

Committee in Session at 8:39 am on Thursday, April 5, 1979.

Senator Keith Ashworth in the Chair.

PRESENT: Chairman Keith Ashworth  
Vice-Chairman Joe Neal  
Senator Jim Kosinski

ABSENT: Senator Clifton Young  
Senator Rick Blakemore  
Senator Wilbur Faiss

GUESTS: Mr. Al Edmundson, Consumer Health Protection,  
Division of Health  
Mr. Robert E. Warren, Executive Secretary, Nevada  
Mining Association, Inc.  
Mr. John McSweeney, Administrator, Aging Services  
Division  
Mr. William Byrne, Nursing Home Ombudsman, Aging  
Services Division

Chairman Ashworth opened the meeting and stated they would be a committee of three for the purpose of taking further testimony on S.B. 237. Senator Blakemore arrived for the meeting (8:43 am).

Mr. Al Edmundson, Consumer Health Protection, Division of Health, explained the proposed amendments (April 2, 1979 Minutes, Exhibit "G"). He stated that in the proposed rewording for Section 1(c) on Page 2, rather than using the word "security," it was reworded to read, "to cover the costs of decontamination, decommissioning and reclamation of the sites used for uranium concentration." Mr. Edmundson stated that on the first page of the package, in his letter, was the proposed amendment by Mr. Steven McCutcheon of VTN, Consultants to the Chevron Corporation. Mr. Edmundson stated that he had phoned several states already in the mining and milling operation. He said this is acceptable with respect to their operations.

Chairman Ashworth stated that when these amendments were discussed by the committee, there was a question as to the amount of ore removed. Mr. Edmundson stated that 10,000 tons was not a large amount. Chairman Ashworth asked if they would be concentrating the ore and Mr. Edmundson responded negatively. He stated that New Mexico has almost identical wording in their law as is in this amendment; Colorado also allows action as is specified by this amendment.

Chairman Ashworth recalled questions raised by the committee as to the one million dollar figure with respect to the proposed wording to Section 1(b). With respect to the word "agreement" raised by Senator Young, Mr. Edmundson stated the agreement pertains to the location of the tailings pond or area so it would be a low-maintenance operation after the decommissioning. He



said that each site has to be licensed on its own merit.

Chairman Ashworth questioned eliminating the one million dollar figure. Mr. Edmundson stated that the money would be in an interest-bearing account but had no objection to removing the figure.

Senator Kosinski expressed concern about the entire last sentence of the proposed rewording to Section 1(b). He questioned why a maximum amount should be statutory. He also questioned why the agency would lock themselves into an agreement by statute that may vary over the years due to economic conditions. Chairman Ashworth suggested placing a period after the word "operation" in the sentence in question. Mr. Edmundson concurred.

Senator Kosinski questioned the provisions as to other state's laws involved in this type of operation. Mr. Edmundson stated that they were almost identical to the proposed language and allows the removal of up to 10,000 tons of ore. Senator Kosinski asked if it was more restrictive. Mr. Edmundson said it was not because the ore crushing and sampling is not a part of the milling operation. Senator Kosinski expressed concern as to the possible danger of residue and also to the problems of reclamation. Mr. Edmundson stated that the problems of reclamation would be covered under the environmental protection laws. He said that the main two states with regulations for this type of operation are New Mexico and Colorado; Oregon and Washington have few regulations at this point.

Senator Young arrived for the meeting. Chairman Ashworth left the meeting and Vice-Chairman Neal assumed the chair. (9 am)

Mr. Robert Warren, Executive Secretary, Nevada Mining Association, addressed Senator Kosinski's question as to if there should be a maximum amount of money regarding the mining companies' liability after a site has been reclaimed and prepared for long-term maintenance. Mr. Warren encouraged the committee to consider some maximum amount. He cited the instance in Ely with the Kennecott Copper Corporation who ultimately closed their plant due to an adverse ruling as to placing a "lid" on costs. He requested that before the committee make a decision, a member of the industry well-versed in the area of uranium be allowed to address the members on these questions.

