

52:276-1 to 52:276-16

LEGISLATIVE HISTORY CHECKLIST

NJSA 52:27G-1 to 52:27G-16

Laws of 1977 Chapter 239 (Office of the Ombudsman for the institutionalized elderly)
Bill No. S3149

Sponsor(s) Fay and others

Date Introduced March 21, 1977

Committee: Assembly Appropriations

Senate Institutions, Health & Welfare; Rev., Finance & Appr

Amended during passage Yes ~~XX~~ Admendments during passa denoted by asterisks

Date of passage: Assembly July 11, 1977

Senate May 23, 1977

Date of approval September 29, 1977

Following statements are attached if available:

Sponsor statement Yes ~~XX~~

Committee Statement: Assembly Yes ~~XX~~

Senate Yes ~~XX~~

Fiscal Note Yes ~~XX~~

Veto message ~~XXX~~ Yes No

Message on signing ~~XXX~~ Yes No

Following were printed:

Reports ~~XXX~~ Yes No

Hearings ~~XXX~~ Yes No

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SENATE, No. 3149

STATE OF NEW JERSEY

INTRODUCED MARCH 21, 1977

By Senators FAY, DUMONT, PARKER, MARTINDELL, ZANE
and DUNN

Referred to Committee on Institutions, Health and Welfare

AN ACT concerning the health, safety, welfare, civil and human rights of elderly persons, establishing the Office of the Ombudsman for the Institutionalized Elderly, and making an appropriation.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. The Legislature hereby finds that in recognition of the different
2 health and health related problems experienced by the various age
3 groups in the general population, numerous health care facilities
4 have been constructed and placed in operation to provide specialized
5 health and health related services to particular such groups; that
6 in providing such services to the elderly it is essential to recognize
7 that while the members of this age group possess the same civil and
8 human rights as members of every other age group, such rights
9 may be far more difficult for certain of the elderly to secure since
10 such persons may be afflicted with physical and mental infirmities,
11 deprived of the comfort and counsel of family and friends, and
12 forced to exist with minimum economic resources, all of which may
13 preclude them from defending and acting in their own best interests,
14 and, that to the degree that certain of the elderly may experience
15 difficulty in securing their civil and human rights as patients, resi-
16 dents and clients of the health care facilities created to serve their
17 specialized needs and problems, it is the obligation of the State
18 to take appropriate action through the creation of an adequate legal
19 framework by which those difficulties may be eliminated.

20 The Legislature, therefore, declares that it is the public policy
21 of this State to secure for elderly patients, residents and clients of
22 health care facilities serving their specialized needs and problems,
23 the same civil and human rights guaranteed to all citizens; and
24 that to this end there should be established as an agency of the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

25 State Government the Office of the Ombudsman for the Institution-
26 alized Elderly, to receive, investigate and resolve complaints
27 concerning certain health care facilities serving the elderly, and to
28 initiate actions to secure, preserve and promote the health, safety
29 and welfare, and the civil and human rights, of the elderly patients,
30 residents and clients of such facilities.

1 2. As used in this act, unless the context clearly indicates
2 otherwise:

3 a. An "act" of any facility or government agency shall be deemed
4 to include any failure or refusal to act by such facility or govern-
5 ment agency;

6 b. "Administrator" means any person who is charged with the
7 general administration or supervision of a facility whether or not
8 such person has an ownership interest in such facility, and whether
9 or not such person's functions and duties are shared with one or
10 more other persons;

11 c. "Facility" means any facility or institution, whether public or
12 private, offering health or health related services for the institu-
12A tionalized elderly, and which is subject to regulation, visitation,
13 inspection, or supervision by any government agency. Facilities
14 include, but are not limited to, nursing homes, skilled nursing homes,
15 intermediate care facilities, extended care facilities, convalescent
16 homes, rehabilitation centers, homes for the aged, special hospitals,
17 veterans hospitals, chronic disease hospitals, psychiatric hospitals,
18 mental hospitals, mental retardation centers or facilities, day care
19 facilities for the elderly, medical day care centers, and boarding
20 homes or other homes for the sheltered care;

21 d. "Government agency" means any department, division, office,
22 bureau, board, commission, authority, or any other agency or
23 instrumentality created by the State, or to which the State is a
24 party, or by any county or municipality, which is responsible for
25 the regulation, visitation, inspection or supervision of facilities, or
26 which provides services to patients, residents or clients of facilities;

27 e. "Guardian" means any person with the legal right to manage
28 the financial affairs and protect the rights of any patient, resident
29 or client of a facility who has been declared a mental incompetent by
30 a court of competent jurisdiction;

31 f. "Institutionalized elderly" or "elderly" means any adult person
32 60 years of age or older who is a patient, resident or client of any
33 facility;

34 g. "Office" means the Office of the Ombudsman for the Institu-
35 tionalized Elderly established herein;

36 h. "Ombudsman" means the administrator and chief executive
37 officer of the Office of the Ombudsman for the Institutionalized
38 Elderly;

39 i. "Patient, resident or client" means any elderly person who is
40 receiving treatment or care in any facility in all its aspects includ-
41 ing, but not limited to, admission, retention, confinement, commit-
42 ment, period of residence, transfer, discharge, and any instances
43 directly related to such status.

1 3. There is hereby established in the Executive Branch of the
2 State Government the Office of the Ombudsman for the Institution-
3 alized Elderly. For the purposes of complying with the provisions
4 of Article V, Section IV, paragraph 1 of the New Jersey Constitu-
5 tion, the Office of the Ombudsman for the Institutionalized Elderly
6 is hereby allocated to the Department of Community Affairs, but,
7 notwithstanding said allocation, the said office shall be independent
8 of any supervision or control by the department or by any board or
9 officer thereof.

1 4. The administrator and chief executive officer of the office shall
2 be the ombudsman, who shall be a person qualified by training and
3 experience to perform the duties of the office. The ombudsman
4 shall be appointed by the Governor, with the advice and consent of
5 the Senate, and shall serve at the pleasure of the Governor during
6 the Governor's term of office and until the appointment and qualifi-
7 cation of the ombudsman's successor. He shall devote his entire
8 time to the duties of his position and shall receive such salary as
9 shall be provided by law. Any vacancy occurring in the position of
10 ombudsman shall be filled in the same manner as the original
11 appointment; provided, however, that whenever the ombudsman
12 dies, resigns, becomes ineligible to serve for any reason, or is
13 removed from office, the Governor shall appoint an acting ombuds-
14 man who shall serve until the appointment and qualification of the
15 ombudsman's successor, but in no event longer than 6 months from
16 the occurrence of the vacancy, and who shall exercise during such
17 period all the powers and duties of the ombudsman pursuant to the
18 provisions of this act.

1 5. The ombudsman, as administrator and chief executive officer
2 of the office, shall:

3 a. Administer and organize the work of the office and establish
4 therein such administrative subdivisions as he may deem necessary,
5 proper and expedient. He may formulate and adopt rules and
6 regulations and prescribe duties for the efficient conduct of the
7 business, work and general administration of the office. He may

8 delegate to subordinate officers or employees in the office such of
9 his power as he may deem desirable to be exercised under his super-
10 vision and control;

11 b. Appoint and remove such stenographic, clerical and other
12 secretarial assistants as may be required for the proper conduct
13 of the office, subject to the provisions of Title 11 (Civil Service)
14 of the Revised Statutes, and other applicable statutes, and within
15 the limits of funds appropriated or otherwise made available
16 therefor. In addition, and within such funding limits, the ombuds-
17 man may appoint, retain or employ, without regard to the provisions
18 of the said Title 11 (Civil Service), or any other statutes, such
19 officers, investigators, experts, consultants or other professionally
20 qualified personnel on a contract basis or otherwise as he deems
21 necessary.

