

SB

442

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2/24/88 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

2/16/88
Mr. President:

DATE TURNED INTO OFFICE 3/23/88

State Affairs Committee considered SB 442

Older Alaskans Commission and the protection of elderly persons; and
establishing the office of the older Alaskans ombudsman

and recommended:

replace with CS SB 442 (SA) same title
 attached amendment(s) and new title

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

P. Kelly
W. Hunter

Don [Signature]
Chairman signature and recommendation

Committee Backup Attached

Senator Rick Uehling

Senate District H
Downtown, Elmendorf, Northeast Anchorage



Senate Finance Committee
Chair, International Trade Committee
Vice-Chair, State Affairs Committee
Labor & Commerce Committee

February 19, 1988

M E M O R A N D U M

TO: Senator Mitch Abood, Chair
Senate State Affairs Committee

FROM: Senator Rick Uehling

SUBJECT: Senate Bill 442

I have asked staff to provide the following background to SB 442, "An Act relating to the Older Alaskans Commission, protection of elderly persons; and establishing the Office of the Older Alaskans Ombudsman."

SB 442 is designed to do three things:

1) to bring the Older Alaskans Commission state statutes (AS 44.21.200 - 44.21.240) into compliance with federal 1987 amendments to the federal Older Americans Act of 1965.

2) to establish the Office of the State Long-Term Care Ombudsman.

3) to establish procedures for the protection of elderly persons in the State of Alaska.

The Older Alaskans Commission has heretofore voluntarily established the Office of the State Long-Term Care Ombudsman, but at this time the office does not exist under state statute and thus has no statutory powers to investigate and resolve complaints. This bill, therefore, brings the Older Alaskans Commission into compliance with the 1987 federal amendments by establishing the Office of the State Long-Term Care Ombudsman and giving it duties and powers that are protected in statute.

This bill additionally meets the requirements of the 1987 amendments to the federal Older Americans Act of 1965 by adding a section which protects those who in good faith report instances of elderly abuse. This so-called "Whistleblowers" provision ensures that a person may bring a civil action for compensatory and punitive damages against an employer or supervisor who violates this subsection, and there is a rebuttable presumption that the detrimental action by the employer or supervisor was retaliatory if it was taken within 90 days of the complaint.



Older Alaskans Commission

Box C
Juneau, Alaska 99811-0209
907/465-3250

POSITION PAPER

SB 442 ESTABLISHING THE OFFICE OF THE OLDER ALASKAN OMBUDSMAN

The Older Alaskan Commission strongly supports the passage of SB 442, although the Commission offers several amendments to enhance the protections offered to older Alaskans by this bill.

Background of the bill: The federal Older Americans Act of 1965 (OAA) has mandated for nearly a decade that each state office on aging, as a condition to receipt of federal funds for senior services, must establish and operate an ombudsman program for the investigation and resolution of complaints made by or on behalf of older individuals residing in long-term care facilities, such as nursing homes.

The Older Alaskans Commission (OAC), as the designated state agency, has operated such a program, staffed by one person, who is now known as the Senior Ombudsman.

SB 442 will bring Alaska's senior ombudsman program into compliance with new requirements under the November 29, 1987 amendments to the Older Americans Act, Public Law 100--175. Federal law now mandates that each State agency be able to provide certain legal guarantees as part of its ombudsman program, such as "whistle-blower protection" and confidentiality of client records. The new federal law seeks state authority for the ombudsman to bring legal action on behalf of individuals. Thus, it is clear that the ombudsman is now to be considered a personal advocate for the nursing home resident, a service not now duplicated by any federal, state, or local agency.

SB 442 is the first specific statutory foundation for Alaska's senior ombudsman program, which was previously operated under the general authority of AS 44.21.230(a)(7), which empowers the Older Alaskans Commission to "administer, ... federal programs as provided under... (Older Americans Act), as amended..."

To date, the senior ombudsman program in Alaska has been operating without any state statutory powers. The Senior Ombudsman handles complaints based solely on the power of

persuasion. There presently exists no protection or remedy for an employee of a nursing home who might be disciplined for having made a complaint to the Ombudsman on behalf of a resident, nor any administrative or legal enforcement if the Ombudsman should be denied access to a resident or to pertinent patient records. SB 442 will cure these deficits, which is in keeping with the intent of the new federal law.

IMPACTS OF THE BILL: In summary, the major impacts of this proposed legislation are that it:

1. Establishes Regulatory Authority for the Older Alaskans Commission.
2. Establishes an Independent Office of the Older Alaskans Ombudsman, with statutory duties and powers to protect older Alaskans residing in nursing homes.
3. Creates a corps of Volunteer Ombudsmen available to older Alaskans in every community.
4. Guarantees Ombudsman Access to nursing home clients and records.
5. Guarantees Confidentiality of Ombudsman Records.
6. Grants Immunity and Protection against Retaliation for Good Faith Reports to Ombudsman or to Division of Family and Youth Services.

The Older Alaskans Commission supports the bill as proposed, but believes it can even more effectively serve older Alaskans if amendments were made to broaden the scope of the Ombudsman's duties to include other types of "long-term care facilities," in addition to just nursing homes, such as adult residential care facilities and adult foster homes. Such amendments would be in keeping with the intent of the 1987 federal legislation which refers to the long-term care ombudsman program as including any skilled nursing facility, any intermediate care facility, and any other similar adult care home. (Sec. 302, Pub. Law 100--175.)

The Commission also proposes an amendment to allow the Ombudsman to continue some of the informal complaint investigation and resolution which he now performs for seniors in other areas closely related to the senior's ability to live as independently as possible. For instance, the Ombudsman should be able, as time and staff allow, to assist with seniors' housing, utility, or health care problems.

The Commission's suggested amendments are included, after the detailed bill analysis.

DETAILED ANALYSIS OF BILL:

1. Establishes Regulatory Authority for the Older Alaskans Commission. Section 1 of the bill grants regulation-making authority to the Older Alaskans Commission as necessary to administer the chapter, AS 44.21, and to comply with federal law. This authority will allow the Commission to meet many of the new federal Ombudsman program requirements through the promulgation of regulations consistent with federal law and the new portions of AS 44.21 contained in this bill.