Senator Kosinski questioned the "open-ended" cost concern expressed by Mr. Warren. He stated that, according to the proposal, the regulation would provide for a fee and felt that once a fee has been paid, no more should be required per unit. He stated that he believed the regulations could be changed in the future to provide for the ore processed. Mr. Warren stated that the interpretation was correct but did not believe it was directly related to the maximum. Senator Kosinski stated that he did believe it was related to the "open-ended" cost. Mr. Warren stated that

the "open-ended" cost in that area did not disturb him because they would be dealing with an area they could measure at each step. He said that as to securing the site, a maximum should be established because a state agency may take a different position at a future time that could be excessive. He said that industries would have difficulty in estimating their long-term costs without a "lid." Senator Kosinski stated he was having difficulty with the inter-relationship between the fees for care and maintenance and the requirements for a surety for decontamination, decommissioning and reclamation. He questioned if there should be any additional need for care and maintenance due to the provision for the bond. Mr. Edmundson stated that the bond applies to a mining company that does not make any profit. He said that the bond would provide funds for the state to decommission and secure the site as to long-term care. Should the company complete its mining operation, Mr. Edmundson stated that the bond would be returned to the company and the only funds left would be those providing for long-term care. Senator Kosinski stated that regardless of how profitable an operation, the company would be obligated to reclaim the land. He questioned what would be left to be done once a site is decontaminated, decommissioned and reclaimed. Mr. Edmundson stated that there should not be much other than fencing the area and securing the area in the event natural conditions affect it. Senator Kosinski questioned why the million dollar figure and why it should not be returned to the company. He felt the matter requires more attention as to the inter-relationship between the two functions.

As to the payment of taxes, Senator Young questioned who would pay the taxes if the claim is patented and if it is unpatented, would it be the obligation of the state to perform the annual assessment. Mr. Warren said that if it is patented, the holder of the property is responsible. Senator Young questioned if under S.B. 237, part of the one million dollars would go for the payment of taxes. Mr. Warren stated that sites, at a certain time, will revert to the state or the federal government. Senator Young stated that it would not revert to the state unless it is patented ground. Mr. Warren stated that there is federal regulation that provides for the federal government to take over these sites after a certain period of time with unpatented ground. Senator Young questioned if there was a bond to insure the taxes would be paid. Mr. Warren stated that the law does not require a bond. Senator Young stated that the state would have a long-term obligation to supervise and maintain with the money, but the company would be obligated to pay the property taxes on patented claims. Mr. Warren concurred. Senator Young stated that if the claim is unpatented, it is subject to being relocated and who pays for the annual assessment. Mr. Warren stated that the claim would probably be located under a mill site and assessment work is not required.

Senator Young questioned the liability as to health hazards that might occur after the company has left the site. He questioned if the liability would be the state's or if it would be the

property holder's. Mr. Edmundson stated that aspect had not been considered. It was his belief that the site would be secured in such a manner than any hazard would be very low-level. Senator Young expressed concern regarding this assumption. Mr. Edmundson stated that this is why they are requesting the long-term care funds. Senator Young asked if the regulations would cover the placement of the site. Mr. Edmundson said that they would and the site location would be a part of the licensing, part of the agreement. Mr. Warren stated that federal regulations mandate that any mining operation must submit a plan of operation from the "cradle to the grave" to avoid any adverse affects. Senator Young questioned any problems with regard to interstate coordination. Mr. Edmundson stated that he did not. Mr. Edmundson stated that Nevada is an agreement state and the Nuclear Regulatory Commission must approve Nevada's actions in this regard. Senator Young questioned any limitation on liability as to interstate tort. He asked if this fact had been considered. Mr. Edmundson stated that it had not. Mr. Warren stated that the environmental impact statements to be formed will cover many of the problems raised today, with the exception of the tort problem. Mr. Warren repeated his request to have a member of the industry come and address the committee.

Chairman Neal closed the hearing on S.B. 237.

The hearing was opened on S.B. 325.

Mr. John McSweeney, Administrator, Aging Services Division, introduced Mr. William Byrne, Nursing Home Ombudsman, Aging Services Division. Mr. McSweeney presented amendments to S.B. 325 (Exhibit "A"). Mr. Byrne spoke in support of S.B. 325 and read Exhibit "B" into the record. Mr. Byrne stated that the amendments submitted by Mr. McSweeney had rectified any objections to S.B. 325.