22 c. Appoint and employ, notwithstanding the provisions of
23 P. L. 1944, c. 20 (C. 52:17A-1 et seq.), a general counsel and such
24 other attorneys or counsel as he may require, for the purpose,
25 among other things, of providing legal advice on such matters as
26 the ombudsman may from time to time require, of attending to and
27 dealing with all litigation, controversies and legal matters in which
28 the office may be a party or in which its rights and interests may
29 be involved, and of representing the office in all proceedings or
30 actions of any kind which may be brought for or against it in any
31 court of this State. With respect to all of the foregoing, such
32 counsel and attorneys shall be independent of any supervision or
33 control by the Attorney General or by the Department of Law and
34 Public Safety, or by any division or officer thereof;

35 d. Have authority to adopt and promulgate pursuant to law
36 such rules and regulations as he deems necessary to carry out the
37 purposes of this act;

38 e. Maintain suitable headquarters for the office and such other
39 quarters as he shall deem necessary to the proper functioning of
40 the office;

41 f. Solicit and accept grants of funds from the Federal Government
42 and from other public and any private sources for any of the
43 purposes of this act; provided, however, that any such funds shall
44 be expended only pursuant to an appropriation made by law;

45 g. Perform such other functions as may be prescribed in this act
46 or by any other law.

1 6. The Office of the Ombudsman for the Institutionalized Elderly
2 shall have as its basic objective that of promoting, advocating and
3 **insuring, as a whole and in particular cases, the adequacy of the**
4 care received, and the quality of life experienced, by elderly

5 patients, residents and clients of facilities within this State. In
6 determining what elements are essential to adequate care and
7 quality of life, the ombudsman shall consider the unique medical,
8 social and economic needs and problems of the elderly as patients,
9 residents and clients of facilities and as citizens and community
10 members.

1 7. a. The office shall establish and implement procedures for
2 eliciting, receiving, processing, responding to and resolving com-
3 plaints from patients, residents or clients of facilities, the relatives
4 or guardians of such persons, or from interested citizens, public
5 officials, or government agencies having an interest in the matter.

6 b. When the office receives a complaint or otherwise encounters
7 a deficiency that pertains to compliance with State or Federal
8 laws or regulations or rules administered by any government
9 agency, it shall make referral thereof directly to the appropriate
10 government agency for action.

11 c. When the complaint received or the investigation conducted
12 by the office discloses facts that it determines warrants the institu-
13 tion of civil proceedings by a government agency against any
14 person or government agency, the matter shall be referred to the
15 government agency with authority to institute such proceedings.

16 d. When the complaint received or the investigation conducted
17 by the office reveals information in relation to the misconduct or
18 breach of duty of any officer or employee of a facility or a govern-
19 ment agency, it shall refer the matter to the appropriate authorities
20 for such action as may be necessary.

21 e. When the complaint received or the investigation conducted
22 by the office discloses information or facts indicating the com-
23 mission of criminal offenses or violations of standards of pro-
24 fessional conduct, it shall refer the matter, as appropriate, to the
25 Attorney General, county prosecutor, or any other law enforce-
26 ment official that has jurisdiction to prosecute the crime, or to the
27 professional licensing board concerned.

28 f. The government agency, prosecuting agency or professional
29 licensing board, as the case may be in this section, shall report to
30 the office on its findings and actions with respect to all such
31 referrals within 30 days after receipt thereof and every 30 days
32 thereafter until final action on each such referral. The office shall
33 monitor all such referrals and responses and maintain a record
34 thereof. The office shall be authorized to make disclosure of such
35 information as appropriate and as may be necessary to resolve
36 the matter referred.

37 g. In the event that the complaint of a patient, resident or
38 client or class of patients, residents or clients of a facility or
39 facilities cannot be resolved satisfactorily through negotiation with
40 the facility or the appropriate government agency or that an act,
41 practice, policy or procedure of a facility or government agency
42 does or may adversely affect the health, safety, welfare or civil
43 or human rights of a patient resident or client or class of patients,
44 residents or clients of a facility or facilities the office may recom-
45 mend to the appropriate authorities civil litigation on behalf of
46 such patient, resident or client or class of patients, residents or
47 clients as it deems appropriate. The office may institute actions
48 for injunctive relief or civil damages.

—1 8. a. The office shall establish and implement procedures for
2 conducting investigations.

3 b. Acting on complaint, the office may, notwithstanding any
4 referral pursuant to section 7. b. of this act, investigate any
5 act, practice, policy or procedure of any facility or government
6 agency that does or may adversely affect the health, safety,
7 welfare or civil or human rights of any patient, resident or client
8 of a facility.

9 c. Acting on its own initiative, the office may investigate any
10 act, practice, policy or procedure of any facility or government
11 agency which it determines does or may adversely affect the
12 health, safety, welfare or civil or human rights of any patient,
13 resident or client in a facility.

14 d. In an investigation the office may:

15 (1) Make the necessary inquiries and obtain such information
16 as it deems necessary;

17 (2) Hold private hearings or public hearings;

18 (3) Enter, without notice, and, after notifying the person in
19 charge of its presence, inspect the premises of a facility or govern-
20 ment agency and inspect there any books, files, medical records or
21 other records that pertain to patients, residents or clients and are
22 required by law to be maintained by the facility or government
23 agency;

24 (4) Compel at a specific time and place, by subpoena, the ap-
25 pearance and sworn testimony of any person who the office
26 reasonably believes may be able to give information relating to
27 a matter under investigation; or

28 (5) Compel any person to produce at a specific time and place,
29 by subpoena any documents, books, records, papers, objects, or
30 other evidence which the office reasonably believes may relate to
31 a matter under investigation.

32 e. The office need not investigate any complaint where it
33 determines that:

34 (1) The complaint is trivial, frivolous, vexatious or not made
35 in good faith;

36 (2) The complaint has been too long delayed to justify present
37 investigation;

38 (3) The resources available, considering the established priori-
39 ties, are insufficient for an adequate investigation; or

40 (4) The matter complained of is not within the investigatory
41 authority of the office.

1 9. The office shall acknowledge complaints, report its findings,
2 make recommendations, gather and disseminate information and
3 other material, and publicize its existence, all as herein provided:

4 a. If a complaint identifies the complainant, the office shall
5 acknowledge the receipt of such complaint and advise the com-
6 plainant of any action taken or opinions and recommendations
7 made by it in connection with the matter complained of.

8 b. Following an investigation the office may report its opinions
9 or recommendations to the party involved. The office may request
10 the party affected by such opinions or recommendations to notify
11 it within a specified time of any action taken by such party on its
12 recommendations. The office, may make public the complaint, the
13 act, practice, policy or procedure of a facility or government agency
14 that does or may adversely affect the health, safety, welfare or
15 civil or human rights of a patient, resident or client, its opinions
16 or recommendations, the response of the facility or government
17 agency to such opinions or recommendations or any further
18 opinions or recommendations of the office.

19 c. The office may recommend to the relevant government agency
20 changes in the rules and regulations adopted or proposed by such
21 government agency, which do or may adversely affect the health,
22 safety, welfare or civil or human rights of any patient, resident
23 or client in a facility.

24 d. The office may propose regulations to and petition any
25 government agency to adopt such regulations, or regulations
26 similar in content, that affect the health, safety, welfare or civil
27 or human rights of any patient, resident or client in a facility.

28 e. The office may recommend to the relevant government agency
29 that a facility shall no longer be permitted to receive patients or
30 residents or payments under the New Jersey Medical Assistance
31 and Health Services Act, P. L. 1968, c. 413 (C. 30:4D-1 et seq.).

32 f. The office may recommend to the relevant government agency
33 that it initiate procedures for assessment of penalties, revocation,
34 suspension, the placing on probationary or provisional license or

35 denial of a license against a facility or a proposed facility as
36 appropriate.

37 g. The office may publicize its existence, function and activities
38 through public relations with government and private organiza-
39 tions and groups and the public at large in general and with
40 patients, residents and clients in facilities in particular.