2. Establishes an independent Office of the Older Alaskans Ombudsman, with statutory duties and powers. Section 2 of the bill adds new sections to AS 44.21 to establish, as required by the 1987 Older Americans Act, an "Office of the State Long-Term Care Ombudsman," titled in SB 442 as "Office of the Older Alaskans Ombudsman."

Sec. 44.21.232 enumerates the powers and duties of the Ombudsman, which include the duty to investigate and resolve complaints made by or on behalf of older Alaskan nursing home residents, about an "administrative action" which may adversely affect the health, safety, welfare, or rights of the older Alaskan.

The ombudsman is given power to issue administrative subpoenas, require testimony and production of evidence under oath, and seek enforcement of these powers in the superior court. The ombudsman is empowered to pursue administrative, legal, or other remedies on behalf of an older Alaskan residing in a nursing home in this state. (This authority is one of the specific requirements of the 1987 Older Americans Act.)

3. Creates a corps of volunteers available to older Alaskans in every community. Sec. 44.21.233 requires the ombudsman to train and certify staff, volunteers, and representatives of the office. Minimum training requirements are listed.

The ombudsman does not now have any employees, volunteers, or other representatives. As a consequence, although the Ombudsman does some circuit-riding visits to nursing homes and other facilities around the state, he is not a visible presence in the facilities who would be frequently available to residents if they have concerns or complaints. Also, a resident afraid of complaining has no assurance that anyone will be on hand locally to intercede if the resident felt that retaliation occurred as a result of having complained to the ombudsman.

SB 442 will authorize the ombudsman to deputize selected volunteers, after training and certification, to be available on a frequent basis to residents of a facility. Numerous

other states have already instituted a volunteer ombudsman program, so training materials and program guidelines are readily available for the start up of such a plan in Alaska.

4. Guarantees Ombudsman access to nursing home clients and records. Sec. 44.21.234 guarantees that the ombudsman shall have access to any nursing home and to any nursing home resident.

5. Guarantees Confidentiality of Ombudsman Records. Sec. 44.21.235 provides that records obtained or maintained by the ombudsman are confidential, not subject to disclosure under the public records law.

6. Grants Immunity and Protection against Retaliation for Good Faith Reports to Ombudsman or to Division of Family and Youth Services. Sec. 44.21.236 provides immunity from both civil and criminal liability for a good faith complainant to the ombudsman, and for the ombudsman, volunteers and representatives of the office for the good faith performance of official duties. (This is a specific requirement of the 1987 Older Americans Act.)

Sec. 44.21.237 makes it a class B misdemeanor to intentionally interfere with the ombudsman or a volunteer or representative of the office in their performance of official duties. It is also made a class B misdemeanor for the employer or supervisor of a person who makes a good faith complaint to the office to in any way "retaliate" against the complainant. (Required by 1987 Older Americans Act.)

The complainant is also given a civil cause of action for retaliation, and may seek both compensatory and punitive damages. The section creates a rebuttable presumption that any detrimental action taken against a complainant within 90 days of the complaint is retaliatory. (Required by 1987 Older Americans Act.)

Section 4 amends the Protection of the Elderly Act, AS 47.24., to prohibit an employer or supervisor of a person who makes a good faith report of harm under 47.24.110 from taking any retaliatory action against the reporter. The person who made the report of harm is given a civil cause of action for compensatory and punitive damages for such retaliation, and a rebuttable presumption about the retaliation is created.

PROPOSED AMENDMENTS:

Page 2, Sec. 2, amend to read:

"Sec 44.21.231. OFFICE OF THE OLDER ALASKANS OMBUDSMAN

(a) The office of the older Alaskans ombudsman is established in the commission.

(b) The ombudsman shall be appointed by the commission, [FOR A TERM OF FOUR YEARS AND MAY BE REAPPOINTED] and shall be in the classified service. A member of the commission who has a financial interest in a nursing home, adult residential facility, or adult foster home in the state, or who has any other conflict of interest, may not participate in the appointment of the ombudsman. The ombudsman is a full-time position, with compensation and conditions of employment determined by the commission. For budgetary and administrative purposes, the ombudsman reports to the executive director of the commission.

(c) The ombudsman may not have a financial interest in a nursing home, adult residential facility, or adult foster in the state. The commission shall adopt regulations to assure that the ombudsman, and employees and volunteers of the office, do not have a conflict of interest or an appearance of a conflict of interest.

(d) The commission shall enter into cooperative agreements regarding the operations of the office of the ombudsman, which agreements shall include investigative protocols, with other state and local agencies which have jurisdiction over nursing homes, adult residential facilities, adult foster homes, or the abuse or neglect of older Alaskans."

Page 2, line 23, amend to read: "...behalf of an older Alaskan who resides in a nursing home, adult residential facility, or adult foster home in the state..."

Page 3, line 4, amend to read: "...remedies on behalf of an older Alaskan who resides in a nursing home, adult residential facility, or adult foster home in the state."

Page 3, after line 5, insert new subsection to read:

(6) The ombudsman may investigate and resolve a complaint made by or on behalf of an older Alaskan about any issue related to the long-term care or residential situation of the older Alaskan, including but not limited to complaints regarding the older Alaskan's landlord, a senior citizens housing facility, a public assistance program, a public grants program for services to older Alaskans, public utilities, health care facilities, or health care providers. The powers of the ombudsman described under (b) of this section do not apply to this subsection.

Page 3, line 10, amend to read: "...local laws and policies relating to nursing homes, adult residential facilities, and adult foster homes in the state,..."

Page 3, lines 17--23, amend to read:

"Sec. 44.21.234. OMBUDSMAN'S ACCESS TO [NURSING HOMES] OLDER ALASKANS AND PATIENT RECORDS. (a) A person may not deny access to a nursing home, adult residential facility, or adult foster home, or to an older Alaskan by the ombudsman or an employee, volunteer, or other representative of the office.

(b) Notwithstanding the provisions of AS 44.21.232(b)(1), the ombudsman may obtain medical or other records of an older Alaskan who resides in a nursing home, adult residential facility, or adult foster home in the state only with the consent of the..."

Page 4, lines 3--6, amend to read:

"(b) The identity of a complainant or an older Alaskan [WHO RESIDES IN A NURSING HOME IN THE STATE] on whose behalf a complaint is made may not be disclosed without the consent of the identified person or the person's legal guardian, unless required by court order."

