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BILL ANALYSIS

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House Bill 4123 (as reported with amendments)

Sponsor: Representative Thomas C. Mathieu

House Committee: Senior Citizens and Retirement

Senate Committee: Health Policy

Date Completed: 5-7-87

RATIONALE

The Older American Act 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. In addition, the ombudsman acts as an advocate in the implementation of public policy regarding long-term care facilities, provides education, and trains 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 Citizens for Better Care, a private nonprofit organization. Some people believe that the program, although mandated by the Federal government, should be made a permanent program through State statute and that the program's services should be expanded to include other areas of long-term care, such as homes for the aged and foster care homes, as well as nursing homes. If the program's coverage is broadened, some people also feel that staffing also must be expanded to ensure that the program operates throughout the State.

CONTENT

House Bill 4123 would amend the Older Michiganians Act to:

- Establish a State long-term care ombudsman program and a system of local or regional ombudsman offices.
- Set job qualifications for the State long-term care ombudsman.
- Prescribe the duties of the State long-term care ombudsman.
- Grant immunity from any civil or criminal liability to the State long-term care ombudsman.
- Outline the accessibility that the State ombudsman, the local or regional long-term care ombudsman, and their volunteers would have to a long-term care facility.
- Set a criminal penalty and fine for violation of the bill.

Program

The bill would require the Office of Services to the Aging to establish a long-term care ombudsman program consisting of a State long-term care ombudsman and a system of local or regional ombudsman offices with the duties and powers set forth in the bill. The local or regional ombudsman program would be funded through Area Agencies on Aging.

Qualifications

Job qualifications for the State long-term care ombudsman would include, but not be limited to, experience in the field of aging; health care; working with community programs; and long-term care issues, both regulatory and policy.

Duties

The State long-term care ombudsman could operate either directly or by contract with any public agency or other appropriate private nonprofit organization, other than an agency or organization that was responsible for licensing or certifying long-term care facilities or that was an association of long-term care facilities.

The State long-term care ombudsman would be required to do all of the following:

- Establish and implement confidential complaint, investigatory, informational, educational, and referral procedures and programs.
- Establish a statewide uniform reporting system to collect and analyze complaints about the health, safety, welfare, and rights of residents of long-term care facilities for the purpose of publicizing improvements and significant problems.
- Assist in the development of and monitor the implementation of State and Federal laws, rules, and regulations concerning the delivery of services to older persons.
- Report annually to the Governor and Legislature on the long-term care ombudsman program and make recommendations for improving the health, safety, welfare, and rights of residents of long-term care facilities.
- Recommend changes in State and Federal law, rules, regulations, policies, guidelines, practices, and procedures to improve the health, safety, welfare, and rights of residents of long-term care facilities.
- Cooperate with persons and public or private agencies and undertake or participate in conferences, inquiries, meetings, or studies that could lead to improvements in the health, safety, welfare, and rights of residents and the functioning of long-term care facilities.
- Publicize widely the long-term care ombudsman program.
- Provide training for local and regional long-term care ombudsmen, which would include, but not be limited to, familiarity with: relevant State and Federal regulatory and enforcement agencies; the common characteristics, conditions, and treatments of long-term care residents; long-term care facility operations; long-term care facility licensing and certification requirements; Titles XVIII and XIX of the Social Security Act; interviewing, investigation, mediation, and negotiation skills; and management of volunteer programs.
- Recommend that the Attorney General institute actions for injunctive relief or civil damages relative to complaints.

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Immunity

If acting in good faith and within the authority granted by the bill, the State long-term care ombudsman would be immune from any civil or criminal liability that could result by reason of taking, investigating, or pursuing a complaint. For purposes of any civil or criminal proceeding, there would be a rebuttable presumption that when having acted under the authority of the bill, the State long-term care ombudsman did so in good faith.

Local/Regional Programs

The local or regional long-term care ombudsman programs, established under the bill, would be required to:

- Accept, investigate, verify, and work to resolve complaints, whether reported to or initiated by an ombudsman, that related to any action that could adversely affect the health, safety, welfare, and rights of a resident of a long-term care facility.
- Provide information about long-term care facilities, the rights of residents, sources of payment for care, and guidelines in selecting a long-term care facility or other service to residents and the public.
- Make referrals to appropriate government and private agencies.
- Recruit, train, and supervise volunteers to assist ombudsmen in providing services.
- Educate residents and the public about abuse of long-term care residents and coordinate with licensing and enforcement agencies to assure appropriate investigation of abuse complaints and corrective actions.
- Assist in the development and work of "resident councils" when invited by residents of the long-term care facility. "Resident council" would mean a forum in which residents of long-term care facilities exercised their rights and communicated their views on the operations of a long-term care facility, the quality of care and life provided, and any other issue of interest to the council.
- Assist the State long-term care ombudsman in identifying needed regulatory changes in long-term care.

Access to Facilities

The State long-term care ombudsman, the local or regional long-term care ombudsmen, and their trained volunteers would be granted access to any long-term care facility for carrying out the local or regional long-term care ombudsman programs of the bill.

For the State long-term care ombudsman and the local or regional long-term care ombudsmen, access could be allowed each day from 8 a.m. to 8 p.m. For ombudsman-trained volunteers, access would be allowed to nursing homes during regular visiting hours each day as required by the Public Health Code (MCL 333.20201). For ombudsman-trained volunteers, access would be allowed to homes for the aged, hospital long-term care units, and adult foster care homes each day from 11 a.m. to 7 p.m. "Access" would mean the right of an ombudsman or volunteer to:

- Enter any facility and identify himself or herself.
- Seek consent from a resident to communicate privately and without restriction with that resident.
- Communicate privately and without restrictions with any resident who consented to communication.
- Observe all resident areas of the facility except the living area of any resident who protested the observation.