41 h. The office shall report to the Governor and the Legislature
42 on or before September 30 of each year, which report shall sum-
43 marize its activities for the preceding fiscal year, document the
44 significant problems in the systems of care and services for the
45 elderly, indicate and analyze the trends in such systems of care
46 and services, and set forth any opinions or recommendations which
47 will further the State's capacity in resolving complaints, en-
48 couraging quality care and ensuring the health, safety, welfare
49 or civil and human rights of elderly patients, residents and clients
50 of facilities, including suggestions or recommendations for legisla-
51 tive consideration and for changes in the policy or rules and
52 regulations of government agencies. The annual report shall be
53 available to the public.

1 10. a. The office shall promote community contact and involve-
2 ment with patients, residents and clients of facilities through the
3 use of volunteers and volunteer programs. The volunteers, as
4 private citizens, may exercise, but need not be limited to, such
5 functions as visitation, consultation, problem solving, eliciting
6 complaints, and, generally serving as advocates on behalf of the
7 institutionalized elderly.

8 The office shall develop and propose programs for use, training,
9 and coordination of volunteers and may:

10 (1) Establish and conduct recruitment programs for volunteers;

11 (2) Establish and conduct training seminars, meetings and other
12 programs for volunteers and supply personnel, written materials
13 and such other reasonable assistance including publicizing their
14 activities as may be deemed necessary;

15 (3) Elicit the support of, and cooperate with, appropriate
16 private, nonprofit and voluntary agencies and community groups
17 in the development and coordination of volunteer programs and
18 activities;

19 (4) Establish a reporting system volunteers can use to document
20 the major problems and concerns affecting the patients, residents
21 or clients of facilities;

22 (5) Reimburse volunteers for some or all their actual expenses,
23 including, but not limited to, telephone and mileage incurred in
24 performance of their duties under this act;

25 (6) Encourage, cooperate with and assist the development and
26 operation of referral services where current, valid and reliable
27 information on facilities and alternatives to institutionalization
28 can be secured by elderly persons in need of these services and
29 the general public;

30 (7) Request the participation and advice of such government
31 agencies and other entities or persons as the office may deem ap-
32 propriate or necessary to the development of volunteer programs
33 and the effective use of volunteers;

34 (8) Establish and conduct meetings and other programs for
35 administrators, professional personnel, and other personnel em-
36 ployed by or in contract with the facilities.

37 b. The office may assist in the development and use, by patients,
38 residents or clients of facilities, of councils and other forums
39 which permit such patients, residents or clients to discuss and
40 communicate, on a continuing basis, their views on the strengths
41 and weaknesses of the operations of the facility and on the quality
42 of care provided and quality of life fostered. Memberships on
43 such councils shall be determined by the patients, residents or
44 clients of the particular facility and may include, but shall not be
45 limited to, such patients, residents or clients, interested relatives,
46 friends or community persons. Assistance by the office may in-
47 clude, but shall not be limited to, conference with administrators,
48 operators or managers of facilities on the purpose and function
49 of such councils and, upon request, participation in the formation
50 of a council which the office deems appropriate to the individual
51 needs of the facility and its patients, residents or clients.

52 In implementing the provisions of this section the ombudsman
53 shall coordinate the efforts of the office concerning volunteers and
54 councils with all relevant government agencies, and with the
55 administrators of such private facilities as he may deem appro-
56 priate, to insure coordination and avoid duplication of effort, so
57 that the volunteer programs and councils developed and supported
58 by the office may genuinely serve the interests of the institutional-
59 ized elderly without in any way disrupting the legitimate function-
60 ing of any facility in this State.

1 11. a. Any correspondence or written communication from any
2 patient, resident or client of a facility to the office shall, if delivered
3 to or received by the facility, be promptly forwarded, unopened,
4 by the facility to the office. Any correspondence or written com-
5 munication from the office to any patient, resident or client of a
6 facility shall, if delivered to or received by the facility, be promptly
7 forwarded, unopened, by the facility to such patient, resident, or
8 client.

9 b. The office shall prepare and distribute to each facility written
10 notices which set forth the address and telephone number of the
11 office, a brief explanation of the function of the office, the procedure
12 to follow in filing a complaint and other pertinent information.

13 The administrator of each facility shall ensure that such written
14 notice is given to every patient, resident or client or his guardian
15 upon admission to the facility and to every person already in
16 residence or his guardian. The administrator shall also post such
17 written notice in a conspicuous, public place in the facility in the
18 number and manner set forth in the guidelines adopted by the office.

19 c. The office shall inform patients, residents or clients, their
20 guardians or their families, of their rights and entitlements under
21 State and Federal laws and rules and regulations by means of the
22 distribution of educational materials and group meetings.

23 d. The office shall facilitate the filing of complaints with the office
24 concerning matters within the authority of the office. The measures
25 taken in connection therewith shall include, but need not be limited
26 to, maintenance of a toll-free telephone, either by the office or in
27 conjunction with the Division on Aging, at least during regular
28 working hours of the office for the filing of complaints.

1 12. The office may request from any government agency, and
2 said agency is hereby authorized and directed to provide, such
3 cooperation and assistance, services and data as will enable the
4 office properly to perform or exercise any of its functions, duties
5 and powers under the provisions of this act.

1 13. a. The office shall maintain confidentiality with respect to
2 all matters in relation to any complaint or investigation together
3 with identities of the complainants, witnesses or patients, residents
4 or clients involved, unless such persons authorize, in writing, the
5 release of such information, except for such disclosures as may be
6 necessary to enable the office to perform its duties and to support
7 any opinions or recommendations that may result from a complaint
8 or investigation. The investigatory files of the office, including
9 all complaints and responses of the office to complaints, shall be
10 maintained as confidential information. Release of pertinent
11 records shall be at the discretion of the ombudsman. Nothing
12 herein contained shall preclude the use by the office of material in
13 its files, otherwise confidential, for the preparation and disclosure
14 of statistical, case study and other pertinent data, provided that
15 in any such use there shall be no disclosure of the identity or the
16 means for discovering the identity of particular persons.

17 b. Any person conducting or participating in any examination
18 of a complaint or an investigation who shall disclose to any person
19 other than the office, or those authorized by the ombudsman to
20 receive it, the name of any witness examined, or any information
21 obtained or given upon such examination or investigation is a
22 disorderly person.

23 c. Any statement or communication made by the office relevant
24 to a complaint received by, proceedings before, or investigative
25 activities of, the office, and any complaint or information made or
26 provided in good faith by any person, shall be absolutely privileged
27 and such privilege shall be a complete defense in any action which
28 shall allege libel or slander.

29 d. The office shall not be required to testify in any court with
30 respect to matters held to be confidential in this section except as
31 the court may deem necessary to enforce the provisions of this act.

1 14. a. No discriminatory, disciplinary or retaliatory action shall
2 be taken against any officer or employee of a facility or govern-
3 ment agency by such facility or government agency or against any
4 patient, resident, or client of a facility or guardian or family
5 member thereof, or volunteer, for any communication by him with
6 the office or for any information given or disclosed by him in good
7 faith to aid the office in carrying out its duties and responsibilities.
8 Any person who knowingly or willfully violates the provisions of
9 this subsection is guilty of a misdemeanor.

10 b. Any person who willfully hinders the lawful actions of the
11 office or willfully refuses to comply with its lawful demands,
12 including the demand of immediate entry into and inspection of
13 a facility or government agency or the demand of immediate access
14 to a patient, resident or client thereof, or who offers any compensa-
15 tion, gratuity, or promise thereof to the office in an effort to affect
16 the outcome of any matter which is being investigated, or is likely
17 to be investigated shall be subject to a penalty of not more than
18 \$1,000.00. Such penalty shall be recoverable by the State in a
19 civil action by a summary proceeding under "the penalty enforce-
20 ment law" (N. J. S. 2A:58-1 et seq.). The county district court
21 of the county in which the offense is alleged to have occurred
22 shall have jurisdiction to enforce said penalty enforcement law
23 upon complaint of the office or any other person. Each violation
24 of this act shall constitute a separate offense.