Page 4, lines 14--17, amend to read:

"Sec. 44.21.237. INTERFERENCE WITH OMBUDSMAN AND RETALIATION PROHIBITED. (a) It is unlawful to intentionally interfere with the ombudsman, or an employee, volunteer, or representative of the office, in the performance of official duties under AS 44.21.232(a)."

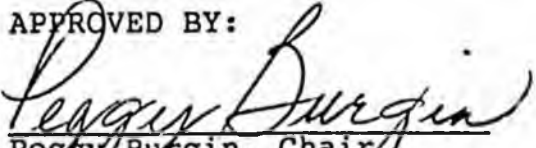
Page 5, before line 13, insert new definitions:

(2) "adult foster home" means an adult foster home licensed by the Department of Health and Social Services;

(3) "adult residential facility" has the meaning given for "facility" in AS 47.35.900 as applied to facilities that provide care for dependent adults;

(4) "senior citizen housing facility" has the meaning given in AS 44.47.620.

APPROVED BY:


Peggy Burgin, Chair
Older Alaskans Commission

DATE:

3-1-88

REVIEWED BY:


John M. Andrews, Commissioner
Department of Administration

DATE:

3/2/88

FISCAL NOTE

REQUEST: _____

Revision Date: _____ Agency Affected: Administration
 Title: Act to protect elderly and BRU: Older Alaskans Commission
 establishing office of older Alaskans ombudsman
 Sponsor: Uehling, Kerttula, Szymanski Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		49.0	49.0	59.4	59.4	59.4
TRAVEL		1.0	5.0	5.0	5.0	5.0
CONTRACTUAL		2.0	10.7	10.7	10.7	10.7
SUPPLIES		1.5	3.0	3.0	3.0	3.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		53.5	67.7	78.1	78.1	78.1

CAPITAL		-0-	-0-	-0-	-0-	-0-
---------	--	-----	-----	-----	-----	-----

REVENUE		-0-	-0-	-0-	-0-	-0-
---------	--	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND		40.1	50.8	58.6	58.6	58.6
FEDERAL FUNDS		13.4	16.9	19.5	19.5	19.5
OTHER		0				
TOTAL		53.5	67.7	78.1	78.1	78.1

POSITIONS:

FULL-TIME		1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Personal Services. The Ombudsman salary would increase by \$300 per year when moved from classified service to appointed status.

Supplies Line. Includes supplies for volunteers.

Prepared by: Connie J. Sipe *CJS* Phone: 465-3250
 Division: Older Alaskans Commission Date: _____

Approved by Commissioner: John M. Andrews *JMA* Date: 3/2/88
 Agency: Administration

Distribution (by preparer):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Position Title Paralegal Assistant I		No. of Positions 1	Range/Step 13	Barg. Unit GGU
Time Status FT	Staff Months 12	Location Anchorage		Election District
Type of Expenditure		Justification		
1	2	3		
Salary	36.1	<p>If SB 442 passes, the existing senior ombudsman program within the Older Alaskans Commission will be given a broader mandate to pursue formal remedies on behalf of aggrieved seniors in nursing homes and other adult care residential facilities. The Ombudsman's office will also be empowered to train and maintain a pool of volunteer and representatives to go into the facilities, in every community where a facility exists. The Ombudsman will need to continue present efforts to collect and maintain a uniform state data base on senior complaints. These new and continuing responsibilities require that the ombudsman have an assistant to help process and investigate complaints, coordinate the training and daily management of the volunteers; and assist in the preparation of legal documents needed for any formal actions which the ombudsman may be compelled to bring on behalf of residents.</p>		
Benefits	12.6			
Premium Pay	-0-			
Other	-0-			
Total Personal Services	48.7			
Travel	1.0			
Contractual	2.0			
Commodities	.5			
Equipment				
Other				
Total Cost				
Funding Source for Total Cost				
Federal Receipts 1002		13.0		
G. F. Match 1003				
General Fund 1004		39.2		
GF Program Receipts 1005				
Other				

**Request For
New Position**

Agency Administration
 BRU Older Alaskans Commission
 Component _____

Page 1 of 1
 Revised Date _____

FY 89

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5531 SSTA SB 442 - SB 499



Ombudsman

March 3, 1988

RECEIVED
MAR 4 1988

State of Alaska

Reply to:

3201 C Street, Suite 403
Anchorage, Alaska 98503
(907) 583-3673

P.O. Box WO
Juneau, Alaska 99811
(907) 465-4970

Senator Mitch Abood, Chairman
Senate State Affairs Committee
Post Office Box V
Juneau, Alaska 99811-3100

Dear Senator Abood:

Enclosed is a position statement on SB442, "An Act relating to the Older Alaskans Commission and the protection of elderly persons; and establishing the office of the older Alaskans ombudsman" that was referred to the Senate State Affairs Committee for a hearing on March 2, 1988 and has been held for future hearings.

As you can see from the position statement, I generally support SB442. Advocacy for seniors in private long term care facilities is a needed service. My concerns are mainly in the area of the use of term "ombudsman". It will be detrimental to this office to have other complaint handling agencies of the state using the same moniker. Our identity will quickly become watered down. This office risks suffering from the failings of other "ombudsmen". My preference of calling the new office "The Senior Citizens Advocate" apparently is precluded by the requirements of the federal act this legislation is attempting to satisfy.

I offer one additional suggestion to those offered in the position statement. I suggest in Sec. 44.21.232 (a) to have the "shall" modified to "may". It is unreasonable to expect the "ombudsman" to investigate and resolve all the complaints presented to the office. Limited resources simply do not permit such a response from a state agency and there will be some complaints that will be frivolous.

Please let me know if you have questions.

Sincerely,

Duncan C. Fowler
Ombudsman

DCF:pjc
Enclosure



ombudsman

State of Alaska

Reply to:

3201 C Street, Suite 403
Anchorage, Alaska 99503
(907) 563-3673

P.O. Box WO
Juneau, Alaska 99811
(907) 465-4970

POSITION PAPER SB442

ESTABLISHING THE OFFICE OF THE OLDER ALASKAN OMBUDSMAN

The Office of the Ombudsman strongly supports the passage of SB442. Some modifications are proposed to prevent confusion between the proposed office and the existing Office of the Ombudsman.

