
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2151

Session of
1984

INTRODUCED BY DURHAM, LLOYD, DAWIDA, DeLUCA, HARPER, KASUNIC,
MAIALE, McINTYRE, MORRIS, PRATT, SEVENTY, SALVATORE, ARTY,
BOOK, CLYMER, HERMAN, KOSINSKI, SEMMEL, E. Z. TAYLOR,
J. L. WRIGHT AND JOHNSON, MAY 9, 1984

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, MAY 9, 1984

AN ACT

1 Establishing an Office of Ombudsman for nursing home problems in
2 the Office of Attorney General.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Definitions.

6 The following words and phrases when used in this act shall
7 have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "Administrative agency" or "agency." Any division,
10 department, office, bureau, commission, official or employee of
11 the Commonwealth which deals with nursing homes, but does not
12 include:

13 (1) Any court or judge.

14 (2) Any member of the Senate or House of Representatives
15 of this Commonwealth.

16 (3) The Governor or his personal staff.

17 (4) Any instrumentality of the Federal Government.

1 (5) Any political subdivision of this Commonwealth.

2 (6) Any official or agency established under an
3 interstate compact.

4 Section 2. Office of Ombudsman.

5 (a) Establishment.--The Office of Ombudsman for nursing
6 homes is hereby established in the Office of Attorney General.
7 The office shall have as its chief administrative officer the
8 ombudsman who shall either personally, by deputy or duly
9 authorized agent or employee of the office, and subject at all
10 times to the provisions of this act and the act of April 9, 1929
11 (P.L.177, No.175), known as The Administrative Code of 1929,
12 exercise the powers and perform the duties by law vested in and
13 imposed on the office.

14 (b) Appointment and authority.--The ombudsman shall be
15 appointed by, shall serve at the pleasure of, and shall be
16 subject to, the Governor, and the Majority and Minority Leaders
17 of the House of Representatives and the Senate. The ombudsman
18 shall have the authority to investigate complaints of neglect or
19 abuse in nursing homes. The ombudsman shall have the authority
20 to investigate decisions, acts and other matters of an agency so
21 as to promote the highest attainable standards of competence,
22 efficiency and justice in the administration of nursing homes.

23 (c) Deputy and other assistants.--The ombudsman shall
24 appoint such personnel as are required to administer the
25 provisions of this act, and shall designate one of his
26 assistants to be the deputy ombudsman. The ombudsman may
27 delegate to members of his staff any of his authority or duties
28 except the duty of formally making recommendations to a nursing
29 home or an administrative agency, or reports to the Governor's
30 Office, or to the General Assembly.

1 Section 3. Powers and duties; procedure.

2 (a) Powers enumerated.--The ombudsman shall have the
3 following powers:

4 (1) He may prescribe the methods by which complaints are
5 to be made, reviewed and acted upon. He shall not levy or
6 collect a complaint fee.

7 (2) He may determine the scope and manner of
8 investigations to be made.

9 (3) Except as otherwise provided, he may determine the
10 form, frequency and distribution of his conclusions,
11 recommendations and proposals. However, the Governor or his
12 representative or the Majority Leader or Minority Leader of
13 either the House of Representatives or the Senate may, at any
14 time the aforementioned deem it necessary, request and
15 receive information from the ombudsman.

16 (4) He may investigate, upon a complaint in writing or
17 orally, or upon his own initiative, allegations of abuse or
18 neglect.

19 (5) He may investigate, upon a complaint in writing or
20 upon his own initiative, any action of an administrative
21 agency.

22 (6) He may request and shall be given access to
23 information in the possession of an administrative agency
24 which he deems necessary for the discharge of his
25 responsibilities.

26 (7) He may examine the records and documents of an
27 administrative agency.

28 (8) He may enter and inspect, at any time, any nursing
29 home or any premises within the control of an administrative
30 agency.

1 (9) He may order any person to appear, give testimony or
2 produce documentary or other evidence which the ombudsman
3 deems relevant to a matter under his inquiry, but any witness
4 at a hearing on or before an investigation as herein
5 provided, shall possess the same privileges reserved to such
6 a witness in the courts or under the laws of this
7 Commonwealth.

8 (10) He may, where he deems necessary, refer and offer
9 assistance to the appropriate legal agency such as, for
10 example, but not limited to, the Attorney General or a public
11 defender for appropriate action in a State court.

12 (b) Areas of concern.--

13 (1) In selecting matters for his attention, the
14 ombudsman should address himself particularly to actions of
15 an administrative agency or nursing home which might be:

16 (i) Complaints of neglect or abuse.

17 (ii) Contrary to law or regulation.

18 (iii) Unreasonable, unfair, oppressive or
19 inconsistent with any policy or judgment of an
20 administrative agency.

21 (iv) Mistaken in law or arbitrary on the
22 ascertainment of facts.

23 (v) Unclear or inadequately explained when reasons
24 should have been revealed.

25 (vi) Inefficiently performed.

26 (2) The ombudsman may also concern himself with
27 strengthening procedures and practices which lessen the risk
28 that objectionable actions of the administrative agency or
29 nursing home will occur.

30 (c) Complaints.--

1 (1) The ombudsman may receive a complaint from any
2 source concerning an action of an administrative agency or
3 nursing home. He may, on his own motion or at the request of
4 another, investigate any action of an administrative agency
5 or nursing home.

6 (2) The ombudsman may exercise his powers without regard
7 to the finality of any action of an administrative agency;
8 however, he may require a complainant to pursue other
9 remedies or channels of complaint open to the complainant
10 before accepting or investigating the complaint.

11 (3) After completing the investigation of a complaint,
12 the ombudsman shall inform the complainant, the
13 administrative agency, the nursing home and the official or
14 employee, of the action taken.

15 (4) A letter to the ombudsman from a person in a nursing
16 home regulated by an administrative agency shall be forwarded
17 immediately and unopened to the ombudsman's office.

18 (d) Recommendations.--

19 (1) If, after duly considering a complaint and whatever
20 material he deems pertinent, the ombudsman is of the opinion
21 that the complaint is valid, he may recommend that an
22 administrative agency or nursing home should:

23 (i) consider the matter further;

24 (ii) modify or cancel its actions;

25 (iii) alter a regulation or ruling;

26 (iv) explain more fully the action in question; or

27 (v) take any other step which the ombudsman states

28 as his recommendation to the administrative agency

29 involved.

30 If the ombudsman so requests, the agency or nursing home

1 shall within the time he specifies, inform the ombudsman
2 about the action taken on his recommendation or the reasons
3 for not complying with it.

4 (2) If the ombudsman has reason to believe that any
5 public official or employee of a nursing home has acted in a
6 manner warranting criminal or disciplinary proceedings, he
7 may refer the matter to the appropriate authorities.

8 (3) If the ombudsman believes that an action upon which
9 a valid complaint is founded has been dictated by a statute,
10 and that the statute produces results or effects which are
11 unfair or otherwise objectionable, the ombudsman shall bring
12 to the attention of the Governor and the General Assembly his
13 view concerning desirable statutory changes.

14 Section 4. Publication of recommendations and reports.

15 In addition to whatever reports the ombudsman may make on an
16 ad hoc basis, the ombudsman shall at the end of each year report
17 to the Governor and the General Assembly concerning the exercise
18 of his functions during the preceding year.

19 Section 5. Effective date.

20 This act shall take effect in 60 days.