Senator Young questioned the difference between an ombudsman and an advocate. Mr. Byrne stated that the ombudsman and advocate are essentially the same thing; the obmudsman is an objective person who eventually becomes the advocate of the patient or resident of the facility. He stated it is an objective position whereby problems of the patients and, in some instances, the facilities attempt to be solved. Senator Young questioned the statutory authority to investigate complaints under statute. Mr. McSweeney stated that the Aging Services Division has the powers to investigate nursing home complaints at any time of day and night; he stated that is the extent of the statute at present time. Senator Young questioned if this would be the first time the position of advocate would be recognized within Nevada Statutes. Mr. Byrne and Mr. McSweeney concurred.

Senator Blakemore questioned the number of facilities presently being served. Mr. Byrne stated that there are approximately 46: skilled nursing facilities, intermediate care facilities and group care facilities.

On Page 2, Section 5, subsection 1(b), Senator Kosinski questioned the kind of regulations Mr. Byrne would propose to adopt. He questioned the intent of this subsection. Mr. McSweeney stated that he interpreted that subsection to pertain to a policy or regulation established by the facility that may adversely affect a resident. He stated that this subsection would allow the ombudsman to identify that policy or regulation and attempt to rectify the matter through negotiations. As to Page 3 of Exhibit "B," Mr. McSweeney stated that paragraphs (i) through (v) are taken from federal legislation; he stated that (ii) provides for essentially the same procedure as subsection 1(b). Senator Kosinski stated that he believed subsection 1(b) was poorly worded.

As to Section 5, subsection 2, Senator Kosinski questioned why one agency should be given the power to regulate another agency. Mr. Byrne stated that it was not the intent to violate the jurisdiction of any other agencies. He stated that the investigation of a complaint may involve investigation by another agency; however, he stated that the investigation must be finalized through his office. Senator Kosinski stated that he believed this subsection gives the ombudsman the power to regulate other agencies. Mr. Byrne disagreed. Senator Neal concurred with Senator Kosinski's interpretation. Mr. Byrne stated that was correct but only with respect to the activity of that agency that affects the health and care of the patient in the particular facility. Mr. McSweeney stated that he felt the key language was "may affect" and also the results would be reported to the administrator of the Division. He felt the last portion of the sentence contained protective language. Senator Blakemore stated that there appeared to be nothing in the law to prevent the "advocate" from going to any agency and starting an investigation. He questioned passing the bill simply because it goes along with federal guidelines. Mr. McSweeney stated that the essential premise of any investigation would have to impact upon the health and well-being of the patient within a health care facility. Senator Young stated that the word "may" makes the potential much broader. Mr. Byrne questioned how to rewrite the language to comply with the federal guidelines and still qualify for the program. Senator Neal questioned if this function could best be handled through the Attorney General's office. Mr. Byrne stated that the function of ombudsman could not be handled through any regulatory agency. He stated that S.B. 325 was patterned through a model act and that the language had been "softened" to a great degree.

As to Section 7, subsection 1, Senator Kosinski questioned if there was a case currently before the supreme court regarding entry without notice. Senator Neal stated that it has a different character than what this bill is referring to; he said the case before the supreme court pertains to state and federal money.

As to Exhibit "B," Page 3, Senator Kosinski questioned what the term "administrative action" referred to in section (i). Mr. Byrne stated that would refer to facility administration. Senator

Kosinski questioned if a bill could be drafted encompassing these particular sections. He stated that (i) through (v) was very different from the proposed S.B. 325. He suggested drafting a statute that is limited to those five sections to meet federal requirements. Mr. Byrne stated that essentially that is what the bill addresses; the only additional verbage addresses how the position of ombudsman shall be administered. He felt that descriptive language is useful, provided that the intent does not go beyond the five points stated in (i) through (v). Senator Kosinski stated that the language in S.B. 325 goes beyond those five points; he specifically noted entry without notice. Mr. Byrne stated that entry without notice was an important aspect in rectifying complaints. Mr. McSweeney stated that this power was granted during the last legislative session. Senator Kosinski questioned if this would be addressed twice in the statutes as there is no repeal section to S.B. 325. Mr. Byrne stated that this is addressed generally under the provisions of the Division.