The Office of the Ombudsman, as established in AS 24.55, is an agency that investigates citizen complaints about the administrative acts of state agencies. (Municipalities may opt for coverage under provisions of AS 24.55.320 by passing an ordinance and paying for the service). The jurisdiction of this office is limited in scope to the administrative acts of state agencies (usually executive branch). It provides investigation and review of some agencies which directly affect the well-being of older Alaskans, e.g. the Pioneer Homes, state institutions, the Division of Public Assistance, the Division of Pioneer Benefits, and the Older Alaskans Commission.

SB442 would codify the program currently called the "Senior Citizens' Ombudsman." That program extends its jurisdiction beyond governmental boundaries into the private sector. In addition to looking at state operated long term care facilities and benefit programs, the Senior Citizen Ombudsman may review complaints about operations of privately operated rest homes and nursing facilities and programs. The State Office of the Ombudsman routinely refers complaints about long term care in the private sector to the existing "Senior Citizens Ombudsman" and we have received good reports about the services provided by the senior citizens' ombudsman and his staff.

The Office of the Ombudsman has been approached in past years by the Older Alaskans Commission to provide the services now required by the federal Older Americans Act. We have not pursued the commission's offer for two reasons:

(1) The extension of the jurisdiction of the state office from the governmental sector to the private sector has not been considered good public policy. This Office of the Ombudsman has believed the private sector should be served by a distinct office, such as that proposed by the Older Americans Act.

(2) Threaded throughout the existing state Ombudsman's Act, AS 24.55, is the requirement that the office function as a neutral party when investigating citizen complaints. The Older Americans Act, on the other hand, requires the Long Term Care Ombudsman program to become an advocate for senior programs.

The difference between providing neutral vs. advocacy services is philosophically significant. The traditional definition of an ombudsman does not support the advocacy role envisioned in the Older Americans Act. The assumption of an advocacy role can affect the manner in which those being investigated view the investigation and their acceptance of subsequent findings. This State Ombudsman's Office has enjoyed the reputation of being a neutral fact finder rather than an advocate for a complainant. This has helped to implement many of our recommendations in the past.

On the other hand, I fully support the advocacy needs of older Alaskans and I applaud the provisions in SB442 which do the following:

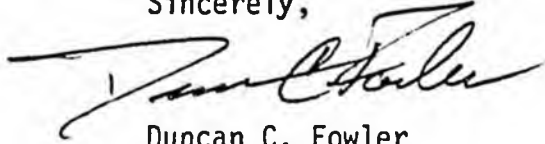
- (1) Provide immunity from liability for the staff and volunteers of the new office (Sec. 44.21.236);
- (2) Provide access to confidential records (Sec.44.21.234);
- (3) Require the records of the office be confidential (Sec. 44.21.235); and especially
- (4) Provide protection from employer retribution to "whistle blowers" (Sec. 44.21.237).

The protection provision is missing from AS 24.55, the statutes governing the State Ombudsman's Office, and there have been negative ramifications for the office because of this lack. Both the Office of the Ombudsman and the Senior Citizens Ombudsman know of complainants, or suspected complainants, losing jobs and becoming the victims of other sorts of harassment because of employer unhappiness with the complaints filed against them. We believe some complainants have lost state benefits for the same reason. SB442 could be strengthened if you insured complainants would not risk the loss of benefits or services because of retaliatory efforts by an agency reviewed by the Senior Citizen Ombudsman.

The similarity in names of the two offices discussed here will cause confusion. That issue should be clear just from reading this paper. It would be the preference of the Alaska Office of the Ombudsman if a name such as "Senior Citizen Advocate" be chosen for the senior program. However, I understand the Older Americans Act requires the use of the term "ombudsman" in the title of the office. Perhaps less confusion would occur if SB442 termed the office the "Long Term Care Ombudsman" in place of "Older Alaskans Ombudsman" and did not use the term "Office of the Ombudsman" in the measure.

In summary, the Office of the Ombudsman welcomes the statutory changes introduced in SB442, since it will provide much needed advocacy services for older Alaskans in an appropriate agency setting. All measures used to reduce confusion between the state's Office of the Ombudsman and our long term care neighbor will be much appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Duncan C. Fowler". The signature is fluid and cursive, with a prominent initial "D" and "F".

Duncan C. Fowler
Ombudsman

DCF:pjc

Senator Rick Uehling

Senate District H
Downtown, Elmendorf, Northeast Anchorage

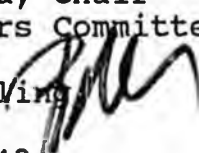


Senate Finance Committee
Chair, International Trade Committee
Vice-Chair, State Affairs Committee
Labor & Commerce Committee

February 19, 1988

M E M O R A N D U M

TO: Senator Mitch Abood, Chair
Senate State Affairs Committee

FROM: Senator Rick Uehling 

SUBJECT: Senate Bill 442

I have asked staff to provide the following background to SB 442, "An Act relating to the Older Alaskans Commission, protection of elderly persons; and establishing the Office of the Older Alaskans Ombudsman."

SB 442 is designed to do three things:

1) to bring the Older Alaskans Commission state statutes (AS 44.21.200 - 44.21.240) into compliance with federal 1987 amendments to the federal Older Americans Act of 1965.

2) to establish the Office of the State Long-Term Care Ombudsman.

3) to establish procedures for the protection of elderly persons in the State of Alaska.

The Older Alaskans Commission has heretofore voluntarily established the Office of the State Long-Term Care Ombudsman, but at this time the office does not exist under state statute and thus has no statutory powers to investigate and resolve complaints. This bill, therefore, brings the Older Alaskans Commission into compliance with the 1987 federal amendments by establishing the Office of the State Long-Term Care Ombudsman and giving it duties and powers that are protected in statute.

This bill additionally meets the requirements of the 1987 amendments to the federal Older Americans Act of 1965 by adding a section which protects those who in good faith report instances of elderly abuse. This so-called "Whistleblowers" provision ensures that a person may bring a civil action for compensatory and punitive damages against an employer or supervisor who violates this subsection, and there is a rebuttable presumption that the detrimental action by the employer or supervisor was retaliatory if it was taken within 90 days of the complaint.



