

Approved: 2-11-97
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chair Sandy Praeger at 10:00 a.m. on February 5, 1997 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Emalene Correll, Legislative Research Department
Bill Wolff, Legislative Research Department
Norman Furse, Revisor of Statutes
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Daniel Gronniger, Chief Counsel, Department on Aging
Sandy Strand, Kansas Advocates for Better Care
Debra Zehr, Kansas Association of Homes and Services for the Aging

Others attending: See attached list

Hearing on SB 128 - State long-term care ombudsman program

Daniel Gronniger, Chief Counsel, Department on Aging, addressed the Committee in support of SB 128 which would authorize the Secretary of Aging to move the operation of the Office of the State Long-Term Care Ombudsman outside the Department through a contract or other arrangement with another state agency or with a private nonprofit organization. Mr. Gronniger also offered amendments to the bill as noted in his written testimony. (See Attachment 1) Committee discussion related to concerns with regard to changes from classified to unclassified positions, performance review, liability insurance, and disciplinary process.

Sandra Strand, Kansas Advocates for Better Care, testified in support of SB 128 and noted the bill would bring Kansas statutes into agreement with the federal ombudsman provisions contained in the Older Americans Act which would significantly improve Long-Term Care Ombudsman services for the state's 31,000 long-term care residents. Ms. Strand also offered amendments to the bill as noted in her written testimony. (Attachment 2)

Debra Zehr, Vice President of Policy and Education, Kansas Association of Homes and Services for the Aging, appeared in opposition to SB 128. Ms. Zehr noted they do not support privatization of the Ombudsman Program and see several difficulties with the use of volunteers in the long-term care ombudsman volunteer program to perform the duties previously reserved for paid professional ombudsmen. (Attachment 3)

A request was made that staff provide the Committee with information on other states that have volunteer programs in regard to this issue.

The Chair announced that the hearing on SB 129 scheduled for today would be held on February 14, 1997.

Adjournment

The meeting was adjourned at 11:00 a.m.

The next meeting is scheduled for February 6, 1997.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
GUEST LIST

DATE: 2-5-97

NAME	REPRESENTING
Dan Lister	Frank Magrew
Carollee Stephens	KDOA LTC OMBUDSMAN
Susan Mahoney	Sen. Salisbury
Vicki Green	Ks Health Care Association
Myron Dunavan	St. Long Term Care Ombudsman
Dan Gronniger	KDOA
MEGGAN GRIGGS	CIGNA
Susan Baker	Hein + Weir
Joann Wiley	^{Speaker,} Kansas Silver Haird Legislature
Michelle Peterson	Peterson Public Affairs
Sandy Strand	Ks Advocates for Better Care
Bretha Carter	DD Council
TK Shing	KANSAS LEGAL SERVICES
Amy Campbell	R. Rice Law Office
Janice Nelson Kimball	KU / Menningers
Janice Haefer	DOA / DPS
Martha Hodgesmith	Attorney General
Debra Zehr	KAHSA
Joseph Keene	KSHS

Testimony on Senate Bill No. 128
Senate Public Health and Welfare Committee
February 5, 1997

by
Daniel J. Gronniger
Kansas Department on Aging

Senator Praeger and members of the committee, thank you for this opportunity to testify in support of Senate Bill No. 128 regarding the State Long-Term Care Ombudsman Program. The Office of the State Long-Term Care Ombudsman is the statutory advocate for Kansas seniors who are residents of nursing facilities. The purpose of this proposed legislation is to authorize the Secretary to move the operation of the Office of the State Long-Term Care Ombudsman outside the Department through a contract or other arrangement with another state agency or with a private nonprofit organization. Senate Bill No. 128 would comport state statutes with 42 U.S.C. § 3058g of the federal Older Americans Act, which permits the designated State agency on aging to "establish and operate the Office [of the State Long-Term Care Ombudsman] and carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization."

Although the Secretary would retain the ultimate responsibility for ensuring the State Long-Term Care Ombudsman Program satisfies the requirements of the Older Americans Act, this legislation would enable the Secretary to move the Program out of the Department to attenuate the perceived conflict between the Department's duties in operating the Office of the Ombudsman and its duties administering the Medicaid nursing facility services payment program (beginning next July 1) and the long-term care assessment (CARE) program. In 1995, the Institute of Medicine's Committee to Evaluate the State Long-Term Care Ombudsman Programs published a study entitled "Real People Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act." The study was funded in part through a contract with the U.S. Department of Health & Human Services' Administration on Aging. Among other conclusions, the Committee concluded that States could comply with the Older Americans Act goal of avoiding conflicts of interest if the ombudsman program was located either outside of state government or inside an independent state government agency that was directly accountable to the governor and without long-term care regulatory responsibilities. *See* INSTITUTE OF MEDICINE, REAL PEOPLE REAL PROBLEMS, at 123 (1995). This legislation would authorize the Secretary to move the Program to an appropriate location for operation.