As to proposed amendments, Page 5, Section 11, Senator Young questioned if the 24-hour time would be feasible. He questioned an instance where the ombudsman may be on vacation or not available. Mr. McSweeney concurred that the verbage may be a problem. He stated that they were addressing the issue from the aspect of patient well-being. Senator Young questioned if the advocate's salary was paid by federal money. Mr. McSweeney stated that it was. As to the Fiscal Note, he said that each state is allowed to take one percent of \$20,000, whichever is greater, of the allotment to support the office. He said the limit on the Fiscal Note is \$20,000. He stated the bill would not have to go to the money committees; however, it is contained in the budget presentation for the Division. The \$20,000 covers salaries, travel and expenses; all federal money.

Senator Young questioned if all the facilities were for long-term care. Mr. McSweeney stated that intermediate and skilled would fall into the category of long-term care; group care would depend upon who is making the definition. Senator Young questioned Section 3, subsection 4 and why it would apply to two types of facilities and not to a third. Mr. Byrne stated that the purpose of an advocate not being appointed who holds any "pecuniary interest in a facility for long-term care" was to avoid any difficulties in enforcing the provisions of the law. He concurred that expertise may be lost and that the provision may not be pertinent to the bill.

There being no further testimony, Chairman Neal closed the hearing on S.B. 325. The meeting was adjourned at 10:06 am.

Respectfully submitted,

  
Roni Ronemus, Committee Secretary

Approved:

  
Chairman

Senator Keith Ashworth

STATE OF NEVADA  
DEPARTMENT OF HUMAN RESOURCES  
RALPH R. DISIBIO, Ed.D., DIRECTOR

## DIVISION FOR AGING SERVICES

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ROBERT LIST  
GOVERNOR

April 2, 1979

Senator Wilbur Faiss  
Nevada State Legislature  
State Legislative Building  
Carson City, Nevada

Dear Senator Faiss:

After consultation in a meeting with the Director of the Department of Human Resources and representatives from the Bureau of Health Facilities, amendments to S.B. 325 are being requested as noted by the attached.

Sincerely,

A handwritten signature in cursive script that reads "John B. McSweeney".

John B. McSweeney  
Administrator

JBM/jb  
Attach.

cc: Dr. Ralph DiSibio  
Dr. John Carr  
Dr. William Thomason

SUMMARY--Creates office of advocate for residents of facilities for long-term care. (BDR 40-1179)  
Fiscal Note: Effect on Local Government: No.  
Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to health and care facilities; creating the office of advocate for residents of facilities for long-term care; providing its powers and duties; providing for the investigation of complaints about facilities; providing a fine; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 449 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 16, inclusive, of this act.

Sec. 2. As used in this act, unless the context otherwise requires:

1. "Advocate" means the advocate for residents of facilities for long-term care.

2. "Facility for long-term care" means a group care facility as defined in NRS 449.005, an intermediate care facility as defined in NRS 449.014 and a skilled nursing facility as defined in NRS 449.018, which specially provide services or care to the elderly at the facility.

~~3. "Volunteer advocate" means a volunteer issued an identification card pursuant to section 10 of this act.~~

Sec. 3. 1. The office of the advocate for residents of facilities for long-term care is hereby created in the aging services division of the department of human resources.

2. The advocate shall be appointed by the administrator of the aging services division at a salary determined by the administrator.

3. The advocate may not accept any other employment while serving as advocate.

4. No person may be appointed as an advocate within 2 years after holding any pecuniary interest in a facility for long-term care.



Sec. 4. With the approval of the administrator of the aging services division, in concurrence with the Director of the Department of Human Resources, the advocate may:

1. Employ persons in the classified service of the state as are necessary to carry out the functions of his office.
2. Adopt regulations necessary to carry out the provisions of sections 2 to 16, inclusive, of this act.
3. Solicit and accept money from public and private sources to carry out the purposes of those provisions.
4. Perform any other functions assigned by law.