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of Human Development Services
Administration on Aging

FEB 20 1988



NATIONAL ASSOCIATION OF
AREA AGENCIES ON AGING
"Reaching the Nation's Elderly"

Older Americans Act of 1965, As Amended

Incorporates Amendments Made by Older Americans Act
Amendments of 1984, Public Law ~~98-459~~ ~~October 9, 1984~~
7 100-175 -- November 29, 1987

INCORPORATES THE 1987 AMENDMENTS TO THE OLDER AMERICANS ACT,
INCLUDING IMPLICATIONS FOR *State or*
AREA AGENCIES ON AGING

Raymond C. Mastalish
Executive Director

December 10, 1987

OLDER AMERICANS ACT OF 1965, AS AMENDED

(42 U.S. CODE, § 3001, ET SEQ.)

NOVEMBER 2, 1984

INCORPORATES AMENDMENTS MADE BY OLDER AMERICANS ACT
AMENDMENTS OF 1984, PUBLIC LAW 98-459—OCTOBER 9, 1984

This compilation of the Older Americans Act of 1965, as amended, shows changes made by the Older Americans Act Amendments of 1984, Public Law 98-459, which was signed into law on October 9, 1984. The text of the Act which was not amended is set in "Roman" typeface (as in Sec. 102, which was not changed). Language which was deleted is indicated like this. Language which was added is in Italic.

OLDER AMERICANS ACT OF 1965

(Public Law 89-73)

AN ACT TO PROVIDE ASSISTANCE IN THE DEVELOPMENT OF NEW OR IMPROVED PROGRAMS TO HELP OLDER PERSONS THROUGH GRANTS TO THE STATES FOR COMMUNITY PLANNING AND SERVICES AND FOR TRAINING, THROUGH RESEARCH, DEVELOPMENT, OR TRAINING PROJECT GRANTS, AND TO ESTABLISH WITHIN THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE AN OPERATING AGENCY TO BE DESIGNATED AS THE "ADMINISTRATION ON AGING"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Older Americans Act of 1965".

TITLE I—DECLARATION OF OBJECTIVES; DEFINITIONS

DECLARATION OF OBJECTIVES FOR OLDER AMERICANS

SEC. 101. The Congress hereby finds and declares that, in keeping with the traditional American concept of the inherent dignity of the individual in our democratic society, the older people of our Nation are entitled to, and it is the joint and several duty and responsibility of the governments of the United States, ~~and of the several States and their political subdivisions~~ ~~to assist our older people to secure equal opportunity to the full and free enjoyment of the following objectives:~~

(1) An adequate income in retirement in accordance with the American standard of living.

(2) The best possible physical and mental health which science can make available and without regard to economic status.

(3) ~~Suitable housing, independently selected, designed and located with reference to special needs and available at costs which older citizens can afford.~~

and of Indian tribes

Obtaining and maintaining

~~ability to perform normal daily tasks or which threaten his or her capacity to live independently.~~

(b) ~~(1)~~ Each State, in approving area agency plans under this section, shall waive the requirement described in clause (2) of subsection (a) for any category of services described in such clause if the area agency on aging demonstrates to the State agency that services being furnished for such category in the area are sufficient to meet the need for such services in such area.

~~(2)(A) Before an area agency on aging requests a waiver under paragraph (1) of this subsection, the area agency on aging shall conduct a timely public hearing in accordance with the provisions of this paragraph. The area agency on aging requesting a waiver shall notify all interested parties in the area of the public hearing and furnish the interested parties with an opportunity to testify.~~

~~(B) The area agency on aging shall prepare a record of the public hearing conducted pursuant to subparagraph (A) and shall furnish the record of the public hearing with the request for a waiver made to the State under paragraph (1)(A).~~

(c)(1) Subject to regulations prescribed by the Commissioner, an area agency on aging designated under section 305(a)(2)(A) or, in areas of a State where no such agency has been designated, the State agency, may enter into agreements with agencies administering programs under the Rehabilitation Act of 1973, and titles XIX and XX of the Social Security Act for the purpose of developing and implementing plans for meeting the common need for transportation services of individuals receiving benefits under such Acts and older individuals participating in programs authorized by this title.

(2) In accordance with an agreement entered into under paragraph (1), funds appropriated under this title may be used to purchase transportation services for older individuals and may be pooled with funds made available for the provision of transportation services under the Rehabilitation Act of 1973, and titles XIX and XX of the Social Security Act.

STATE PLANS

Sec. 307. (a) Except as provided in section 309(a), each State, in order to be eligible for grants from its allotment under this title for any fiscal year, shall submit to the Commissioner a State plan for a two-, three-, or four-year period determined by the State agency, with such annual revisions as are necessary, which meets such criteria as the Commissioner may by regulation prescribe. Each such plan shall:

(1) ~~contain assurances that the State plan will be based upon area plans developed by area agencies on aging within the State designated under section 305(a)(2)(A) and that the State will prepare and distribute a uniform format for use by area agencies in developing area plans under section 306.~~

(2) ~~provide that each area agency on aging designated under section 305(a)(2)(A) will develop and submit to the State agency for approval an area plan which complies with the provisions of section 306.~~

(C) Whenever the State agency proposes to grant a waiver to an area agency under this subsection, the State agency shall publish the intention to grant such a waiver together with the justification for the waiver at least 30 days prior to the effective date of the decision to grant the waiver. An individual or a service provider from the area with respect to which the proposed waiver applies is entitled to request a hearing before the State agency on the request to grant such waiver. If, within the 30 day period described in the first sentence of this subparagraph, an individual or service provider requests a hearing under this subparagraph, the State agency shall afford such individual or provider an opportunity for a hearing.

(i) If the State agency waives the requirement described in clause (2) of subsection (a), the State agency shall provide to the Commissioner--

(i) a report regarding such waiver that details the demonstration made by the area agency on aging to obtain such waiver;

(ii) a copy of the record of the public hearing conducted pursuant to subparagraph (A); and

(iii) a copy of the record of any public hearing conducted pursuant to subparagraph (C).

(d) An area agency on aging may not require any provider of legal assistance under this title to reveal any information that is protected by the attorney-client privilege.

comply with all of the following requirements:

The plan shall

The plan shall

Requirement for State agency to hold hearing, if requested, when they chose to grant a waiver to the Area Agency regarding funding of priority services: Access, In-home, Legal Assistance.