This legislation would also bring the State statutes in line with the Older Americans Act provisions authorizing the training and use of unpaid volunteers within the Program. *See* 42 U.S.C. § 3058g(h)(4).

Attached to this testimony are some proposed amendments to the first draft (1-28) of Senate Bill No. 128. Except for the substantive amendment to New Section 1, these amendments are intended to clarify the meanings, and not to change the substance, of the statutes proposed in the first print (1-28) of the Bill. The proposed amendments are summarized as follows:

- In New Section 1, new subsection (c): Making the State and Regional ombudsman

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and other employees of the office who are appointed by the Secretary State employees in the classified service under the civil service act, instead of the unclassified service.

- In New Section 1, new subsection (e): Adding a provision requiring the Secretary to use the competitive bid process for a contract or other arrangement with a private nonprofit organization, but eliminating the requirement for a cost/service analysis required by the Kansas Performance Review Act if the Secretary first finds: (1) a conflict of interest between the Department's duties to the Program and its duties to other programs of the Department; and (2) that privatization of the Program is necessary to avoid or attenuate the conflict. [This would be inserted on Page 2 beginning on Line 8 of the first print of S.B. 128.]

- In New Section 2, first and second sentences: To make it clear that any State Long-Term Care Ombudsman heading an Office operated by another State agency or a private nonprofit organization has the same duties and authority as a State Long-Term Care Ombudsman who is an employee of the Department on Aging. [These changes would appear on Page 2, beginning at the end of Line 8 of the first print of S.B. 128.]

- In Section 3(a)(2) (K.S.A. 1996 Supp. 75-5916(a)(2)): Adding another part to the definition of "ombudsman" to make it clear that an "ombudsman" is also a person so designated by a State Long-Term Care Ombudsman heading the Office operated by another State agency or a private nonprofit organization. [This new subsection would be inserted on Page 2 at Line 23 of the first print of S.B. 128.]

- In Section 3(e) (K.S.A. 1996 Supp. 75-5916(e)): Adding language to the definition of "State Long-Term Care Ombudsman" to make it clear that it is the individual serving, on a full-time basis, as the head of the Office operated by another State agency or a private nonprofit organization who is also a "State Long-Term Care Ombudsman." The reference to "full-time" is added to make it clear to any state agency that an individual in the State Long-Term Care Ombudsman position must do that job full-time and not split time on some other program of the agency. [This new language would be inserted on Page 2, Line 38 of the first print of S.B. 128.]

- In Section 4(d) (K.S.A. 1996 Supp. 75-5917a(d)): Substituting "operated" for "administered" in reference to the Office to use the same term used in the Older Americans Act. [This change would appear on Page 3, in Line 18 of the first print of S.B. 128.]

- In Section 4(e) (K.S.A. 1996 Supp. 75-5917a(e)): Deleting and adding language to make it clear that this provision applies when the Office is "operated" by a private nonprofit organization or another state agency. [This change would appear on Page, in Line 24 of the first print of S.B. 128.]

This concludes my testimony on Senate Bill No. 128. Thank you for this opportunity to speak. I will stand for questions from the Committee.

PROPOSED AMENDMENTS TO SENATE BILL NO. 128

by Kansas Department on Aging

February 5, 1997

AN ACT concerning the state long-term care ombudsman program; providing for establishing and operating such program by the secretary of aging; authorizing contract to operate the long-term care ombudsman office; responsibility for program requirements; amending K.S.A. 1996 Supp. 75-5916, 75-5917a, and 75-5918 and repealing the existing sections; also repealing K.S.A. 1996 Supp. 75-5917.

New Section 1. (a) The secretary of aging shall be responsible for establishing and operating the office of the state long-term care ombudsman and for carrying out the state long-term care ombudsman program in accordance with the requirements of the older Americans act, 42 U.S.C. 3001 *et seq.*, and any amendments thereto.

(b) For the purposes of establishing and operating the office of the state long-term care ombudsman and of carrying out the ombudsman program, the secretary is authorized:

(1) To enter into a contract or other arrangement with any state agency which is not responsible for licensing or certifying long-term care facilities or services in Kansas;

(2) To contract with any private nonprofit organization which is qualified and authorized to do business in Kansas and which is not a facility, an association of facilities, or an affiliate of an association of facilities; or

(3) To appoint a state long-term care ombudsman, regional long-term care ombudsman, and employees of the office as a part of the department on aging.