Sec. 5. The advocate shall:

1. Establish by regulation procedures:
  - (a) For receiving, investigating, referring and attempting to voluntarily resolve any complaints made by or on behalf of a resident of a facility for long-term care; or
  - (b) In regard to any act [~~or policy~~] of any facility or governmental agency which may adversely affect the health, safety, welfare or civil rights of any resident.
2. Investigate any act of a governmental agency which may affect those residents and report the results of his investigation to the administrator of the aging services division.
3. Recommend and review [~~policies~~] legislation and regulations, both in effect and proposed, which affect facilities for long-term care.
4. Upon request, advise and assist the governor, the legislature and public and private groups in formulating and putting into effect policy which affects facilities for long-term care and their residents.
5. Record and analyze information and complaints about facilities for long-term care to identify problems affecting their residents.
6. Educate the public on the special problems and needs of residents of facilities for long-term care and assist community groups in developing projects to improve the quality of life of the residents.

7. Report <sup>periodically</sup> ~~annually~~ to the administrator of the aging services division about the activities of the office.

Sec. 6. 1. The advocate may, upon his own initiative or upon a complaint by or on behalf of a resident of a facility for long-term care, investigate ~~or appoint a volunteer advocate to investigate,~~ any act or policy which may adversely affect the health, safety, welfare or civil rights of any resident.

2. If the identity of a complainant is known, the advocate shall notify him of the advocate's decision to investigate or not to investigate the complaint and the reasons for that decision.

Sec. 7. In conducting an investigation, the advocate ~~and any volunteer advocate~~ may:

1. Enter any facility for long-term care without notice ~~between the hours of 8 a.m. and 2 p.m. and,~~ after notifying the person in charge of the facility of his presence, inspect the facility and any records maintained by the facility except the medical and personal financial records of any particular resident. The medical and personal financial records of a resident may be inspected only with the informed consent of the resident or his legal guardian.

2. Obtain such assistance and information from any agency of the state or any of its political subdivisions and have access without notice to any records of that agency as is necessary to properly perform the investigation.

Sec. 8. 1. After conducting an investigation, the advocate shall notify the complainant, the party complained about and any other affected party of the results of the investigation. The advocate shall make recommendations when appropriate and shall attempt to resolve any problem revealed by the investigation through mediation.

2. In appropriate cases, the advocate shall refer the results of the investigation to appropriate governmental agencies with authority to enforce applicable laws and regulations through administrative, civil or criminal proceedings.

3. Except as provided in subsection 4, if the advocate believes it would help resolve a problem, he may make public any information about a complaint, investigation, a problem revealed by an investigation, the recommendations for resolving the problem and the response to the recommendations.

4. The identity of a complainant or a resident of a facility for long-term care may be made public by the advocate only if:

- (a) The complainant or resident authorizes the disclosure; or
- (b) Required by a court upon its determination that the disclosure is necessary to a judicial proceeding in that court.

5. The advocate shall notify a complainant of the ultimate disposition of the matter raised in his complaint.

Sec. 9. 1. The advocate shall prepare and distribute to each facility for long-term care a notice describing the purpose of his office and the procedure for making a complaint, including the address and telephone number of his office.

2. The advocate shall adopt regulations describing the manner in which the notice must be posted.

3. The person in charge of each facility for long-term care shall provide a copy of the notice to each resident of the facility or to his guardian. That person shall also post the notice according to regulations adopted by the advocate.

~~Sec. 10. 1. The advocate may select and train persons to be volunteer advocates who shall be issued a card identifying them as volunteer advocates upon completion of their training.~~

~~2. The volunteer advocates may:~~

- ~~(a) Regularly enter facilities for long term care, visit the residents and communicate with the family of residents and others interested in their welfare for the purpose of soliciting and receiving complaints.~~

~~(b) Report to the advocate concerning complaints received and other matters appropriate for investigation.~~

~~(c) At the request of the advocate, conduct an investigation upon a matter, attempt to resolve the matter and report the results to the advocate.~~

~~(d) Inform the community about the activities of the office and about the special problems and needs of residents.~~

~~(e) Perform other tasks the advocate assigns.~~

Sec. [11]<sup>10</sup> Except as provided in subsection 3 of section 8 of this act, information gathered through an investigation is confidential and may not be disseminated to the public.