Penalty

A person who retaliated or discriminated against any of the following individuals due to that individual's registration of a complaint or assistance in the investigation of a complaint would be guilty of a misdemeanor:

- An officer, employee, resident, or visitor to a long-term care facility.
- A family member or guardian of a resident in a long-term care facility.
- An ombudsman as described in the bill.
- A volunteer at a long-term care facility.

A person who willfully did any of the following in connection with an ombudsman would be subject to a fine of not more than \$1,500:

- Hindered the work of an ombudsman or an ombudsman program.
- Refused to comply with a lawful request of an ombudsman.
- Offered compensation or other promises improperly to influence the outcome of a matter being investigated by an ombudsman.

Definitions

Long-term care facility would mean one or more of the following:

- A home for the aged, a nursing home, a county medical care facility, and a hospital long-term care unit as defined in the Public Health Code.
- An adult foster care facility as defined in the Adult Foster Care Facility Licensing Act.

MCL 400.582 et al.

BACKGROUND

The Older Americans Act, as amended in 1975, mandated that state units on aging, such as the Michigan Office of Services to the Aging (OSA), establish state long-term care ombudsman programs to:

- Receive and investigate complaints from and concerning the care elders receive in the state's nursing homes.
- Monitor the development and implementation of laws affecting nursing home residents.
- Provide information to the public about long-term care residents and their problems.
- Support and encourage the development of local citizens' groups in the work of the ombudsman programs.

Only seven of the State's 14 Area Agencies on Aging have local projects serving any portion of their service area, and two of those have no paid staff. In more than 1,000 visits to nursing homes, ombudsman staff and volunteers talked with residents and their families and friends, home staff, and administration to resolve issues and participate in staff trainings, family and resident council meetings, and resident care conferences.

Most of the efforts of the local and State ombudsmen are devoted to the resolution of problems, issues, and concerns of nursing home residents. During 1985-86, 954 individual cases, representing 1,773 individual issues, were handled and closed by State and local ombudsman programs. Also in that time, ombudsman programs assisted more than 3,700 people who sought information about nursing homes and other long-term care services. This represented an increase of 36% in both cases and information requests over the previous year.

SENATE COMMITTEE ACTION

The Senate Health Policy Committee adopted amendments to the bill to remove a provision that would have established a formula for funding the State, local or regional long-term care ombudsman programs in order to have the funding handled through the appropriations process. The formula would have been based on square miles, number of

nursing homes, number of nursing home beds, and the percentage of nursing home residents who received Medicaid within the geographic area that was to be served.

FISCAL IMPACT

The bill would result in an expenditure by the State of approximately \$750,000 annually. This amount would provide several additional positions in the State office as well as at least one professional position in each of the 14 regions. The bill would have no fiscal impact on local governments.

ARGUMENTS

Supporting Argument

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 long-term care facilities, to assert their rights. Advocates for senior citizens support the ombudsman program, and believe it should include other long-term care facilities in addition to nursing homes, because the program is an enthusiastic supporter of the rights of a vulnerable and growing segment of the population.

Supporting Argument

While the ombudsman aims to uphold the rights of the elderly and those residing in long-term care facilities, the ombudsman's in-depth knowledge of regulations, Medicare, Medicaid, and related issues enables the ombudsman to work with the residents and their families in addition to those in the long-term care industry. Thus, the ombudsman is able to resolve problems informally while avoiding the involvement of regulatory agencies, except for extreme cases. That is one reason that members of the long-term care industry support the ombudsman program: it helps to resolve minor problems between the client and care facility before they got out of hand.

Supporting Argument

Michigan's current ombudsman program is limited geographically and financially. Only seven of the State's 14 Area Agencies on Aging reportedly have ombudsman programs, and two of those have no paid staff. In fact, Kalamazoo and Saginaw have no programs at all. The bill would expand the program statewide, but not increase the State's employees since the State contracts for staff with a separate organization, such as Citizens for Better Care, through the Area Agencies on Aging. The program also relies heavily on volunteers, who are trained by the permanent staff. For example, Massachusetts' program costs \$1.6 million and involves more than 200 volunteers.

Opposing Argument

Although the bill would extend the ombudsman program beyond its current scope, it still would not be a comprehensive approach to long-term care since the program would not cover noninstitutional care, such as home health care, hospice care, and adult day care.

Response: The long-term care ombudsman program is designed to assist persons in institutions, not to cover those receiving in-home care. There are other programs to protect those persons receiving in-home care, such as adult protective services which handle cases of abuse.

Opposing Argument

The bill would establish some training requirements for local and regional ombudsmen, but does not specify

training requirements for volunteers. Testing and certification of the competence of all volunteers involved in the ombudsman program should be required before these volunteers could be assigned to work in a long-term care facility.

Opposing Argument

While the bill would provide procedures to address problems in long-term facilities, no appeal procedures are included in the bill for organizations undergoing investigations. This issue should be corrected if the bill is to be fair to all parties. One example of an appeal procedure can be found in the Public Health Code (MCL 333.21763 (4)), which provides for representatives of approved organizations to have access to nursing homes.

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This analysis was prepared by nonpartis in Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.