Change in format of this section appears to strengthen the requirements on State agencies regarding what shall be included in the State plan.

(11) provide that subject to the requirements of merit employment systems of State and local governments, preference shall be given to individuals aged 60 or older for any staff positions (full time or part time) in State and area agencies for which such individuals qualify;

(12) provide assurances that the State will—

(A) establish and operate, either directly or by contract or other arrangement with any public agency or other appropriate private nonprofit organization which is not other than an agency or organization which is responsible for licensing or certifying long-term care services in the State or which is not an association (or an affiliate of such an association) of long-term care facilities (including any other residential facility for older individuals), a long-term care ombudsman program which will—provide an individual who will, on a full-time basis—

(i) investigate and resolve complaints made by or on behalf of older individuals who are residents of long-term care facilities relating to administrative action which may adversely affect the health, safety, welfare, and rights of such residents;

(ii) monitor the development and implementation of Federal, State, and local laws, regulations, and policies with respect to long-term care facilities in the State;

(iii) provide information as appropriate to public agencies regarding the problems of older individuals residing in long-term care facilities;

(iv) provide for training staff and volunteers and promote the development of citizen organizations to participate in the ombudsman program; and

(v) carry out such other activities as the Commissioner deems appropriate;

(B) establish procedures for appropriate access by the ombudsman to long-term care facilities and patients' records, including procedures to protect the confidentiality of such records and ensure that the identity of any complainant or resident will not be disclosed without the written consent of such complainant or resident, or upon court order;

(C) establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems, with provision for submission of such data to the agency of the State responsible for licensing or certifying long-term care facilities in the State and to the Commissioner on a regular basis; and

(D) establish procedures to ensure that any files maintained by the ombudsman program shall be disclosed only at the discretion of the ombudsman having authority over the disposition of such files, except that the identity of any complainant or resident of a long-term care facility shall not be disclosed by such ombudsman unless—

(i) such complainant or resident, or his legal representative, consents in writing to such disclosure; or

1987 AMENDMENTS - ADDITIONS/DELETIONS

The plan shall

The plan shall provide the following assurances, with respect to a long-term care ombudsman program:

The State agency will

an Office of the State Long-Term Care Ombudsman (in this paragraph referred to as the "Office") and shall carry out through the Office.

The State agency will

The State agency will

The State agency will

the individual's

IMPLICATIONS FOR ^{state} ~~AREA~~ AGENCIES ON AGING

Requires State to establish an Office of the State Long Term Care Ombudsman.

(ii) such disclosure is required by court order; and
(5) in planning and operating the ombudsman program, consider the views of area agencies on aging, older individuals, and provider agencies; A

1987 AMENDMENTS - ADDITIONS/DELETIONS

IMPLICATIONS FOR ^{State} AREA AGENCIES ON AGING

the State agency will

(F) The State agency will--

(i) ensure that no individual involved in the designation of the long-term care ombudsman (whether by appointment or otherwise) or the designation of the head of any subdivision of the Office is subject to a conflict of interest;

(ii) ensure that no officer, employee, or other representative of the Office is subject to a conflict of interest; and

(iii) ensure that mechanisms are in place to identify and remedy any such or other similar conflicts.

(G) The State agency will--

(i) ensure that adequate legal counsel is available to the Office for advice and consultation and that legal representation is provided to any representative of the Office against whom suit or other legal action is brought in connection with the performance of such representative's official duties; and

(ii) ensure that the Office has the ability to pursue administrative, legal, and other appropriate remedies on behalf of residents of long-term care facilities.

(H) The State agency will require the Office to--

(i) prepare an annual report containing data and findings regarding the types of problems experienced and complaints received by or on behalf of individuals residing in long-term care facilities, and to provide policy, regulatory, and legislative recommendations to solve such problems, resolve such complaints, and improve the quality of care and life in long-term care facilities;

(ii) analyze and monitor the development and implementation of Federal, State, and local laws, regulations, and policies with respect to long-term care facilities and services in that State, and recommend any changes in such laws, regulations, and policies deemed by the Office to be appropriate;

Ombudsman program strengthened considerably at State level:

- Avoid conflict of interest in appointment of Office head;
- Legal advice must be available to Office staff;
- Annual report required;
- Federal, State and local laws must be monitored;
- Training must be provided for ombudsman staff (paid and volunteer);
- Area or local ombudsman are to be considered a subdivision of the State Office (paid and volunteer);
- Staff (paid and volunteer) are protected from liability;
- Ombudsman must have access to patients and their records.

(iii) provide information to public agencies, legislators, and others, as deemed necessary by the Office, regarding the problems and concerns, including recommendations related to such problems and concerns, of older individuals residing in long-term care facilities;

(iv) provide for the training of the Office staff, including volunteers and other representatives of the Office, in--

(I) Federal, State, and local laws, regulations, and policies with respect to long-term care facilities in the State;

(II) investigative techniques; and

(III) such other matters as the State deems appropriate;

(v) coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illness established under part A of the Developmental Disabilities Assistance and Bill of Rights Act and under the Protection and Advocacy for Mentally Ill Individuals Act of 1986; and

(vi) include any area or local ombudsman entity designated by the State Long-Term Care Ombudsman as a subdivision of the Office. Any representative of an entity designated in accordance with the preceding sentence (whether an employee or an unpaid volunteer) shall be treated as a representative of the Office for purposes of this paragraph.

(I) The State will ensure that no representative of the Office will be liable under State law for the good faith performance of official duties.