Sec. [12]<sup>11</sup> Any person who is employed by a facility for long-term care or who provides services to residents of the facility and who has reasonable cause to believe that a resident of a facility has been abused, neglected, exploited or abandoned shall report that information to the advocate ~~[or the volunteer advocate within 5 days after obtaining the information.]~~ as soon as possible and/or reasonable; in any case, within 24 hours.

Sec. [13]<sup>12</sup> Any correspondence between the advocate ~~[or a volunteer advocate]~~ and a resident of a facility for long-term care which is handled by the facility must be promptly forwarded or delivered to the advocate or resident without being opened.

Sec. [14]<sup>13</sup> Any information provided or complaint made in good faith by any person to the advocate ~~[or a volunteer advocate]~~ and any communication made in good faith by the advocate ~~[or a volunteer advocate]~~ which is relevant to a complaint or investigation, is absolutely privileged and may not be the basis for an action involving libel or slander.

Sec. [15]<sup>14</sup> No facility for long-term care may discharge or in any manner discriminate or retaliate against any resident, employee or other person because of a complaint made or information provided in good faith to the advocate. ~~[or a volunteer advocate.]~~

Sec. ~~16.~~<sup>15</sup> A person who:

1. Willfully fails to comply with the provisions of subsection 3 of section 9 of this act or sections 12, 13 or 15 of this act;
2. Willfully hinders the advocate ~~or a volunteer advocate~~ in performing their lawful duties;
3. Willfully refuses to allow the advocate ~~or a volunteer advocate~~ to enter and inspect the records of a facility for long-term care; or
4. Offers anything of value to the advocate or anyone associated with his office for the purpose of affecting any matter under investigation or likely to come under investigation,

*which* ~~shall be fined not less than \$500 and not more than \$1,000, which may be recovered by the attorney general or the district attorney of the county in which the violation occurred,~~ is guilty of a misdemeanor.

RE: SENATE BILL 325.

HEW publication "Planning Handbook - Nursing Home Ombudsman Services, Guide for Area Agencies on Aging", distributed November, 1977, by the Administration on Aging, San Francisco, California, Section 6.1, states in part as follows:

"the legislated powers vested in the nursing home ombudsman are determined by the states, etc.etc. There can be little doubt that the nursing home ombudsman's effectiveness is enhanced by legislative authority; for that matter, a nursing home ombudsman with no specific mandate can all too easily be rendered impotent if regulatory agencies, government officers, and nursing home administrators/owners 'don't feel like cooperating'."

At the time the foregoing was published in 1977, and prior to the enactment of Public Law 95-478 this just-past October, there was no Federal legislation which specifically mandated a State nursing home program. The program was permissive to the states. However, in the interim between 1975 and 1978, the Administration on Aging learned that the absence of explicit statutory authority seriously inhibited the Federal administration of the rules and regulations governing certification of nursing homes. Now, Public Law 95-478, October, 1978, is a mandate and gives to the program explicit Federal statutory authority. (See Sec. 307 (12) (A) (B) (C) (D) (i) (ii).)

The new Federal statute could not, of course, dictate to the states that the states, too, must give the program state statutory authority (though many states already have); but the Federal act does require a considerable strengthening of the ombudsman program by mandating a program. A program which will investigate and resolve complaints, etc.; monitor the development of Federal, State and local laws, regulations and policies, etc.; provide information to public agencies, etc.; provide for training volunteers, etc.; provide procedures for appropriate access, etc.; establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems; provision for submission of such data to the agency of the State responsible for licensing or certifying, and to the Commissioner, on a regular basis, etc. Additionally, HEW Program Development Handbook for Nursing Home Ombudsman Services for the Elderly provides that among the goals and objectives of the program shall be "creation of, and advocacy for, State legislation to legitimize the ombudsman program."

Hence, Senate Bill 325, particularly Sections 5,6,7,8, will establish the procedures by which the Ombudsman will function, within the definition, as it applies to the obligations and authorities of long-term care facilities and government agencies.