~~→→→~~(c) The state long-term care ombudsman, and each regional long-term care ombudsman and other employees of the office who may be appointed by the secretary shall be in the unclassified service and the other appointed employees shall be in the classified service under the Kansas civil service act. Under the supervision of the secretary, an appointed state long-term care ombudsman shall administer the operations of the office and supervise each regional long-term care ombudsman and the other employees of the office. ~~→→→ Nothing in this section shall affect the classified status of any ombudsman prior to the effective date of this act and the unclassified status of appointed ombudsmen shall apply only to persons who are appointed to an ombudsman position by the secretary after the effective date of this act.~~

(d) All personnel actions involving classified employees, including transfers, layoffs, or position abolitions or reallocations, which may be taken by the secretary as deemed necessary as a result of contracts or other arrangements authorized by subsections (b)(1) and (b)(2) of this section, shall be taken in accordance with the Kansas civil service act, any rules and regulations adopted thereunder and any amendments thereto.

~~→→→~~(e) The secretary shall comply with the competitive bid requirements of K.S.A. 75-3739 and amendments thereto for contracts or other arrangements with private nonprofit organizations. The secretary is not required to comply with the requirements of the Kansas performance review act in K.S.A. 1996 Supp. 75-7101 and amendments thereto if the secretary first determines that conflicts of interest exist between the program's functions and other duties and functions of the department and that the contract or other arrangement is necessary to avoid or attenuate those conflicts.

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→→→New Sec. 2. Any state long-term care ombudsman serving in the office operated by a state agency or private nonprofit organization under a contract or other arrangement with the secretary under section 1 of this act and amendments thereto shall have the same duties, obligations, and authority as a state long-term care ombudsman who is an individual appointed to that position by the secretary under section 1 of this act and amendments thereto. →→→~~No state long-term care ombudsman which is a private nonprofit organization and no~~ employee, agent, officer, director, trustee, independent contractor, or other representative of ~~such a~~ private nonprofit organization administering the office of the state long-term care ombudsman shall be deemed or found to be an employee of the state for any purposes under any circumstances.

Sec. 3. K.S.A. 1996 Supp. 75-5916 is hereby amended to read as follows: 75-5916. As used in the long-term care ombudsman act:

(a) "Ombudsman" means:

(1) *an individual appointed as the state long-term care ombudsman or as a any regional long-term care ombudsman or by the secretary;*

→→→(2) any individual designated as an ombudsman by the state long-term care ombudsman in the office operated by a state agency or private nonprofit organization which has entered into a contract or other arrangement with the secretary; or

~~(2)~~ (3) *any individual designated as an ombudsman under subsection (h) of K.S.A. 75-5918 and amendments thereto or as a volunteer ombudsman under subsection (j) of K.S.A. 75-5918 and amendments thereto who has received the training required under subsection (f) of K.S.A. 75-5918 and amendments thereto and who has been designated by the state long-term care ombudsman as a representative of the office authorized to carry out the powers, duties and functions of the office of the state long-term care ombudsman.*

(b) "Secretary" means the secretary of aging.

(c) "Facility" means an adult care home as such term is defined in K.S.A. 39-923 and amendments thereto.

(d) "Resident" means a resident as such term is defined in K.S.A. 39-923 and amendments thereto.

(e) "State long-term care ombudsman" means the individual appointed by the secretary →→→to administer the office of the state long-term care ombudsman, or the individual serving full-time as the head of the office of the state long-term care ombudsman operated by a state agency or private nonprofit organization which has entered into a contract or other arrangement with the secretary to perform the duties required of the office under the older Americans act, 42 U.S.C. 3001 et seq., and any amendments thereto.

(f) "Regional long-term care ombudsman" means an individual appointed by the secretary under *section 1 of this act* ~~K.S.A. 75-5917~~ and amendments thereto.

(g) "Office" means the office of the state long-term care ombudsman.

(h) "Conflict of interest" means having a pecuniary or other interest in a facility, but not including interests that result only from having a relative who is a resident.

(i) "Department" means the department on aging.

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(j) "Program" means the state long-term care ombudsman program required by the older Americans act, 42 U.S.C. 3001 et seq., and any amendments thereto.

Sec. 4. K.S.A. 1996 Supp. 75-5917a is hereby amended to read as follows: 75-5917a. The secretary shall ensure that: (a) No individual involved in the designation of any ombudsman is subject to a conflict of interest;

(b) no officer, employee or other representative of the office is subject to a conflict of interest;

(c) policies and procedures are in place to identify and remedy all conflicts of interest specified under paragraphs (a) and (b);

→→→(d) when the office is ~~administered~~ operated by a state long-term care ombudsman appointed by the secretary under section 1 of this act and any amendments thereto, legal counsel is available to the office for advice and consultation and that legal representation is provided to any ombudsman against whom suit or other legal action is brought in connection with the performance of the ombudsman's official duties; and

→→→(e) when the ~~state long-term care ombudsman~~ office is operated by a private nonprofit organization or a state agency, the office has legal counsel available for advice, consultation, and representation in the event of a lawsuit or other legal action by or against an ombudsman related to the performance of program duties; and

(~~e~~) (f) the office has the ability to pursue administrative, legal and other appropriate remedies on behalf of residents of facilities.