25 c. The office may bring suit in any court of competent jurisdiction
26 to enforce any of the powers enumerated in this act.

1 15. The Legislature through the Senate and Assembly Standing
2 Committees on Institutions, Health and Welfare, or such other
3 committee or committees as may be designated from time to time
4 by the President of the Senate and Speaker of the General
5 Assembly, respectively shall review, on a continuous basis, the
6 development, administration and operation of the office provided
7 for in this act. To facilitate this review and oversight, the office
8 shall submit to the committees the reports required by this act,
9 and such other reports as shall be called for by the committees
10 from time to time.

1 16. If any section, subsection, paragraph, sentence or other
2 part of this act is adjudged unconstitutional or invalid, such
3 judgment shall not affect, impair or invalidate the remainder of this
4 act, but shall be confined in its effect to the section, subsection, para-
5 graph, sentence or other part of this act directly involved in the
6 controversy in which said judgment shall have been rendered.

1 17. There is hereby appropriated to the Office of the Ombudsman
2 for the Institutionalized Elderly the sum of ***[\$300,000.00]***
3 *\$150,000.00*.

1 18. This act shall take effect immediately.

SENATE, No. 3149

STATE OF NEW JERSEY

INTRODUCED MARCH 21, 1977

By Senators FAY, DUMONT, PARKER, MARTINDELL, ZANE
and DUNN

Referred to Committee on Institutions, Health and Welfare

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1 BE IT ENACTED *by the Senate and General Assembly of the State*
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1 1. The Legislature hereby finds that in recognition of the different
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3 groups in the general population, numerous health care facilities
4 have been constructed and placed in operation to provide specialized
5 health and health related services to particular such groups; that
6 in providing such services to the elderly it is essential to recognize
7 that while the members of this age group possess the same civil and
8 human rights as members of every other age group, such rights
9 may be far more difficult for certain of the elderly to secure since
10 such persons may be afflicted with physical and mental infirmities,
11 deprived of the comfort and counsel of family and friends, and
12 forced to exist with minimum economic resources, all of which may
13 preclude them from defending and acting in their own best interests;
14 and, that to the degree that certain of the elderly may experience
15 difficulty in securing their civil and human rights as patients, resi-
16 dents and clients of the health care facilities created to serve their
17 specialized needs and problems, it is the obligation of the State
18 to take appropriate action through the creation of an adequate legal
19 framework by which those difficulties may be eliminated.

20 The Legislature, therefore, declares that it is the public policy
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17 veterans hospitals, chronic disease hospitals, psychiatric hospitals,
18 mental hospitals, mental retardation centers or facilities, day care
19 facilities for the elderly, medical day care centers, and boarding
20 homes or other homes for the sheltered care;

21 d. "Government agency" means any department, division, office,
22 bureau, board, commission, authority, or any other agency or
23 instrumentality created by the State, or to which the State is a
24 party, or by any county or municipality, which is responsible for
25 the regulation, visitation, inspection or supervision of facilities, or
26 which provides services to patients, residents or clients of facilities;

27 e. "Guardian" means any person with the legal right to manage
28 the financial affairs and protect the rights of any patient, resident
29 or client of a facility who has been declared a mental incompetent by
30 a court of competent jurisdiction;

31 f. "Institutionalized elderly" or "elderly" means any adult person
32 60 years of age or older who is a patient, resident or client of any
33 facility;

34 g. "Office" means the Office of the Ombudsman for the Institu-
35 tionalized Elderly established herein;

36 h. "Ombudsman" means the administrator and chief executive
37 officer of the Office of the Ombudsman for the Institutionalized
38 Elderly;

39 i. "Patient, resident or client" means any elderly person who is
40 receiving treatment or care in any facility in all its aspects includ-
41 ing, but not limited to, admission, retention, confinement, commit-
42 ment, period of residence, transfer, discharge, and any instances
43 directly related to such status.

1 3. There is hereby established in the Executive Branch of the
2 State Government the Office of the Ombudsman for the Institution-
3 alized Elderly. For the purposes of complying with the provisions
4 of Article V, Section IV, paragraph 1 of the New Jersey Constitu-
5 tion, the Office of the Ombudsman for the Institutionalized Elderly
6 is hereby allocated to the Department of Community Affairs, but,
7 notwithstanding said allocation, the said office shall be independent
8 of any supervision or control by the department or by any board or
9 officer thereof.

1 4. The administrator and chief executive officer of the office shall
2 be the ombudsman, who shall be a person qualified by training and
3 experience to perform the duties of the office. The ombudsman
4 shall be appointed by the Governor, with the advice and consent of
5 the Senate, and shall serve at the pleasure of the Governor during
6 the Governor's term of office and until the appointment and qualifi-
7 cation of the ombudsman's successor. He shall devote his entire
8 time to the duties of his position and shall receive such salary as
9 shall be provided by law. Any vacancy occurring in the position of
10 ombudsman shall be filled in the same manner as the original
11 appointment; provided, however, that whenever the ombudsman
12 dies, resigns, becomes ineligible to serve for any reason, or is
13 removed from office, the Governor shall appoint an acting ombuds-
14 man who shall serve until the appointment and qualification of the
15 ombudsman's successor, but in no event longer than 6 months from
16 the occurrence of the vacancy, and who shall exercise during such
17 period all the powers and duties of the ombudsman pursuant to the
18 provisions of this act.

1 5. The ombudsman, as administrator and chief executive officer
2 of the office, shall:

3 a. Administer and organize the work of the office and establish
4 therein such administrative subdivisions as he may deem necessary,
5 proper and expedient. He may formulate and adopt rules and
6 regulations and prescribe duties for the efficient conduct of the
7 business, work and general administration of the office. He may

8 delegate to subordinate officers or employees in the office such of
9 his power as he may deem desirable to be exercised under his super-
10 vision and control;

11 b. Appoint and remove such stenographic, clerical and other
12 secretarial assistants as may be required for the proper conduct
13 of the office, subject to the provisions of Title 11 (Civil Service)
14 of the Revised Statutes, and other applicable statutes, and within
15 the limits of funds appropriated or otherwise made available
16 therefor. In addition, and within such funding limits, the ombuds-
17 man may appoint, retain or employ, without regard to the provisions
18 of the said Title 11 (Civil Service), or any other statutes, such
19 officers, investigators, experts, consultants or other professionally
20 qualified personnel on a contract basis or otherwise as he deems
21 necessary.

22 c. Appoint and employ, notwithstanding the provisions of
23 P. L. 1944, c. 20 (C. 52:17A-1 et seq.), a general counsel and such
24 other attorneys or counsel as he may require, for the purpose,
25 among other things, of providing legal advice on such matters as
26 the ombudsman may from time to time require, of attending to and
27 dealing with all litigation, controversies and legal matters in which
28 the office may be a party or in which its rights and interests may
29 be involved, and of representing the office in all proceedings or
30 actions of any kind which may be brought for or against it in any
31 court of this State. With respect to all of the foregoing, such
32 counsel and attorneys shall be independent of any supervision or
33 control by the Attorney General or by the Department of Law and
34 Public Safety, or by any division or officer thereof;

35 d. Have authority to adopt and promulgate pursuant to law
36 such rules and regulations as he deems necessary to carry out the
37 purposes of this act;

38 e. Maintain suitable headquarters for the office and such other
39 quarters as he shall deem necessary to the proper functioning of
40 the office;

41 f. Solicit and accept grants of funds from the Federal Government
42 and from other public and any private sources for any of the
43 purposes of this act; provided, however, that any such funds shall
44 be expended only pursuant to an appropriation made by law;

45 g. Perform such other functions as may be prescribed in this act
46 or by any other law.

