

ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION & SOCIAL SERVICES COMMITTEE

March 6, 2002

1:50 p.m.

MEMBERS PRESENT

Senator Lyda Green, Chair
Senator Loren Leman, Vice Chair
Senator Gary Wilken
Senator Jerry Ward
Senator Bettye Davis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

SENATE BILL NO. 342

"An Act relating to the long term care ombudsman."

MOVED CSSB 342(HES) OUT OF COMMITTEE

PREVIOUS SENATE COMMITTEE ACTION

SB 342 - See HESS minutes dated 3/4/02.

WITNESS REGISTER

Kathy Koster, Administrator
Wildflower Court
Juneau, AK 99801

POSITION STATEMENT: Opposed to SB 342

Jeff Jessee, Director
Alaska Mental Health Trust Authority
Department of Revenue
550 W 7th Ave., Suite 1820
Anchorage, AK 99501

POSITION STATEMENT: Supports SB 342

ACTION NARRATIVE

TAPE 02-17, SIDE A

Number 001

CHAIRWOMAN LYDA GREEN called the Senate Health, Education &

Social Services Committee meeting to order at 1:50 p.m. Present were Senators Leman, Davis and Green.

#SB 342

SB 342-LONG TERM CARE OMBUDSMAN

SENATOR WARD moved to adopt Version F of SB 342 as the working document of the committee.

There being no objection, CHAIRWOMAN GREEN announced that the motion carried. She then explained that language was added on page 3 of Version F that specifies two reasons for which the long term care ombudsman or staff may not be denied access to a long term care facility. She then took public testimony.

MS. KATHY KOSTER, Administrator of Wildflower Court, a long-term care facility and assisted living facility in Juneau, explained that Wildflower Court is a private non-profit organization with 44 nursing home beds and 11 assisted living beds. She thanked committee members for the work they do to assure good care for elderly Alaskans and said that the long term care community in Alaska supports any kind of legislation that protects elderly Alaskans. That community believes in establishing a collaborative relationship with the ombudsman and other state agencies because they all have the common goal of providing good care. Ms. Koster said she is opposed to SB 342 because it broadens the scope of the ombudsman's responsibility beyond that required. She expressed the following two concerns.

- Language in the bill allows the ombudsman to visit residents, residents' representatives and others in order to identify problems. She expressed concern that such visits could become a fishing expedition for problems. She believes that the ombudsman should have access to facilities 24 hours per day but the problem lies in soliciting information about whether anyone has done anything wrong.
- The bill would allow the use of volunteers to identify and investigate. She believes those activities require strong skills when working with the elderly population. She believes there is a grave danger in allowing a lay person, who may not be trained in investigative techniques or medical procedures, access to highly confidential patient records and information. It takes a highly trained investigator to find out the truth of the matter and to find deeper or systemic problems.

MS. KOSTER said that long term care facilities in Alaska are required to notify state and federal surveyors for the nursing

home profession of a problem within a facility within 24 hours and the surveyors are required to investigate those problems. She believes that oversight is adequate to ensure good care. She stated support to bring Alaska's statute into compliance with federal law, but she does not support going beyond that.

1:55 p.m.

CHAIRWOMAN GREEN informed members that their packets contain letters from the Nursing Association, the Alaska Mental Health Trust Authority (AMHTA) and Carl Garver (ph) at the Mary Conrad Center.

CHAIRWOMAN GREEN then called Mr. Jesse to testify and asked him why the AMHTA feels this bill is necessary after Governor Knowles issued an executive order last year to move the long term ombudsman out of the Department of Administration to avoid any conflict of interest that some felt existed.

MR. JEFF JESSE, Executive Director of the Alaska Mental Health Trust Authority, explained that AMHTA received oversight responsibility for the Office of the Long-term Care Ombudsman last year and, in the course of taking on that responsibility, the AMHTA reviewed the statute. During that review it noticed that Alaska's statutory language was not entirely compatible with the requirements of the Older Americans Act, a federal law. Under the Older Americans Act (OAA), each state is required to have a long-term care ombudsman with certain powers and abilities as a condition of receiving funds. A volunteer program was part of the concept behind creation of the Office of the Long-term Care Ombudsman within the OAA.