Sec. 5. K.S.A. 1996 Supp. 75-5918 is hereby amended to read as follows: 75-5918. The state long-term care ombudsman shall:

(a) Investigate and resolve complaints made by or on behalf of the residents relating to action, inaction or decisions of facilities or the representatives of facilities, or both, except that all complaints of abuse, neglect or exploitation of a resident shall be referred to the secretary of health and environment in accordance with provisions of K.S.A. 39-1401 et seq. and amendments thereto;

(b) develop continuing programs to inform residents, their family members or other persons responsible for residents regarding the rights and responsibilities of residents and such other persons;

(c) provide the legislature, the governor and the secretary with an annual report containing data and findings regarding the types of problems experienced and complaints received by or on behalf of residents and containing policy, regulatory and legislative recommendations to solve such problems, resolve such complaints and improve the quality of care and life in facilities;

(d) analyze and monitor the development and implementation of federal, state and local government laws, rules and regulations, resolutions, ordinances and policies with respect to long-term care facilities and services provided in this state, and recommend any changes in such laws, regulations, resolutions, ordinances and policies deemed by the office to be appropriate;

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(e) provide information to public agencies, legislators and others, as deemed necessary by the office, regarding the problems and concerns of older individuals residing in facilities, including recommendations related thereto;

(f) provide for the training of the state long-term care ombudsman, each regional long-term care ombudsman and any individual designated as an ombudsman under subsection (h) or subsection (j) of K.S.A. 75-5918 and amendments thereto in (1) federal, state and local laws, rules and regulations, resolutions, ordinances and policies with respect to facilities located in Kansas, (2) investigative techniques, and (3) such other matters as the secretary deems appropriate;

(g) coordinate ombudsman services provided by the office with the protection and advocacy systems for individuals with developmental disabilities and mental illness established under part A of the federal developmental disabilities assistance and bill of rights act, 42 U.S.C.A. 6001 *et seq.*, and under the federal protection and advocacy for mentally ill individuals act of 1986, public law 99-316;

(h) consider an individual who is an employee of an area agency on aging which provides ombudsman services and who has been designated as an ombudsman by the state long-term care ombudsman to be a representative of the office and such individual shall be deemed to be a representative of the office for the purposes of this act;

(i) *establish a system for recruiting individuals to become unpaid, volunteer ombudsmen who will first be trained as required by subsection (f) of K.S.A. 75-5918 and amendments thereto and thereafter designated as ombudsmen authorized to perform the duties and carry out the responsibilities required of representatives of the office;*

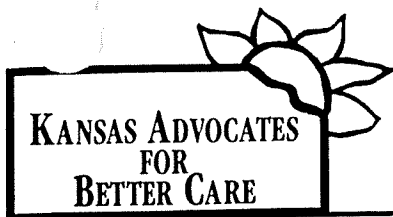
(j) *consider an individual who is an unpaid volunteer designated as an ombudsman by the state long-term care ombudsman to be a representative of the office and such individual shall be deemed to be a representative of the office for the purposes of this act;*

(k) collaborate with the department of health and environment and the department of social and rehabilitation services to establish a statewide system to collect and analyze information on complaints and conditions in facilities; and

(l) perform such other duties and functions as may be provided by law, *including those described in 42 U.S.C. 3058g of the older Americans act and amendments thereto*, or as may be directed by the secretary of aging.

Sec. 6. K.S.A. 1996 Supp. 75-5916, 75-5917, 75-5917a, and 75-5918 are repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.



TESTIMONY

TO: Senate Committee on Public Health and Welfare
FROM: Sandra Strand, Executive Director
SUBJECT: SB 128
DATE: February 5, 1997

On behalf of our membership, I appreciate the opportunity to testify in favor of this bill, which would bring our state statutes into agreement with the federal ombudsman provisions contained in the Older Americans Act, and which would significantly improve Long-Term Care Ombudsman (LTCO) services for our state's 31,000 long term care residents.

I will explain the reasons why we support privatization of the State Long Term Care Ombudsman program, and will finish by offering some amendments to the bill.

Avoiding Conflicts of Interest

The transfer of long term care services for older Kansans from SRS to KDOA is to be completed by July of 1997. Once the transfer is complete, KDOA's responsibility for long term care services will create an unavoidable conflict of interest for the ombudsman program. SRS would also be an inappropriate host agency because of conflicts of interest. The SRS Transition Oversight Committee recently released a report in which it recommended that KDOA and SRS explore privatizing the Long-Term Care Ombudsman Program.