1 6. The Office of the Ombudsman for the Institutionalized Elderly
2 shall have as its basic objective that of promoting, advocating and
3 insuring, as a whole and in particular cases, the adequacy of the
4 care received, and the quality of life experienced, by elderly

5 patients, residents and clients of facilities within this State. In
6 determining what elements are essential to adequate care and
7 quality of life, the ombudsman shall consider the unique medical,
8 social and economic needs and problems of the elderly as patients,
9 residents and clients of facilities and as citizens and community
10 members.

1 7. a. The office shall establish and implement procedures for
2 eliciting, receiving, processing, responding to and resolving com-
3 plaints from patients, residents or clients of facilities, the relatives
4 or guardians of such persons, or from interested citizens, public
5 officials, or government agencies having an interest in the matter.

6 b. When the office receives a complaint or otherwise encounters
7 a deficiency that pertains to compliance with State or Federal
8 laws or regulations or rules administered by any government
9 agency, it shall make referral thereof directly to the appropriate
10 government agency for action.

11 c. When the complaint received or the investigation conducted
12 by the office discloses facts that it determines warrants the institu-
13 tion of civil proceedings by a government agency against any
14 person or government agency, the matter shall be referred to the
15 government agency with authority to institute such proceedings.

16 d. When the complaint received or the investigation conducted
17 by the office reveals information in relation to the misconduct or
18 breach of duty of any officer or employee of a facility or a govern-
19 ment agency, it shall refer the matter to the appropriate authorities
20 for such action as may be necessary.

21 e. When the complaint received or the investigation conducted
22 by the office discloses information or facts indicating the com-
23 mission of criminal offenses or violations of standards of pro-
24 fessional conduct, it shall refer the matter, as appropriate, to the
25 Attorney General, county prosecutor, or any other law enforce-
26 ment official that has jurisdiction to prosecute the crime, or to the
27 professional licensing board concerned.

28 f. The government agency, prosecuting agency or professional
29 licensing board, as the case may be in this section, shall report to
30 the office on its findings and actions with respect to all such
31 referrals within 30 days after receipt thereof and every 30 days
32 thereafter until final action on each such referral. The office shall
33 monitor all such referrals and responses and maintain a record
34 thereof. The office shall be authorized to make disclosure of such
35 information as appropriate and as may be necessary to resolve
36 the matter referred.

37 g. In the event that the complaint of a patient, resident or
38 client or class of patients, residents or clients of a facility or
39 facilities cannot be resolved satisfactorily through negotiation with
40 the facility or the appropriate government agency or that an act,
41 practice, policy or procedure of a facility or government agency
42 does or may adversely affect the health, safety, welfare or civil
43 or human rights of a patient resident or client or class of patients,
44 residents or clients of a facility or facilities the office may recom-
45 mend to the appropriate authorities civil litigation on behalf of
46 such patient, resident or client or class of patients, residents or
47 clients as it deems appropriate. The office may institute actions
48 for injunctive relief or civil damages.

1 8. a. The office shall establish and implement procedures for
2 conducting investigations.

3 b. Acting on complaint, the office may, notwithstanding any
4 referral pursuant to section 7. b. of this act, investigate any
5 act, practice, policy or procedure of any facility or government
6 agency that does or may adversely affect the health, safety,
7 welfare or civil or human rights of any patient, resident or client
8 of a facility.

9 c. Acting on its own initiative, the office may investigate any
10 act, practice, policy or procedure of any facility or government
11 agency which it determines does or may adversely affect the
12 health, safety, welfare or civil or human rights of any patient,
13 resident or client in a facility.

14 d. In an investigation the office may:

15 (1) Make the necessary inquiries and obtain such information
16 as it deems necessary;

17 (2) Hold private hearings or public hearings;

18 (3) Enter, without notice, and, after notifying the person in
19 charge of its presence, inspect the premises of a facility or govern-
20 ment agency and inspect there any books, files, medical records or
21 other records that pertain to patients, residents or clients and are
22 required by law to be maintained by the facility or government
23 agency;

24 (4) Compel at a specific time and place, by subpoena, the ap-
25 pearance and sworn testimony of any person who the office
26 reasonably believes may be able to give information relating to
27 a matter under investigation; or

28 (5) Compel any person to produce at a specific time and place,
29 by subpoena any documents, books, records, papers, objects, or
30 other evidence which the office reasonably believes may relate to
31 a matter under investigation.

32 e. The office need not investigate any complaint where it
33 determines that:

34 (1) The complaint is trivial, frivolous, vexatious or not made
35 in good faith;

36 (2) The complaint has been too long delayed to justify present
37 investigation;

38 (3) The resources available, considering the established priori-
39 ties, are insufficient for an adequate investigation; or

40 (4) The matter complained of is not within the investigatory
41 authority of the office.

1 9. The office shall acknowledge complaints, report its findings,
2 make recommendations, gather and disseminate information and
3 other material, and publicize its existence, all as herein provided:

4 a. If a complaint identifies the complainant, the office shall
5 acknowledge the receipt of such complaint and advise the com-
6 plainant of any action taken or opinions and recommendations
7 made by it in connection with the matter complained of.

8 b. Following an investigation the office may report its opinions
9 or recommendations to the party involved. The office may request
10 the party affected by such opinions or recommendations to notify
11 it within a specified time of any action taken by such party on its
12 recommendations. The office, may make public the complaint, the
13 act, practice, policy or procedure of a facility or government agency
14 that does or may adversely affect the health, safety, welfare or
15 civil or human rights of a patient, resident or client, its opinions
16 or recommendations, the response of the facility or government
17 agency to such opinions or recommendations or any further
18 opinions or recommendations of the office.

19 c. The office may recommend to the relevant government agency
20 changes in the rules and regulations adopted or proposed by such
21 government agency, which do or may adversely affect the health,
22 safety, welfare or civil or human rights of any patient, resident
23 or client in a facility.

24 d. The office may propose regulations to and petition any
25 government agency to adopt such regulations, or regulations
26 similar in content, that affect the health, safety, welfare or civil
27 or human rights of any patient, resident or client in a facility.

28 e. The office may recommend to the relevant government agency
29 that a facility shall no longer be permitted to receive patients or
30 residents or payments under the New Jersey Medical Assistance
31 and Health Services Act, P. L. 1968, c. 413 (C. 30:4D-1 et seq.).

32 f. The office may recommend to the relevant government agency
33 that it initiate procedures for assessment of penalties, revocation,
34 suspension, the placing on probationary or provisional license or

35 denial of a license against a facility or a proposed facility as
36 appropriate.

37 g. The office may publicize its existence, function and activities
38 through public relations with government and private organiza-
39 tions and groups and the public at large in general and with
40 patients, residents and clients in facilities in particular.

41 h. The office shall report to the Governor and the Legislature
42 on or before September 30 of each year, which report shall sum-
43 marize its activities for the preceding fiscal year, document the
44 significant problems in the systems of care and services for the
45 elderly, indicate and analyze the trends in such systems of care
46 and services, and set forth any opinions or recommendations which
47 will further the State's capacity in resolving complaints, en-
48 couraging quality care and ensuring the health, safety, welfare
49 or civil and human rights of elderly patients, residents and clients
50 of facilities, including suggestions or recommendations for legisla-
51 tive consideration and for changes in the policy or rules and
52 regulations of government agencies. The annual report shall be
53 available to the public.

1 10. a. The office shall promote community contact and involve-
2 ment with patients, residents and clients of facilities through the
3 use of volunteers and volunteer programs. The volunteers, as
4 private citizens, may exercise, but need not be limited to, such
5 functions as visitation, consultation, problem solving, eliciting
6 complaints, and, generally serving as advocates on behalf of the
7 institutionalized elderly.