Any failure of passage of Senate Bill 325 would seriously inhibit the effectiveness of the nursing home ombudsman program and, as well, defeat the purpose of advocating adequately the well-being of older individuals who are residents of long-term care facilities.

WBB

4/1/79

# THE NURSING HOME LAW LETTER

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## 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 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 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 the Commissioner of AoA, on a "regular basis."

Finally, the state must establish procedures to assure that ombudsman's files will be closed "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 of some of the many recent Congressional hearings held in recent years to consider the problem of over-institutionalization.



STATE OF NEVADA

DEPARTMENT OF HUMAN RESOURCES

~~REGISTRATION~~ Michael Melner, Director

DIVISION FOR AGING SERVICES

JOHN B. MCSWEENEY, ADMINISTRATOR

ADMINISTRATIVE OFFICE

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505 EAST KING STREET

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CARSON CITY, NEVADA 89710

MIKE O'CALLAGHAN  
GOVERNORM E M O R A N D U M

TO: All Nursing Home Administrators

FROM: W. B. Byrne, Nursing Home Ombudsman  
Division for Aging Services - Las Vegas

The attached material re "Bill of Rights" and "Policies and Procedures", and "Complaints Procedures by Ombudsman", affecting nursing home facilities is not intended to qualify nor substitute, in any way, the Licensing Regulations for nursing home facilities as adopted by the Nevada State Board of Health, Bureau of Health Facilities.

In the interests of our mutual goal of attaining the ultimate of comfort and welfare of our institutionalized elderly, these papers have been prepared to emphasize a greater attention to some of those regulations affecting the rights, the comforts and the care of the elderly patients, which may not have been, or are not being, diligently observed.

I am confident you will agree this memo will serve a worthwhile purpose for all concerned, i.e., the patients, the facilities, and the Division, in the attainment of our goal for the best care possible for the elderly residents of nursing homes in Nevada. I look forward to your co-operation.

  
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W. B. Byrne  
Nursing Home Ombudsman

WBB/vjt  
Attachments

POLICIES AND PROCEDURES

1. The facility must have written policies and procedures, available to the staff, governing all areas of services provided by the facility.
2. In these policies and procedures, the rights, care, safety and welfare of residents shall be clearly set forth to the staff and shall provide that patients shall not be mistreated or abused; that complaints may be registered with the Administrator by any employee without threat of discharge or reprisal.
3. The duties and responsibilities of each classification of staff, except supervisory, shall be clearly set forth in the written policies and procedures.
4. A written account, available to residents and their families, shall be maintained on a current basis for each resident, including written, signed and dated receipts for all personal possessions and funds received or deposited with the facility; and written, signed and dated receipts for all disbursements made to or on behalf of the resident, including the purpose of the disbursement; a ledger shall be maintained for the handling of resident's personal funds, kept current. The ledger and receipts for each resident must be made available for review upon request of the Division.
5. A procedure shall be maintained which assures that each resident's health and care is under supervision of a physician who sees the resident as needed, and in no case less often (than 30 or 60 days, depending on type of facility) unless otherwise justified by documents of the attending physician. The facility is responsible for notification to physician when and if the period of physician's non-attendance exceeds the maximum period provided by regulations.
6. A written and regularly rehearsed Disaster Preparedness Plan for staff and residents is the responsibility of the facility.
7. An inventory of a resident's personal belongings on admission shall be taken, made a part of the resident's record, and updated as necessary; shall carry ownership identification.
8. The facility shall maintain methods of administrative management which assures -
  - a. Staff sufficient in number and qualifications, on duty all hours of each day, to carry out the requirements of the law and the Rules and Regulations of the Bureau of Health Facilities, Department of Human Resources.
  - b. An inservice education program conducted for development and improvement of the skills of the facility's personnel, and records kept which indicate the extent of participation in such orientation and staff development.
  - c. Where the facility does not employ a qualified professional person to render a required institutional service, there shall be written agreements with outside resources to render the services.