In the fall of 1995, The Institute of Medicine released a study (*Real People, Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act*) which was commissioned by Congress and which recommended the following:

By fiscal year 1998, no ombudsman program should be located in an entity of government (state or local) or agency outside government whose head is responsible for:

- licensure, certification, registration, or accreditation of long-term care residential facilities;
- *provision of Medicaid waiver programs;*
- *long-term care case management;*
- *reimbursement or rate-setting for long-term care services;*
- *adult protective services; - SRS*
- *Medicaid eligibility determination*
- *preadmission screening for long-term care residential placements;*
- *decisions regarding admission of elderly individuals to residential facilities.*

By July 1997, the programs and services in italics will become the responsibility of KDOA.

The Institute of Medicine study further recommended: "States can comply fully with the OAA (Older Americans Act) goal of avoiding conflict of interest only if the ombudsman program is located outside state government in a freestanding organization that has a commitment to an advocacy mission."

Providing Strong, Independent, Effective Advocacy for Residents

The Long-Term Care Ombudsman Program was developed to assist and empower people who live in care homes. The Older Americans Act requires the ombudsman to carry out a number of functions, including:

Resident-level advocacy:

- Identifying, investigating and resolving complaints made by or on behalf of residents relating to providers, public agencies, or health and social service agencies;
- Providing services to protect the health, safety, welfare and rights of residents;
- Informing residents of how to obtain services;
- Ensuring residents have regular and timely access to ombudsman services and receive timely responses to complaints;

Systems-level advocacy:

- Representing the interests of residents before governmental agencies and seeking administrative, legal and other remedies;
- Analyzing, commenting on, and monitoring the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions; recommend any changes in such laws; and facilitate public comment on such laws;
- Promoting the development of citizen organizations and resident and family councils.

Unfortunately, the state-operated program has not succeeded in being an effective advocate for Kansas residents. Long-term care residents in Kansas do not have regular and timely access to Ombudsmen and do not receive timely responses to complaints. Ombudsmen in Kansas are not able to make routine visits to facilities, and are frequently limited to handling complaints over the telephone.

Long-term care residents in Kansas receive minimal systems-level advocacy from the Ombudsman program. Ombudsman staff are not always free to speak out in support of or in opposition to laws, policies and regulations, because of internal conflicts of interest and potential political repercussions.

Unfortunately, and despite the efforts of its small but hard-working staff, the Kansas State Long Term Care Ombudsman Program finished 50th in a study of Ombudsman Output Measures conducted by the Office of Inspector General in 1991.

The 1995 Institute of Medicine study recommends a ratio of paid staff to long term care beds of 1 to 2,000. Kansas lags far behind, with only 1 FTE per 7,340 beds. The nationwide average is 1 FTE for 2,698 beds. (See attachment from IOM study.)

How would privatizing the program help?

- It would create a true public-private partnership, teaming up existing resources and know-how, and making them go farther to enhance services for residents.
- It would allow access to other sources of funding that are not currently available to the program, but are only available to 501 (c)(3) organizations.
- It would remove conflicts of interest which hinder the program.
- It would strengthen program performance and accountability through oversight of a board of directors and through the contracting process.

What about concerns that have been expressed?

- Would necessary information be withheld if the program is moved outside state government?

No. Access of the official Ombudsman program to certain information is specifically defined, authorized and protected in the Older Americans Act, no matter where the Ombudsman is housed. Additionally, language in this bill specifies that any state long-term care ombudsman serving under a contract shall have the same duties, obligations and authority as an ombudsman employed by the state.

- Would the recently developed volunteer ombudsman program be threatened by privatization?

No. Language in this bill defines volunteer ombudsmen and strengthens their role in the program. The most successful Ombudsman programs in the country rely heavily on volunteers. With scarce staff resources, community volunteers can significantly expand the reach and effectiveness of the Ombudsman program. It is important, however, that volunteers be screened for suitability, well-trained, and adequately supported and monitored in their role.

- Would a privatized Ombudsman program have an adversarial relationship with adult care home providers?

Not necessarily. However, the ombudsman's primary responsibility is to advocate on behalf of residents when government or providers do not serve them or their interests. That responsibility can require playing a more significant role than that of neutral mediator or problem solver. If a resident needs strong advocacy, the ombudsman should be able and willing to provide it.

Requested amendments:

Deletions from lines 34 - 37 and 42 -43 on page 1, and line 1 on page 2.

Rationale: The object of privatizing the program should be to improve services for residents and to operate the program more efficiently, not to protect the status of current state employees. Any current employees should be allowed to transfer to other state positions.

Additions to lines 13 and 38 on page 2.

Rationale: The Older Americans Act specifies: "The Office shall be headed by an individual, to be known as the State Long-Term Care Ombudsman, who shall be selected from among individuals with expertise and experience in the fields of long-term care and advocacy."

Additions to lines 24 and 24 on page 3.

Rationale: To distinguish the SLTCO as an individual, rather than an agency, as above. To assure that private legal counsel is available to the program, to avoid conflicts of interest associated with employees of state agencies.

Changes to lines 35 - 36 on page 3.