8 The office shall develop and propose programs for use, training,
9 and coordination of volunteers and may:

10 (1) Establish and conduct recruitment programs for volunteers;

11 (2) Establish and conduct training seminars, meetings and other
12 programs for volunteers and supply personnel, written materials
13 and such other reasonable assistance including publicizing their
14 activities as may be deemed necessary;

15 (3) Elicit the support of, and cooperate with, appropriate
16 private, nonprofit and voluntary agencies and community groups
17 in the development and coordination of volunteer programs and
18 activities;

19 (4) Establish a reporting system volunteers can use to document
20 the major problems and concerns affecting the patients, residents
21 or clients of facilities;

22 (5) Reimburse volunteers for some or all their actual expenses,
23 including, but not limited to, telephone and mileage incurred in
24 performance of their duties under this act;

25 (6) Encourage, cooperate with and assist the development and
26 operation of referral services where current, valid and reliable
27 information on facilities and alternatives to institutionalization
28 can be secured by elderly persons in need of these services and
29 the general public;

30 (7) Request the participation and advice of such government
31 agencies and other entities or persons as the office may deem ap-
32 propriate or necessary to the development of volunteer programs
33 and the effective use of volunteers;

34 (8) Establish and conduct meetings and other programs for
35 administrators, professional personnel, and other personnel em-
36 ployed by or in contract with the facilities.

37 b. The office may assist in the development and use, by patients,
38 residents or clients of facilities, of councils and other forums
39 which permit such patients, residents or clients to discuss and
40 communicate, on a continuing basis, their views on the strengths
41 and weaknesses of the operations of the facility and on the quality
42 of care provided and quality of life fostered. Memberships on
43 such councils shall be determined by the patients, residents or
44 clients of the particular facility and may include, but shall not be
45 limited to, such patients, residents or clients, interested relatives,
46 friends or community persons. Assistance by the office may in-
47 clude, but shall not be limited to, conference with administrators,
48 operators or managers of facilities on the purpose and function
49 of such councils and, upon request, participation in the formation
50 of a council which the office deems appropriate to the individual
51 needs of the facility and its patients, residents or clients.

52 In implementing the provisions of this section the ombudsman
53 shall coordinate the efforts of the office concerning volunteers and
54 councils with all relevant government agencies, and with the
55 administrators of such private facilities as he may deem appro-
56 priate, to insure coordination and avoid duplication of effort, so
57 that the volunteer programs and councils developed and supported
58 by the office may genuinely serve the interests of the institutional-
59 ized elderly without in any way disrupting the legitimate function-
60 ing of any facility in this State.

1 11. a. Any correspondence or written communication from any
2 patient, resident or client of a facility to the office shall, if delivered
3 to or received by the facility, be promptly forwarded, unopened,
4 by the facility to the office. Any correspondence or written com-
5 munication from the office to any patient, resident or client of a
6 facility shall, if delivered to or received by the facility, be promptly
7 forwarded, unopened, by the facility to such patient, resident, or
8 client.

9 b. The office shall prepare and distribute to each facility written
10 notices which set forth the address and telephone number of the
11 office, a brief explanation of the function of the office, the procedure
12 to follow in filing a complaint and other pertinent information.

13 The administrator of each facility shall ensure that such written
14 notice is given to every patient, resident or client or his guardian
15 upon admission to the facility and to every person already in
16 residence or his guardian. The administrator shall also post such
17 written notice in a conspicuous, public place in the facility in the
18 number and manner set forth in the guidelines adopted by the office.

19 c. The office shall inform patients, residents or clients, their
20 guardians or their families, of their rights and entitlements under
21 State and Federal laws and rules and regulations by means of the
22 distribution of educational materials and group meetings.

23 d. The office shall facilitate the filing of complaints with the office
24 concerning matters within the authority of the office. The measures
25 taken in connection therewith shall include, but need not be limited
26 to, maintenance of a toll-free telephone, either by the office or in
27 conjunction with the Division on Aging, at least during regular
28 working hours of the office for the filing of complaints.

1 12. The office may request from any government agency, and
2 said agency is hereby authorized and directed to provide, such
3 cooperation and assistance, services and data as will enable the
4 office properly to perform or exercise any of its functions, duties
5 and powers under the provisions of this act.

1 13. a. The office shall maintain confidentiality with respect to
2 all matters in relation to any complaint or investigation together
3 with identities of the complainants, witnesses or patients, residents
4 or clients involved, unless such persons authorize, in writing, the
5 release of such information, except for such disclosures as may be
6 necessary to enable the office to perform its duties and to support
7 any opinions or recommendations that may result from a complaint
8 or investigation. The investigatory files of the office, including
9 all complaints and responses of the office to complaints, shall be
10 maintained as confidential information. Release of pertinent
11 records shall be at the discretion of the ombudsman. Nothing
12 herein contained shall preclude the use by the office of material in
13 its files, otherwise confidential, for the preparation and disclosure
14 of statistical, case study and other pertinent data, provided that
15 in any such use there shall be no disclosure of the identity or the
16 means for discovering the identity of particular persons.

17 b. Any person conducting or participating in any examination
18 of a complaint or an investigation who shall disclose to any person
19 other than the office, or those authorized by the ombudsman to
20 receive it, the name of any witness examined, or any information
21 obtained or given upon such examination or investigation is a
22 disorderly person.

23 c. Any statement or communication made by the office relevant
24 to a complaint received by, proceedings before, or investigative
25 activities of, the office, and any complaint or information made or
26 provided in good faith by any person, shall be absolutely privileged
27 and such privilege shall be a complete defense in any action which
28 shall allege libel or slander.

29 d. The office shall not be required to testify in any court with
30 respect to matters held to be confidential in this section except as
31 the court may deem necessary to enforce the provisions of this act.

1 14. a. No discriminatory, disciplinary or retaliatory action shall
2 be taken against any officer or employee of a facility or govern-
3 ment agency by such facility or government agency or against any
4 patient, resident, or client of a facility or guardian or family
5 member thereof, or volunteer, for any communication by him with
6 the office or for any information given or disclosed by him in good
7 faith to aid the office in carrying out its duties and responsibilities.
8 Any person who knowingly or willfully violates the provisions of
9 this subsection is guilty of a misdemeanor.

10 b. Any person who willfully hinders the lawful actions of the
11 office or willfully refuses to comply with its lawful demands,
12 including the demand of immediate entry into and inspection of
13 a facility or government agency or the demand of immediate access
14 to a patient, resident or client thereof, or who offers any compensa-
15 tion, gratuity, or promise thereof to the office in an effort to affect
16 the outcome of any matter which is being investigated, or is likely
17 to be investigated shall be subject to a penalty of not more than
18 \$1,000.00. Such penalty shall be recoverable by the State in a
19 civil action by a summary proceeding under "the penalty enforce-
20 ment law" (N. J. S. 2A:58-1 et seq.). The county district court
21 of the county in which the offense is alleged to have occurred
22 shall have jurisdiction to enforce said penalty enforcement law
23 upon complaint of the office or any other person. Each violation
24 of this act shall constitute a separate offense.

25 c. The office may bring suit in any court of competent jurisdiction
26 to enforce any of the powers enumerated in this act.

1 15. The Legislature through the Senate and Assembly Standing
2 Committees on Institutions, Health and Welfare, or such other
3 committee or committees as may be designated from time to time
4 by the President of the Senate and Speaker of the General
5 Assembly, respectively shall review, on a continuous basis, the
6 development, administration and operation of the office provided
7 for in this act. To facilitate this review and oversight, the office
8 shall submit to the committees the reports required by this act,
9 and such other reports as shall be called for by the committees
10 from time to time.

1 16. If any section, subsection, paragraph, sentence or other
2 part of this act is adjudged unconstitutional or invalid, such
3 judgment shall not affect, impair or invalidate the remainder of this
4 act, but shall be confined in its effect to the section, subsection, para-
5 graph, sentence or other part of this act directly involved in the
6 controversy in which said judgment shall have been rendered.

