



**House
Legislative
Analysis
Section**

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone: 517/373-6466

LONG-TERM CARE OMBUDSMAN

RECEIVED

House Bill 4123 as introduced
First Analysis (3-5-87) Floor Copy

APR 08 1987

Sponsor: Rep. Thomas C. Mathieu Mich. State Law Library
Committee: Senior Citizens & Retirement

H.B. 4123 (3-5-87)

THE APPARENT PROBLEM:

Federal law requires all states to operate an ombudsman program to investigate and resolve complaints regarding the health, safety, welfare and rights of residents of long-term care facilities, as well to act as an advocate in the implementation of public policy regarding long-term care facilities, provide public education, and train volunteers to participate in ombudsman programs. Michigan's long-term ombudsman program is administered by the Office of Services to the Aging through a contract with a private nonprofit organization, Citizens for Better Care. The program operates under a provision of the Public Health Code that allows representatives of approved organizations access to nursing home residents to assist them in pursuing their legal rights. Advocates of the ombudsman program seek to codify the program and expand it to serve people living in homes for the aged, foster care homes, as well as in nursing homes. Further, where the current program serves only a few regions of the state, advocates propose to expand the program to serve long-term care residents statewide.

THE CONTENT OF THE BILL:

The bill would amend the Older Michiganians Act to establish an ombudsman program for residents of long-term care facilities (homes for the aged, adult foster care homes, and nursing homes, including county medical care facilities and hospital long-term care units). The program would be headed by a state long-term care ombudsman, and would use a system of local or regional ombudsman offices. The program would investigate and attempt to resolve complaints relating to actions that could affect the health, safety, welfare, or rights of residents. Further, the program would provide public information about long-term care facilities, make referrals, train volunteers for the program, assist long-term care facility resident councils, and identify needed regulatory changes in long-term care.

The state ombudsman would be charged with establishing confidential procedures for handling complaints, establishing a statewide reporting system for complaints, assisting in developing and monitoring state and federal laws and regulations concerning services to the elderly, training local and regional ombudsmen, publicizing the program, and recommending that the Attorney General take legal action on complaints. Further, the ombudsman would report annually to the governor and the legislature on the program, and recommend changes in laws and programs to improve services for long-term care residents. The state ombudsman could operate either directly or by contracting with a public or private agency, except agencies responsible for licensing long-term care facilities or associations of facilities.

State and local or regional ombudsman programs would be funded through area agencies on aging, under a formula based on the number of square miles, number of nursing homes, number of nursing home beds, and the percentage of nursing home residents receiving Medicaid within each geographic area served.

The state ombudsman and local or regional ombudsman would be granted access, from 8 a.m. to 8 p.m., to any long-term care facility for the purposes of carrying out their responsibilities. Their trained volunteers would also be granted access to nursing homes during regular visiting hours each day. In addition, volunteers would be granted access from 11 a.m. to 7 p.m. to other long-term care facilities.

It would be a misdemeanor to retaliate against people who registered a complaint. Refusal to comply with the ombudsman's lawful requests, hindrance of an investigation, or offering a bribe to an ombudsman would subject a person to a fine of up to \$1,500.

The state ombudsman would be immune from civil or criminal liability when acting in good faith in investigating a complaint (MCL 400.582 et al.).

FISCAL IMPLICATIONS:

The House Fiscal Agency estimates that the costs to implement the state and local ombudsman programs would be approximately \$900,000 to \$1 million per year (3-4-87).

BACKGROUND INFORMATION:

A similar bill (House Bill 5537) passed the House in 1986.

ARGUMENTS:

For:

The federal requirement that states implement a long-term care ombudsman program recognizes that it may be difficult for people in nursing homes and similar facilities to assert their rights. Michigan's current ombudsman program is limited geographically and financially; according to the Office of Services to the Aging (OSA), 5 of the 14 OSA regions have no local ombudsman program, and others are only minimally funded. The bill would expand the program statewide and would provide ombudsman services for people residing in homes for the aged and adult foster care facilities, as well as nursing homes.

OVER

The ombudsman program is supported by many senior citizens advocacy groups because it has proven to be an enthusiastic advocate for the rights of those residing in long-term care facilities. With the ombudsman's in-depth knowledge of long-term care regulation, Medicare, Medicaid and related issues, the focus of the program is to assist residents and their families in resolving both major and minor problems related to health, safety, welfare and rights. In many cases, the ombudsman is able to resolve problems informally, thus avoiding involving the regulatory agencies. This allows the Departments of Social Services and Public Health to concentrate on more serious cases of abuse or financial exploitation.

Against:

Long-term care facilities are already extensively regulated by the Departments of Public Health and Social Services. The bill would result in duplication of services and, in some cases, conflicts with current law. The bill would endow ombudsman staff and volunteers with broad powers to investigate complaints and even cases of suspected abuse, which are more appropriately handled by regulatory and law enforcement authorities. At the very least, the bill should clearly differentiate between the authority granted to the ombudsman staff and the program's volunteers. Further, the bill grants extended access hours for the ombudsman and volunteers to enter facilities, which some argue are more extensive than or in conflict with the access hours granted to regulators under current law. In addition, the bill does not advise the patients or residents of long-term care facilities of their right to terminate an unwanted visit with an ombudsman.

Against:

Although the bill would extend the ombudsman program beyond its current level, it is still not a comprehensive approach to long-term care: the program still would not cover noninstitutional care, such as home health care, hospice care, adult day care, and meals-on-wheels. Further, a truly comprehensive ombudsman program should not be located in an agency which has funding and regulatory responsibilities for noninstitutional care, but should be placed in an independent agency, such as the Office of Health and Medical Affairs.

Against:

The bill does establish some training requirements for local or regional ombudsmen, but is not specific about training requirements for volunteers. The bill should provide for testing and certification of the competence of all volunteers enrolled in the ombudsman program before they could be assigned to work in a long-term care facility. This procedure would help ensure that the volunteers were able to perform their specified duties.

Against:

While the bill provides numerous procedures for both ombudsman and patient to address problems in long-term care facilities, there is no mention of appeal procedures for organizations undergoing scrutiny. This issue must be corrected if the bill is to be fair to all parties involved. Advocates of an appeal system point to the appeal procedure already in existence in Section 21763 (4) of the Public Health Code, which sets a precedent for this measure to be taken.

POSITIONS:

The Office of Services to the Aging supports the bill (3-4-87).

Citizens for Better Care supports the bill (3-4-87).

The Area Agencies on Aging Association of Michigan supports the bill (3-4-87).

The Department of Social Services supports the bill (3-4-87).

The Health Care Association of Michigan supports the bill (3-4-87).

The Michigan Nonprofit Homes Association supports the concept of the bill but has serious concerns about some provisions (3-4-87).