Rationale: The Older Americans Act requires the ombudsman program to "identify, investigate, and resolve complaints." Abuse, neglect and exploitation complaints should still be investigated by the Department of Health and Environment, but the Ombudsman should not be excluded from those investigations.

I ask you to support this bill as amended, and to make it possible for Kansas residents to have a strong, independent, and effective long-term care ombudsman program.

Thank you for your attention to these detailed comments. I will be happy to respond to questions.

TABLE 6.1 Fiscal, Staffing, and Long-Term Care Bed Data, Selected States

State	OIG Rating	Number of LTC Beds	Total Expenditures (FY 1993 \$)	Expenditures per LTC Bed (FY 1993 \$)	Ratios of FTE Paid Staff to LTC Beds
<i>Highest-Ranked States</i>					
Massachusetts	27	58,509	2,000,321	34.19	1:1,950
District of Columbia	27	4,966	244,767	49.29	1:1,655
California	25	269,149	6,007,226	22.32	1:1,759
Michigan	23	95,052	892,311	9.39	1:4,526
Oregon	23	27,744	349,378	12.59	1:9,248
New Mexico	23	9,397	278,740	29.66	1:1,342
<i>Middle-Ranked States</i>					
Connecticut	19	33,294	769,273	23.11	1:3,329
Maryland	19	32,766	186,631	5.70	1:1,927
West Virginia	19	12,778	431,356	33.76	1:1,420
Rhode Island	19	11,147	89,814	8.06	1:11,147
South Dakota	19	8,955	107,830	12.04	1:128
Vermont	19	5,845	224,829	38.47	1:1,169
Wyoming	19	4,127	171,404	41.53	1:1,032
<i>Lowest-Ranked States</i>					
Pennsylvania	13	133,002	1,752,924	13.18	1:4,290
South Carolina	13	24,449	146,224	5.98	1:4,890
Nebraska	13	24,181	90,497	3.74	1:24,181
Indiana	12	68,582	403,712	5.89	1:5,276
Iowa	12	42,286	205,496	4.86	1:5,286
Hawaii	12	6,047	101,571	16.80	1:3,024
Kansas	11	29,358	195,880	6.67	1:7,340

NOTE: States are listed in order by OIG index score and then number of LTC beds (nursing home and B&C beds) as a proxy for demand for ombudsman services. Middle-ranked states, with scores of 19, are the modal states in the OIG ranking.

SOURCES: OIG, 1991b; DuNah et al., 1993; Harrington et al., 1993; AARP, 1994a; AoA, 1994c.

gram, but it should be clear that the OIG index does not relate in any straightforward way to some of the crude measures of program performance adequacy noted above.

FINANCIAL RESOURCES

Resources, for the purposes of this study, are taken to mean dollars available to the states to operate the program as it is mandated today. Some regard staff as a form of "resources," but as the acquisition and deployment of paid staff or even of unpaid volunteers presupposes adequate financing, staffing levels are regarded here as a structural measure of program quality or performance.

Financial support to the states and their localities for their ombudsman activities is available through several channels: the federal funds that flow to the states, state "matching" funds, state general revenues that may exceed funds used as matching funds, local host agency matching funds, and other monies raised at the state or local level through various fund-raising activities in public and private sectors. Data on these critical parts of the ombudsman program were presented in Chapter 2, as was the description of how the program is funded; some key figures are repeated in this chapter for convenience (Table 6.2).

In monetary terms, the ombudsman program is very small as federal programs go. The main figures show that total expenditures (summing across all sources) for fiscal year (FY) 1993 were more than \$37 million; of that amount, federal expenditures were more than \$23.6 million and state and other local expenditures more than \$13.5 million.

Federal dollars flow each year to the states through Title III-B and Title VII, Chapters 2 and 3 of the OAA. Title III-B (Supportive Services) and Title VII-3 (Elder Abuse Prevention) may be used for ombudsman as well as other programs, Title VII-2 only for ombudsman purposes. In FY 1993 Congress appropriated under Title VII \$3.87 million for ombudsman activities (Chapter 2) and, of the total \$4.35 million appropriated for Elder Abuse Prevention, states elected to use \$2.1 million in conjunction with the ombudsman program (see Table 2.4).

As Table 6.2 documents, the states vary widely in their direct financial support for ombudsman programs and in the proportions of those expenditures that can be attributed to federal, state, and other sources. In 1993, for example, states reported total expenditures for their ombudsman programs between about \$61,000 (North Dakota) and \$6,000,000 (California). States vary even more in the extent to which they (or their localities) generate other monies for these purposes; probably only 60 percent of the states commit nongovernmental money to the program. In 1993, some states reported that

SENATE BILL No. 128

By Committee on Public Health and Welfare

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9 AN ACT concerning the state long-term care ombudsman program; pro-
10 viding for establishing and operating such program by the secretary of
11 aging; authorizing contract to operate the long-term care ombudsman
12 office; responsibility for program requirements; amending K.S.A. 1996
13 Supp. 75-5916, 75-5917a and 75-5918 and repealing the existing sec-
14 tions; also repealing K.S.A. 1996 Supp. 75-5917.
15

16 *Be it enacted by the Legislature of the State of Kansas:*

17 New Section 1. (a) The secretary of aging shall be responsible for
18 establishing and operating the office of the state long-term care om-
19 budsman and for carrying out the state long-term care ombudsman pro-
20 gram in accordance with the requirements of the older Americans act,
21 42 U.S.C. 3001 *et seq.*, and any amendments thereto.