1 17. There is hereby appropriated to the Office of the Ombudsman
2 for the Institutionalized Elderly the sum of \$300,000.00.

1 18. This act shall take effect immediately.

SPONSORS' STATEMENT

The purpose of this bill is to establish the Office of the Ombudsman for the Institutionalized Elderly within the Executive branch of the State Government, and to make an appropriation.

As defined in this bill, the institutionalized elderly means any adult person 60 years of age or older who is a patient, resident or client of any facility or institution whether public or private providing health or health related services, which is subject to regulation, visitation, inspection, or supervision by any governmental agency. Facilities include, but are not limited to, nursing homes, skilled nursing homes, intermediate care facilities, extended care facilities, convalescent homes, rehabilitation centers, homes for the aged, special hospitals, veterans hospitals, chronic disease hospitals, psychiatric hospitals, mental hospitals, mental retardation centers or facilities, day care facilities for the elderly, medical day care centers, and boarding homes or other homes for sheltered care.

The current State population of institutionalized elderly exceeds forty thousand and is increasing. At present, a State Government official funded with Federal moneys, known as the Nursing Home Ombudsman, is located in the Department of Community Affairs with limited powers and duties with respect to but one component of the institutionalized elderly population of the State—i.e. those in nursing homes.

This bill would guarantee to the institutionalized elderly an adequate legal framework through which to centralize and coordinate responsibilities for the interests and welfare of these citizens; and would establish the Office of the Ombudsman for the Institutionalized Elderly with sufficient powers and authority to initiate actions to secure, preserve and promote, the health, safety, welfare and civil and human rights of New Jersey's institutionalized elderly—rights to which they are morally entitled and of which they have for far too long been deprived.

This bill recognizes the different health and health related problems experienced by various age groups in the general population, and the fact that numerous health care facilities have been constructed and placed in operation to provide specialized health and health related services to such groups. In providing such services to the elderly, it is essential to recognize that while the members of this age group possess the same civil and human rights as members of every other age group, such rights may be far more difficult for certain of the elderly to secure. Such persons may be afflicted with physical and mental infirmities, deprived of the comfort and counsel of family and friends, increasingly isolated from the community, and forced to exist with minimum economic resources, all of which may preclude them from defending and acting in their own best interests. To the degree that certain of the elderly may experience difficulty in insuring their own well being and in securing their civil and human rights, as patients, residents, and clients of the health care facilities serving their specialized needs and problems, it is the obligation of the State to take appropriate action through the creation of an adequate legal framework by which those difficulties may be eliminated.

This bill declares that it is the public policy of this State 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. To this end, there is established as an agency of the State Government, the Office of the Ombudsman for the Institutionalized Elderly, to receive, investigate and resolve complaints concerning certain health care facilities serving the elderly, and to initiate actions, 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.

SENATE INSTITUTIONS, HEALTH AND WELFARE
COMMITTEE

STATEMENT TO
SENATE, No. 3149

STATE OF NEW JERSEY

DATED: APRIL 18, 1977

This bill creates an Office of the Ombudsman for the Institutionalized Elderly within the executive branch of the State government.

The broad objective of the bill is to promote and secure for the elderly who are patients, residents or clients of health care facilities the civil and human rights guaranteed to all citizens of the United States.

The bill grants extensive powers to the office, giving it the responsibility to investigate complaints and initiate actions concerning the deprivation of rights and the health, safety and welfare of the "institutionalized elderly" in all "facilities." The latter two terms are broadly defined, so that the "institutionalized elderly" encompasses senior citizens who are cared for in day care centers and clinics as temporary clients or outpatients as well as long-term inpatients of nursing homes and mental hospitals. The term "facilities" encompasses all facilities but prisons and general hospitals, whether public or private. The Office of the Ombudsman for the Institutionalized Elderly would also be responsible for monitoring the activities of State agencies such as the Department of Health and Division of Medicaid and for promoting community contact with the institutionalized elderly through the use of volunteer programs.

The bill "allocates" the Office of Ombudsman to the Department of Community Affairs for purposes of complying with the provision of the New Jersey Constitution that requires all instrumentalities of State government to be allocated among not more than 20 principal departments. However, the office would not in any manner be under the supervision or control of the department, allowing it to function as an independent "advocacy" body.

The bill carries an appropriation of \$300,000.00.

Discussion in committee concerned the following questions: 1) whether some of the functions of the Office of Ombudsman would unnecessarily duplicate existing responsibilities of the Department of Health and the Division of Medicaid in the Department of Human

Services and 2) whether the office might not be more appropriately attached to the Department of the Public Advocate rather than the Department of Community Affairs. After listening to testimony from the Departments of Health, Community Affairs and the Public Advocate, the committee was satisfied that there would be no duplication of services and that the allocation of the Office to the Department of Community Affairs is appropriate.

REFERENCE USE ONLY

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SENATE INSTITUTIONS, HEALTH AND WELFARE
COMMITTEE

STATEMENT TO
SENATE, No. 3149

STATE OF NEW JERSEY

DATED: APRIL 25, 1977

— This bill creates an Office of the Ombudsman for the Institutionalized Elderly within the executive branch of the State Government.

The Office of the Ombudsman would have as its basic objective that of promoting, advocating and insuring, as a whole and in particular cases, the adequacy of the care received and the quality of life experienced, by elderly patients, residents and clients of facilities within this State. This bill would allow the office to establish and implement procedures for eliciting, receiving, processing, responding to and resolving complaints from elderly patients, residents or clients of facilities or from interested citizens, public officials or government agencies having an interest in matters related to such complaints.

For the purposes of this bill, "facility" is defined as any institution offering health or health related services for the institutionalized elderly. Such facilities would include, but not be limited to, skilled nursing homes, intermediate care facilities, extended care facilities, boarding homes, homes for sheltered care, convalescent homes, rehabilitation centers, homes for the aged, special hospitals, mental hospitals, mental retardation centers, day care facilities for the elderly and medical day care centers. There are approximately 500 such institutions in the State which service the over 40,000 institutionalized elderly. The "institutionalized elderly" are defined to be adult persons 60 years of age or older who are patients, residents or clients of any facility.

This bill would "allocate" the Office of the Ombudsman to the Department of Community Affairs so as to comply with the provision of the New Jersey Constitution that requires all instrumentalities of State Government to be allocated among the principal departments. However, the office would not be under the control of the department, allowing it to function as an independent body.

The bill carries an appropriation of \$300,000.00.

Discussion in committee concerned the following two questions:

(1) Whether or not some of the functions of the Office of the Ombudsman would unnecessarily duplicate existing responsibilities of the Department of Health and the Division of Medicaid in the Department of Human Services; and (2) whether the office might not be more appropriately attached to the Department of the Public Advocate rather than the Department of Community Affairs.

On the first point, the committee determined that there would be no duplication of services because the Office of the Ombudsman would be devoted exclusively to defending and protecting the interests of the institutionalized elderly. Its powers would not be limited to the interests of certain limited kinds of patients, as are the powers of the Division of Medicaid, nor would it be limited to oversight of certain aspects of certain facilities as is the Department of Health. In fact, the committee learned that a special office such as that created by this bill has been recommended by the Federal Government, specifically as a means of ending the overlapping and duplication of services to the institutionalized elderly and to assure the elderly and their families of an independent office through which to centralize and coordinate responsibilities for their interests and welfare. Both the Departments of Health and the Public Advocate supported the creation of the Office of the Ombudsman.

On the question of whether the office should not instead be placed in the Department of the Public Advocate, the committee learned that that department does not have the statutory authority to deal with particular cases and takes the position that this office is more properly allocated to the Department of Community Affairs. Furthermore, the Office of the Ombudsman would handle health and health related problems which would be better solved by trained nurses and social workers than attorneys, who predominate in the Department of the Public Advocate. Finally, the committee supported the bill's allocation of the office to the Department of Community Affairs, because that department is already responsible for supervision of Offices on Aging in all 21 counties, and can work closely with the Office of the Ombudsman on handling problems and providing information to the elderly.

