 1 Dietary 1 Administration 2 Nursing 2  Total 6	Anon. 1 Resident 1 Relative 2 Local 1  5	5  5	5  5		



DECEMBER - 1978

MONTHLY REPORTS OF NURSING HOME COMPLAINTS from Governor's Office

Date	Nature of Complaint	Received From	Referrals Made	Answers Received	Valid	Not Valid
12/18/78	Nursing 1	Anonymous 1				
12/18/78						
12/18/78						
12/18/78						
12/18/78	Nursing 1	Disgruntled employee 1	1	1		1
12/18/78	Nursing 3	Relative 3	3			
12/18/78	Nursing 5	Relative 3 Anonymous 1 Employee 1	5	1  2  Received from previous mo. referrals		1  2

# THE NURSING HOME LAW LETTER

Published by National Senior Citizens Law Center

Main Office:  
1636 West 8th Street, Suite 201  
Los Angeles, California 90017  
(213) 388-1381

Branch Office:  
1200 15th Street NW  
Washington, DC 20005  
(202) 872-1404

---

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.<sup>1/</sup>

---

<sup>1/</sup>"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.<sup>2/</sup> Criticism of this bias can be expected

---

<sup>2/</sup> 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.



# *Kansasans for Improvement of Nursing Homes, Inc.*

927½ MASSACHUSETTS ST. #4

LAWRENCE, KANSAS 66044

842-3088 - Area Code 913

February 8, 1979

STATEMENT TO SENATE JUDICIARY COMMITTEE RE SB 146:

KINH is pleased to support SB 146 as presented to the Committee; we find it acceptable in every respect. We feel that it fills a real need, and we are certain that you will be hearing from others who agree.

The Coalition on Aging, with which KINH is affiliated, has adopted as a legislative priority, the substance and content of this bill. While KINH interest is focused primarily on nursing home residents, we join the Coalition in support of a broader measure which includes both non-institutionalized and institutionalized aged, blind, and disabled persons, as embodied in SB 146.

We are supporting SB 146 for the following reasons:

1) It provides a systematic, coordinated, and complete response and follow-through program for serious complaints which involve abuse, neglect or exploitation. It would replace an incomplete and, in our opinion, ineffective method of dealing with serious complaints. We think it would result in a vastly improved response.

2) It provides information to the public on where to register complaints (Sec 2-d) In our public opinion survey conducted last year, KINH interviewers questioned relatives as to where they made complaints; a majority had no idea that the Department of Health and Environment regulates nursing homes, nor did they know how to contact the Department. The majority who had made complaints said they went to the Administrator of the home, and if satisfactory action was not taken on their complaint, nevertheless that is where it ended. We believe that friends and families of nursing home residents have the right to be informed of where help is available to them. SB 146 answers this problem.

3) Sec. 3 of SB 146 would allay some of the fear of families or friends by removing any civil or criminal liability resulting from making a complaint. It would also

allay the fear of employees that they will lose their jobs if they make a report.

In the public opinion survey, both families and employees expressed a fear of retaliation if they were to make a complaint; others exhibited this fear by remaining silent. SB 146 protects people who have these very real and well-founded fears.

4) SB 146 also deals with the problem of individuals who can't or won't "rock the boat."

--Hospital and nursing home employees who are aware of the abuse, neglect, or exploitation, 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 penalties.

--Families of Medicaid patients who feel they have no right to complain because they are not paying for care;

--Employees who feel more loyalty to the management of the home than to the well-being of the patients;

--Individuals who have seen so much human suffering that they become calloused and indifferent;

--Individuals who simply will not get involved.

KINH has come in contact with all of these categories of individuals. Whatever their reason for remaining silent, SB 146 places on them legal responsibility and a uniform policy and procedure which applies to everyone who may have knowledge of abuse, neglect or exploitation of any individual who is aged, blind, or disabled.

We reiterate that Senator Meyers' bill is needed; we very much appreciate her interest in introducing the bill, and respectfully ask that this Committee report it favorably to the Senate.

By Petey Cerf, President of KINH