22 (b) For the purposes of establishing and operating the office of the
23 state long-term care ombudsman and of carrying out the ombudsman
24 program, the secretary is authorized:

25 (1) To enter into a contract or other arrangement with any state
26 agency which is not responsible for licensing or certifying long-term care
27 facilities or services in Kansas;

28 (2) to contract with any private nonprofit organization which is qual-
29 ified and authorized to do business in Kansas and which is not a facility,
30 an association of facilities or an affiliate of an association of facilities; or

31 (3) to appoint a state long-term care ombudsman, ~~regional long-term~~
32 ~~care ombudsman and employees of the office as a part of the department~~
33 ~~on aging.~~

34 ~~(c) The state long-term care ombudsman and each regional long-term~~
35 ~~care ombudsman who may be appointed by the secretary shall be in the~~
36 ~~unclassified service and the other appointed employees shall be in the~~
37 ~~classified service under the Kansas civil service act. Under the supervision~~
38 ~~of the secretary, an appointed state long-term care ombudsman shall ad-~~
39 ~~minister the operations of the office and supervise each regional long-~~
40 ~~term care ombudsman and the other employees of the office. Nothing in~~
41 ~~this section shall affect the classified status of any ombudsman prior to~~
42 ~~the effective date of this act and the unclassified status of appointed om-~~
43 ~~budsmen shall apply only to persons who are appointed to an ombudsman~~

1 ~~position by the secretary after the effective date of this act.~~

2 (d) All personnel actions involving classified employees, including
3 transfers, layoffs or position abolitions or reallocations, which may be
4 taken by the secretary as deemed necessary as a result of contracts or
5 other arrangements authorized by subsections (b)(1) and (b)(2) of this
6 section, shall be taken in accordance with the Kansas civil service act, any
7 rules and regulations adopted thereunder and any amendments thereto.

8 New Sec. 2. Any state long-term care ombudsman serving under a
9 contract or other arrangement with the secretary under section 1 and
10 amendments thereto shall have the same duties, obligations and authority
11 as a state long-term care ombudsman who is an individual appointed to
12 that position by the secretary under section 1 and amendments thereto.

13 No state long-term care ombudsman ~~which is~~ a private nonprofit organization
14 and no employee, agent, officer, director, trustee, independent contractor
15 or other representative of such a state long-term care ombudsman shall
16 be deemed or found to be an employee of the state for any purposes
17 under any circumstances.

employed by

18 Sec. 3. K.S.A. 1996 Supp. 75-5916 is hereby amended to read as
19 follows: 75-5916. As used in the long-term care ombudsman act:

20 (a) "Ombudsman" means:

21 (1) *an individual appointed as* the state long-term care ombudsman;
22 ~~any or as a regional long-term care ombudsman or by the secretary;~~

23 (2) any individual designated as an ombudsman under subsection (h)
24 of K.S.A. 75-5918 and amendments thereto *or as a volunteer ombudsman*
25 *under subsection (j) of K.S.A. 75-5918 and amendments thereto* who has
26 received the training required under subsection (f) of K.S.A. 75-5918 and
27 amendments thereto and who has been designated by the state long-term
28 care ombudsman *as a representative of the office authorized* to carry out
29 the powers, duties and functions of the office ~~of the state long-term care~~
30 ~~ombudsman.~~

31 (b) "Secretary" means the secretary of aging.

32 (c) "Facility" means an adult care home as such term is defined in
33 K.S.A. 39-923 and amendments thereto.

34 (d) "Resident" means a resident as such term is defined in K.S.A. 39-
35 923 and amendments thereto.

36 (e) "State long-term care ombudsman" means the individual ap-
37 pointed by the secretary ~~to administer the office of the state long-term~~
38 ~~care ombudsman, or~~ *the state agency or private nonprofit organization*
39 *which has entered into a contract or other arrangement with the secretary*
40 *to perform the duties required of the office under the older Americans*
41 *act, 42 U.S.C. 3001 et seq., and any amendments thereto.*

employed by

42 (f) "Regional long-term care ombudsman" means an individual ap-
43 pointed by the secretary under K.S.A. 75-5917 section 1 and amendments

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1 thereto.

2 (g) "Office" means the office of the state long-term care ombudsman.