(J) The State will--

(i) ensure that willful interference with representatives of the Office in the performance of their official duties (as defined by the Commissioner) shall be unlawful;

(ii) prohibit retaliation and reprisals by a long-term care facility or other entity with respect to such interference, retaliation, and

Continued

(13) provide with respect to nutrition services that—

(A) each project providing nutrition services will be available to individuals aged 60 or older and to their spouses, and may be made available to handicapped or disabled individuals who have not attained 60 years of age but who reside in housing facilities occupied primarily by the elderly at which congregate nutrition services are provided;

(B) primary consideration shall be given to the provision of meals in a congregate setting, except that each area agency (i) may award funds made available under this title to organizations for the provision of home delivered meals to older individuals in accordance with the provisions of subpart 2 of part C, based upon a determination of need made by the recipient of a grant or contract entered into under this title, without requiring that such organizations also provide meals to older individuals in a congregate setting; and (ii) shall, in awarding such funds, select such organizations in a manner which complies with the provisions of subparagraph (H) *subclause (1)*;

(C) each project will permit recipients of grants or contracts to charge participating individuals *solicit voluntary contributions* for meals furnished in accordance with guidelines established by the Commissioner, taking into consideration the income ranges of eligible individuals in local communities and other sources of income of the recipients of a grant or contract; and (ii) such *charges voluntary contributions* will be used to increase the number of meals served by the project involved, to facilitate access to such meals, and to provide other supportive services directly related to nutrition services;

(D) in the case of meals served in a congregate setting, a site for such services and for comprehensive supportive services is furnished in as close proximity to the majority of eligible individuals' residences as feasible, with particular attention upon a multipurpose senior center, a school, a church, or other appropriate community facility, preferably within walking distance where possible, and where appropriate, transportation to such site is furnished;

(E) each project will establish outreach activities which insure that the maximum number of eligible individuals may have an opportunity to participate;

(F) each project may establish and administer the nutrition project with the advice of persons competent in the field of service in which the nutrition project is being provided, older individuals who will participate in the program, and of persons who are knowledgeable with regard to the needs of older individuals;

(G) each project will provide special menus, where feasible and appropriate to meet the particular dietary needs

(iii) provide for appropriate sanctions with respect to such interference, retaliation, and reprisals; and

(iv) ensure that representatives of the Office shall have--

(1) access to long-term care facilities and their residents; and

(2) with the permission of a resident or resident's legal guardian, have access to review the resident's medical and social records or, if a resident is unable to consent to such review and has no legal guardian, appropriate access to the resident's medical and social records.

(K) The State agency will prohibit any officer, employee, or other representative of the Office to investigate any complaint filed with the Office unless the individual has received such training as may be required under subparagraph (G)(iv) and has been approved by the long-term care ombudsman as qualified to investigate such complaints.

The plan shall

Older Alaskans Commission
Proposed FY89 Budget
as of Oct. 21, 1987

	(1) Title I. I Adm.	(2) Title V Adm.	(3) Older Alaskans Advocate	(4) Title III	(5) Title V	(6) USDA	(7) Title IV	(8) Total
P/S	481.1	150.9	53.3	0	12.0	0	0	697.3
Travel	40.7	8.8	8.5	0	0	0	0	58.0
C/S	92.9	12.8	12.0	33.8	0	0	80.0	231.5
Supplies	6.7	1.7	.6	0	0	0	0	9.0
Equipment	0	0	0	0	0	0	0	0
Grants	0	0	0	6,541.0	1,631.4	237.0	0	8,409.4
<hr/>								
Total	621.4	174.2	74.4	6,574.8	1,643.4	237.0	80.0	9,405.2
Fed.	300.0	174.2	74.4	3,537.5	1,277.2	237.0	80.0	5,680.3
SGF	321.4	0	0	3,037.3	366.2	0	0	3,724.9

Staff positions

PFT

13.0

PPI

2.0

Staff months

168.4

List of Title III and AS 47.65 Grants FY 88

1. Alaska Legal Services, Inc.	144,223	29. Metlakatla Indian Community	78,611
2. City of Aleknagik	9,197	30. Minto Senior Services	55,801
3. Alzheimer's Family Support Group	44,933	31. Nenana Tortella Council on Aging	85,827
4. Anchor-AGE Senior Center	112,250	32. Ninilchik Senior Citizens	19,978
5. Anch. Comm. Mental Health Center	92,750	33. Nome Community Center	96,436
6. City of Bethel	109,080	34. North Star Council on Aging	254,531
7. Bristol Bay Native Association	197,958	35. North Slope Borough	160,308
8. Catholic Community Services	1,212,880	36. Older Persons Action Group	158,245
9. Mabel T. Caverly Senior Center	61,251	37. Palmer Senior Citizens	153,979
10. Chugiak Senior Center	210,259	38. Salvation Army (Transportation Program)	426,951
11. Copper River Native Association	104,413	39. Salvation Army	593,414
12. City of Cordova	73,271	40. Senior Citizens of Kodiak	138,849
13. City of Dillingham	138,636	41. Seldovia Seniors	22,902
14. Fairbanks Native Association	35,021	42. Seward Senior Citizens	52,720
15. Fairbanks Rehabilitation	73,099	43. Soldotna Seniors	17,154
16. City of Fort Yukon	55,100	44. City of Tanana	231,155
17. Foster Grandparents/Senior Companion	74,729	45. Tapraq, Inc.	13,352
18. City of Galena	3,639	46. Upper Tanana Development Corp.	218,600
19. Home Health Care, Inc.	20,236	47. Valdez Senior Citizens	33,824
20. Home Health Care (Case Management)	90,648	48. City of Wainwright	13,957
21. Homer Senior Citizens	123,570	49. Wasilla Area Seniors	120,142
22. City of Houston	8,867	Amount unobligated as of 10/1/87, will be	
23. City of Kenai	141,402	be obligated during FY 88.	5,768
24. Ketchikan Rendezvous Senior Day Svcs.	62,581	TOTAL	\$6,377,500
25. Kotzebue Senior Center	30,065		
26. Kuspuk School District	29,926		
27. Lower Kuskokwim School District	92,802		
28. City of Kenai, Day Care Program	72,200		

9715B1/1007-0477

C700	ADDITIONAL EXPLANATION FORM
------	-----------------------------------

AGENCY Administration
 BRU Older Alaskans Commission
 COMPONENT Older Alaskans Services

Page	4	of	6
Revised Date:			