Alaska's volunteer program encountered some difficulties so the office contracted with a national expert on volunteer programs to develop model training materials. Shortly after acquiring the Office of the Long-term Care Ombudsman in the AMHTA, he attended a national training forum for ombudsmen and was surprised to find this same training manual is being used in a number of states as a model. When AMHTA took on the office and realized it had excellent training materials, he set upon hiring a new ombudsman who would take on the task of gearing the volunteer program back up.

At that time, the CEO of an assisted living facility in Anchorage announced her opinion that state law does not authorize the long-term care ombudsman or volunteers to enter her facility. She then commissioned a legal opinion confirming her opinion that state law does not provide that authority, even though that

limitation is clearly inconsistent with the requirements of the federal act. The AMHTA requested a copy of that opinion but the request was denied and was told that if the ombudsman tried to assert such a right of access, litigation might result.

MR. JESSEE said that the AMHTA was focused on getting the ombudsman's office operative, not on the need for legislation. He spoke to the Attorney General's Office and national back-up centers and now feels confident that the ombudsman's office is required to have access. He noted that although he said the reason for this bill is one of compliance with federal law, more importantly it is the right way for the ombudsman's office to operate. He maintained that most nursing and assisted living homes provide very good care to older Alaskans but, like any large industry, they are not uniform in the quality of care they provide. Problems occasionally arise and, when they do, the ombudsman needs an effective mechanism to get them resolved. He surmised that SB 342 will avoid more arguing about the role of the Office of the Long term Care Ombudsman.

MR. JESSEE said he understands the industry's frustration over how that office has operated in the past. He does not believe the relationship between the providers and the long term care ombudsman has been what it should have been at all times but he maintained that the office currently has excellent staff. He is confident in their ability to put together a good program and carry it out. He urged the industry to focus on holding the AMHTA accountable for the program it operates. If the Office of the Long Term Care Ombudsman, employees, volunteers or other representatives fail to carry out the duties in a fair and appropriate manner, he encourages the industry to see that the problems are corrected. He pointed out that one reason the long term care ombudsman is not located in the office of the state ombudsman is because if the long term care ombudsman fails to properly carry out his or her duties, one avenue of recourse is to the state ombudsman. He repeated the importance of holding the office accountable for the program it delivers instead of putting barriers in its way.

CHAIRWOMAN GREEN questioned what the long term care ombudsman would have to do to investigate if it received a report of an incident in a facility that was barring access.

MR. JESSEE said it would be messy. If a person was at immediate risk, he would attempt to find some proxy to get into the home - whether that be the police or someone from assisted living licensing or Medicaid licensing. If the risk was less serious, there would probably be drawn out litigation in an attempt to

figure out who is in charge.

CHAIRWOMAN GREEN asked if access is not usually an issue.

MR. JESSEE confirmed that access is not a big issue across the state. Most homes understand the vulnerability of the population they serve and are often supportive of having others involved. He acknowledged that providers do not always see issues that arise in the same way and conflict resolution is necessary. He referred to a statement from Carl Garver in which he said the office of the long term care ombudsman operates best when it serves to mediate issues that come up in homes and to help each side see the point of view of the other. He said he could not agree more. The goal is not to drag homes through a bunch of meaningless paperwork and antagonism and negative energy. It is to try to resolve issues so that seniors are provided the best care possible.

There being no further questions or testimony, SENATOR LEMAN moved to amend Version F by deleting the words "in order" on page 1, line 11, and by changing the word "relating" to "related" on page 2, line 5. He explained that both changes were technical in nature.

CHAIRWOMAN GREEN announced that with no objections, Version F was amended.

SENATOR LEMAN then moved CSSB 342(HES) from committee with individual recommendations and its zero fiscal note.

With no objection, CHAIRWOMAN GREEN announced that CSSB 342(HES) moved to the next committee of referral.

There being no further business to come before the committee, CHAIRWOMAN GREEN announced the committee would meet on Friday, March 15, and then adjourned the meeting at 2:12 p.m.