SENATE REVENUE, FINANCE AND
APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3149

STATE OF NEW JERSEY

DATED: MAY 2, 1977

The purpose of this bill is to establish the Office of the Ombudsman for the Institutionalized Elderly within the Executive branch of the State Government, and to make an appropriation.

As defined in this bill, the institutionalized elderly means any adult person 60 years of age or older who is a patient, resident or client of any facility or institution whether public or private providing health or health related services, which is subject to regulation, visitation, inspection, or supervision by any governmental agency. Facilities include, but are not limited to, nursing homes, skilled nursing homes, intermediate care facilities, extended care facilities, convalescent homes, rehabilitation centers, homes for the aged, special hospitals, veterans hospitals, chronic disease hospitals, psychiatric hospitals, mental hospitals, mental retardation centers or facilities, day care facilities for the elderly, medical day care centers, and boarding homes or other homes for sheltered care.

The current State population of institutionalized elderly exceeds forty thousand and is increasing. At present, a State Government official funded with Federal moneys, known as the Nursing Home Ombudsman, is located in the Department of Community Affairs with limited powers and duties with respect to but one component of the institutionalized elderly population of the State—i.e. those in nursing homes.

This bill would guarantee to the institutionalized elderly an adequate legal framework through which to centralize and coordinate responsibilities for the interests and welfare of these citizens; and would establish the Office of the Ombudsman for the Institutionalized Elderly with sufficient powers and authority to initiate actions to secure, preserve and promote, the health, safety, welfare and civil and human rights of New Jersey's institutionalized elderly—rights to which they are morally entitled and of which they have for far too long been deprived.

This bill recognizes the different health and health related problems experienced by various age groups in the general population; and the fact that numerous health care facilities have been constructed and placed in operation to provide specialized health and health related services to such groups. In providing such services to the elderly, it is essential to recognize that while the members of this age group possess the same civil and human rights as members of every other age group, such rights may be far more difficult for certain of the elderly to secure. Such persons may be afflicted with physical and mental infirmities, deprived of the comfort and counsel of family and friends, increasingly isolated from the community, and forced to exist with minimum economic resources, all of which may preclude them from defending and acting in their own best interests. To the degree that certain of the elderly may experience difficulty in insuring their own well being and in securing their civil and human rights, as patients, residents, and clients of the health care facilities serving their specialized needs and problems, it is the obligation of the State to take appropriate action through the creation of an adequate legal framework by which those difficulties may be eliminated.

This bill declares that it is the public policy of this State 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. To this end, there is established as an agency of the State Government, the Office of the Ombudsman for the Institutionalized Elderly, to receive, investigate and resolve complaints concerning certain health care facilities serving the elderly, and to initiate actions, 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.

COMMITTEE AMENDMENTS

Committee amendments reduce the appropriation from \$300,000.00 to \$150,000.00 anticipating less than full year cost.

SENATE COMMITTEE AMENDMENT TO
SENATE, No. 3149

—♦—
STATE OF NEW JERSEY
—♦—

ADOPTED MAY 5, 1977

Amend page 12, section 17, line 2, omit "\$300,000.00", insert
"\$150,000.00".

REFERENCE USE ONLY

FISCAL NOTE TO
SENATE, No. 3149

STATE OF NEW JERSEY

DATED: MAY 16, 1977

Senate Bill No. 3149 creates an Office of the Ombudsman for the Institutionalized Elderly within the Executive Branch of the State Government.

The Department of Community Affairs estimates that enactment of this legislation would require a State expenditure of \$298,000.00 in fiscal 1977-78 and \$313,000.00 in fiscal 1978-79. These estimated expenses would provide for the necessary salaried positions with fringe benefits and the general operating expenses involved.

The fiscal note is based on actual cost information.

In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.

REFERENCE USE ONLY

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO
SENATE, No. 3149

STATE OF NEW JERSEY

DATED: JUNE 20, 1977

This bill creates an Office of the Ombudsman for the Institutionalized Elderly in but not of the Department of Community Affairs. Its basic objective is to promote, advocate and insure the adequacy of care received, and the quality of life experienced, by elderly patients, residents and clients of facilities in this State.

The office is empowered to investigate complaints as well as initiate actions on its own. It may look into the affairs of any facility that provides services to the Institutionalized Elderly, the criteria being that it is subject in the first instance to "regulation, visitation, inspection, or supervision by any government agency."

The legal staff of the office is to be independent of the Attorney General's Office. Investigations of complaints may be referred to another agency or conducted directly by the office.

The office is required to prepare and distribute to every facility a written notice that describes the office's function, and where and how to file a complaint. The administrator of the facility is then required to ensure that every resident, patient or client receives a personal copy of the notice. Confidentiality is required in the handling of complaints.

An annual report is required regarding the operation of the office and identification of significant problems and recommended solutions to those problems.

An appropriation of \$150,000.00 is provided for the initial operation of the office.

FROM THE OFFICE OF THE GOVERNOR

SEPTEMBER 29, 1977

FOR FURTHER INFORMATION

FOR IMMEDIATE RELEASE

ANNE BURNS

Governor Brendan Byrne today signed into law the following bills:

A-2021 - sponsored by Assemblyman Martin Herman, D-Gloucester, which is known as the "Prescription Drug Price and Quality Stabilization Act."

The bill amends the Pharmacy Act to allow advertising of prescription drug prices and establishes a Drug Utilization Review Council in the Department of Health to allow substitution of less expensive generic drugs for brand name drugs.

The Council will consist of the Commissioner of Health and the Director of the Division of Consumer Affairs serving as ex officio members and nine members appointed by the Governor for five year terms. These nine appointees will include two licensed pharmacists, two licensed physicians with pharmacological experience, three people with expertise in medical pharmacology and two members of the general public.

The Council will hold public hearings in order to prepare a list of interchangeable drug products. This list will be distributed by the Council among licensed physicians, licensed pharmacist and another person upon request.

Council members will be unsalaried but may receive up to \$1000 per year for expenses.

The act will take effect immediately.

S-3149 - sponsored by Senator John J. Fay, D-Middlesex, which creates an Office of the Ombudsman for the Institutionalized Elderly in the Department of Community Affairs.

This office will promote, advocate and insure the adequacy of care received by elderly patients, residents, and clients of facilities within the state.

The office is empowered to investigate complaints as well as initiate actions on its own. Its legal staff will be independent of the Attorney General's Office. The bill provides an appropriation of \$150,000 for the initial operation of the new office.

S-1544 - sponsored by Senator John J. Fay, D-Middlesex, which provides that when a court finds that a private nursing or convalescent home, extended care facility, intermediate care facility, boarding home or rest home is in substantial or habitual violation of the standards of health, safety and resident care set by federal or state law, the county may appoint a receiver to correct the conditions.

The complaint seeking receivership must allege that the facts have been brought to the attention of the owner or licensee of the home and that the condition has not been remedied within a reasonable period of time. The bill would also permit the county to allow the owner to correct the unacceptable conditions and to delay appointing a receiver until the owner fails to comply with the court's direction.

The legislation authorizes the receiver to hire consultants, make necessary repairs, and hire or discharge employees including the administrator or manager.

S-594 - sponsored by former Senator Anne Martindell, D-Mercer, and John J. Fay, D-Middlesex, which requires the annual disclosure of the identity of people with financial or business interests in nursing homes operating within New Jersey.

If the nursing home paid or received a total of \$2,500 or more during any fiscal year in connection with any person or any affiliate of a person who has a financial interest in the nursing home, a description of the transaction must be made to the Commissioner of Health.

Failure to file this statement will result in a penalty of not less than \$10 and no more than \$100 for each day that the statement is not filed.

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