3 (h) "Conflict of interest" means having a pecuniary or other interest
4 in a facility, but not including interests that result only from having a
5 relative who is a resident.

6 (i) "Department" means the department on aging.

7 (j) "Program" means the state long-term care ombudsman program
8 required by the older Americans act, 42 U.S.C. 3001 et seq., and any
9 amendments thereto.

10 Sec. 4. K.S.A. 1996 Supp. 75-5917a is hereby amended to read as
11 follows: 75-5917a. The secretary shall ensure that:

12 (a) No individual involved in the designation of any ombudsman is
13 subject to a conflict of interest;

14 (b) no officer, employee or other representative of the office is sub-
15 ject to a conflict of interest;

16 (c) policies and procedures are in place to identify and remedy all
17 conflicts of interest specified under paragraphs (a) and (b);

18 (d) when the office is administered by a state long-term care om-
19 budsman appointed by the secretary under section 1 and any amendments
20 thereto, legal counsel is available to the office for advice and consultation *private*
21 and that legal representation is provided to any ombudsman against whom
22 suit or other legal action is brought in connection with the performance
23 of the ombudsman's official duties; ~~and~~

24 (e) when the state long-term care ombudsman is a private nonprofit *employed by*
25 organization or a state agency, the office has legal counsel available for *private*
26 advice, consultation and representation in the event of a lawsuit or other
27 legal action by or against an ombudsman related to the performance of
28 program duties; and

29 (e) (f) the office has the ability to pursue administrative, legal and
30 other appropriate remedies on behalf of residents of facilities.

31 Sec. 5. K.S.A. 1996 Supp. 75-5918 is hereby amended to read as
32 follows: 75-5918. The state long-term care ombudsman shall:

33 (a) Investigate and resolve complaints made by or on behalf of the
34 residents relating to action, inaction or decisions of facilities or the rep-
35 resentatives of facilities, or both, ~~except that all complaints of abuse, ne-~~
36 ~~glect or exploitation of a resident shall~~ *also* be referred to the secretary of
37 health and environment in accordance with provisions of K.S.A. 39-1401
38 et seq. and amendments thereto;

39 (b) develop continuing programs to inform residents, their family
40 members or other persons responsible for residents regarding the rights
41 and responsibilities of residents and such other persons;

42 (c) provide the legislature, the governor and the secretary with an

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KAHSA

KANSAS ASSOCIATION OF
HOMES AND SERVICES FOR THE AGING

TESTIMONY

To: Senator Sandy Praeger, Chair, and Members of the
Senate Public Health and Welfare Committee

From: Debra Zehr, Vice President of Policy and Education

Re: Senate Bill 128 - Changes to Long-Term Care Ombudsman Program

Date: Wednesday, February 5, 1997

Thank you Madam Chair, and Members of the Committee. On behalf of our members, I appreciate the opportunity to comment on Senate Bill 128.

The Kansas Association of Homes and Services for the Aging is a not-for-profit organization which represents more than 150 not-for-profit long-term health care, housing, and community service providers throughout the state. KAHSA supports a strong and effective Long-Term Care Ombudsman Program as an important component in ensuring high quality of life and care for senior Kansans living in nursing homes throughout the state. Because of this, we have serious reservations about Senate Bill 128.

Privatization

Senate Bill 128 would permit the Secretary on Aging to contract or enter into an arrangement with a state agency or a nonprofit organization to carry out the Long-Term Care Ombudsman Program.

- KAHSA supports moving the Ombudsman Program to a state agency that has no direct participation in the regulation or funding of adult care homes.

We do not support the privatization of the Ombudsman Program because:

- Any organization administering the program must be perceived to be fair, and can be effective in resolving complaints only if it is trusted by residents, families, and nursing home staff.
- We are aware of no private, nonprofit organization in the state that is perceived to be fair by all concerned parties, and none which could fulfill the very important advocacy role rather than an adversarial role.

Volunteers

Senate Bill 128 directs the Long-Term Care Ombudsman to establish a volunteer program to perform the duties previously reserved for paid professional ombudsmen alone. We believe paid professionals are

most effective in this role. We see several difficulties with the use of volunteers in this capacity, including:

- Ensuring adequate screening so that each volunteer is capable and non-adversarial
- Ensuring high quality initial and ongoing training
- Providing a comprehensive system for supervising volunteers in multiple locations
- How will volunteers be held accountable for their actions or inaction, and are there legal implications to be considered?
- The statute would allow the volunteer to perform any and all of the duties of the paid professional ombudsman. We believe there should be some limitations put on the scope of the volunteers' practice.

The Department on Aging already has a pilot volunteer ombudsman program underway in three locations in the state. We would prefer to learn from the successes and problems encountered in this program before permitting expansion to other parts of the state. Toward this end, we recommend monitoring the pilot program over the next year through an oversight committee comprised of state agencies, and consumer and provider representatives.

Thank you. I would be happy to answer questions.