COMPLAINTS PROCEDURES BY OMBUDSMAN AND/OR  
ADMINISTRATOR FOR AGING SERVICES

1. Investigation of complaints shall be based on an action or failure to act by an Administrator or employee of a nursing home facility which might be -
  - a. Contrary to law
  - b. An unreasonable, unfair, offensive or unnecessarily discriminatory act.
  - c. A mistake.
  - d. An act unaccompanied by an adequate statement of reasons.
  - e. An act performed in an inefficient manner.
  - f. Any condition adversely affecting the health, comfort, safety or welfare of the patient, resident or client.
  
2. A complaint deemed valid by the Ombudsman and by the Administrator for Aging Services and requiring remedial action shall be identified and brought in writing to the attention of the nursing home Administrator. The Administrator, in concurrence with the Ombudsman, shall establish target dates for taking appropriate remedial action. If remedial action is not completed or forthcoming, the Ombudsman may -
  - a. Extend the target dates if such action will facilitate the resolution of the complaint.
  - b. Make public the complaint and the Ombudsman's recommendations and the response of the nursing facility. However, in no case shall the names of the individuals in the complaint be disclosed publicly, except through formal litigation.
  - c. Refer the complaint to the Administrator of the Division for Aging Services.

Upon referral from the Ombudsman, the Division for Aging Services, Department of Human Resources, assumes the responsibility for the disposition of the complaint. If the complaint is found valid and the nursing home facility fails to take action thereon, the Administrator for the Division for Aging Services, Department of Human Resources, may -

- a. Make public the complaint, the Division Administrator's recommendations, and the response of the nursing home facility. In no case shall the names of the individuals involved in the complaint be disclosed publicly, except through formal litigation.
- b. If indicated by the circumstances of the complaint, recommend any changes in rules and regulations for inspecting and licensing nursing home facilities.
- c. Refer the complaint to the District Attorney and/or the State's Attorney General for prosecution if there is reason to believe the nursing home facility or its employee is guilty of a criminal act.
- d. Recommend to the Department that the nursing home no longer receive payments under the state medical assistance (Medicaid).
- e. Recommend that the Bureau of Health Facilities initiate procedures for revocation of license.

3. In an investigation, the Ombudsman has the authority to -
  - a. Make inquiries and obtain information as is necessary to carry out the purpose of his office.
  - b. Enter, without notice, to inspect the premises and conditions of a nursing home facility for purposes of investigating a specific complaint, or for the purpose of a general investigation.

WBB/vjt

Typed October 6, 1977

BILL OF RIGHTS

1. A Bill of Rights, covering all patients, informing the patient as to what services the patient can expect and get, shall be in written form, shall conform to the licensing regulations governing the facility, and shall be made available to the patient or the patient's representative, upon admission.

2. Included in the Bill of Rights shall be the following statement:

"In order to secure for elderly patients, residents and clients of health care facilities serving their specialized needs and problems, the same civil and human rights guaranteed to all citizens, the State of Nevada, Division for Aging Services, has established the office of Nursing Home Ombudsman for institution-alized elderly; to receive, investigate and resolve complaints concerning certain classes of health care facilities serving the elderly; to secure, preserve and promote the health, safety and welfare and the civil and human rights of the elderly patients, residents and clients of such facilities.

"Complaints shall be registered by the patient, his/her representative, or any employee, with the Administrator of the facility, WITHOUT THREAT OF DISCHARGE OR OTHER REPRISAL AGAINST ANY EMPLOYEE OR PATIENT, for remedial action by the Administrator.

"If indicated remedial action is not taken forthwith, the complaint shall be registered by the complainant with the Nursing Home Ombudsman; if deemed valid by the Ombudsman and the Administrator for Aging Services, remedial action will be taken forthwith by the Nursing Home Ombudsman and/or the Administrator for Aging Services.

"Nursing Home Ombudsman is -

W. B BYRNE  
Suite 880, Tropicana Plaza  
1055 East Tropicana Avenue  
State Mail Room  
Las Vegas, Nevada 89158

Phone: Office - 385-0358  
Home - 733-6476"

3. Every patient, or representative of a patient, shall receive a copy of a printed complaint form which will be supplied to all nursing home facilities by the Division for Aging Services.

WBE/vjt  
Typed October 6, 1977