FY 89

1100643

SFY '88 Grants for Title V

SE Regional Resource Center (OWS)	\$26,744	Palmer Senior Citizens (OLDS)	23,307
Adult Learning Center	9,214	Minto Village Council	20,616
Agricultural Experimental Station	38,168	Nenana Tortella Council on Aging	18,841
Alaska Historical and Transportation Museum	10,047	Nome Senior Citizens	28,130
Alaska Women's Commission	9,770	North Star Council on Aging	8,177
Anchor-AGE Center, Inc.	42,596	Older Persons Action Group (OPAG)	30,379
Anchorage Community Mental Health	8,610	Palmer Senior Citizens	31,885
Angoon, City of	16,250	People Count, Inc.	17,545
AWARE	19,807	Rendezvous Day Care	8,836
Bering Sea Women's Group	20,242	SEACAP	23,045
Bethel, City of	20,832	Salvation Army	272,421
Bristol Bay Native Association	32,940	Seward Senior Citizens	22,530
Catholic Comm. Services (SE Senior Svcs.)	115,717	Southeast Regional Resource Center	49,848
Central Council Tlingit/Haida Tribes of AK	35,989	Tanana, City of	17,277
Chugiak Senior Center	101,139	Tanana Valley Community College	22,987
Cordova, City of	20,331	Upper Tanana Development Corporation	65,662
Denakkannaaga, Inc.	9,292	Valdez Senior Citizens	33,021
City of Dillingham	10,039	Wasilla Senior Citizens	38,909
Fairbanks Arts Association	22,139	Women in Crisis and Counseling	10,269
Foster Grandparent Senior Companion (Fairbanks)	9,782	People Count (OWS)	12,277
Home Health Care, Inc.	6,809	Fairbanks Rehabilitation Association	8,479
Homer Senior Citizens, Inc.	14,442	Ninilchik	7,037
Homer Society of Natural History	36,928	North Star Council on Aging (OWS)	23,425
Kenai, City of	13,280		
Kodiak Senior Citizens	29,652	Amount unobligated as of 9/1/87 will be	
Lower Yukon Health Association	9,639	obligated during FY 88	93,476
Metlakatla Indian Community	8,123		
		TOTAL	\$1,586,900

9/15B1/1007-04/9

C700	ADDITIONAL EXPLANATION FORM
------	-----------------------------------

AGENCY Administration
 DRU Older Alaskans Commission
 COMPONENT Older Alaskans Services

Page <u>6</u> of <u>6</u>
Revised Date:

FY 89

000645

Older Alaskans Commission

Box C
Juneau, Alaska 99811-0209
907/465-3250

OAC Grants for Services

The following OAC grant services are part of the long term care continuum in Alaska.

Adult Day Care provides supervision and a wide range of services for seniors needing assistance with daily living tasks. Adult day care usually occurs on a daily basis for 4 to 7 hours, in a group setting. Most of the seniors using adult day care reside at home with their family. Besides providing an extended break in caring for a senior family member, day care services also allow family members to work outside the home, an important factor in maintaining economic security. The following grant agencies provide adult day care:

Anchorage Community Mental Health Clinic, Anchorage
Salvation Army, Anchorage

Chugiak Senior Center, Chugiak
Dillingham Senior Center, Dillingham
Kenai Senior Services, Kenai
Rendezvous Senior Day Care Services, Ketchikan
Southeast Senior Services, Juneau

Respite Care refers to temporary, short-term adult care services either in a person's home or in a congregate setting. While adult day care occurs on a regularly scheduled basis, respite care occurs sporadically, providing temporary relief for the primary care-giver. Only Fairbanks makes available 24 hour respite care, which can last up to two weeks to allow vacation time for the caregiver. The following grantees provide respite care services:

Salvation Army, Anchorage
Chugiak Senior Center, Chugiak
Home Health Care, Anchorage
Fairbanks Rehabilitation Association, Fairbanks

Homemaker/Chore Services: Homemaker services are provided on a regular basis and provide assistance in housecleaning, laundry, errands, meal preparation and other daily tasks essential in maintaining a household. Chore services provide occasional help with household chores such as heavy cleaning or yard work that are not required daily. The following grantees provide homemaker/chore services:

Salvation Army, Anchorage
Seward Senior Services, Seward
Kodiak Senior Center, Kodiak
Cordova Senior Services, Cordova
Dillingham Senior Center, Dillingham
Bristol Bay Native Association, 11 communities
Upper Tanana Development Corporation, 5 communities
Kenai Senior Services, Kenai
Homer Senior Center, Homer
Southeast Senior Services, 15 communities
Fairbanks Native Association, Fairbanks
Seldovia Native Association, Seldovia

Home Health Services are health services provided by a medical professional (L.P.N., R.N., P.A., or M.D.) in a client's home. Services may include blood pressure checks, dental or vision care, foot care, or health education. Only one Commission grantee provides home health services, the Kodiak Senior Center, Kodiak. (The Division of Public Health provides home health care to many seniors around the state.)

Other Supportive Services grants include visiting and telephone reassurance. Visiting occurs usually in a client's home and provides comfort or companionship as well as informal assessment of an individual's mental/physical functioning. Telephone Reassurance provides regular telephone contact to seniors in physical and/or social isolation. Such regular communication insures the health and safety of the senior and reassures them that help is available when needed. Fifteen OAC projects provide such supportive services.

Home-Delivered and Congregate Meals provide one-third of the RDA (Recommended Daily Allowance) of nutritional needs for senior citizens as established by the Food and Nutritional Board of the National Academy of Sciences. Meals are delivered to home-bound seniors or to those temporarily

unable to attend congregate meals due to illness. The following grantees provide home-delivered and/or congregate meals:

Salvation Army, Anchorage
Chugiak Senior Center, Chugiak
Kodiak Senior Center, Kodiak
Cordova Senior Services, Cordova
Dillingham Senior Center, Dillingham
Bristol Bay Native Association, (11 communities)
Upper Tanana Development Corporation 3 communities
North Star Council on Aging, Fairbanks
Kenai Senior Services, Kenai
Homer Senior Center, Homer
Ninilchik Senior Center, Ninilchik
Southeast Senior Services, 15 communities
Fort Yukon Elderly Services, Fort Yukon
North Slope Borough, Barrow
Lower Kuskokwim School District, 20 communities
City of Wainwright
Nome Community Center, Nome
Copper River Native Association, 7 communities
Valdez Senior Center, Valdez
Seldovia Native Association, Seldovia
Tapaq, Inc., Stebbins

Senior Companion services are grant projects that recruit volunteers to provide company for home-bound seniors on a regular basis. One agency provides senior companion services in Juneau, Hoonah and Fairbanks; namely Foster Grandparents/Senior Companions.

Tanana Elders' Residence provides assisted residential services including meals and transportation for up to 15 handicapped and mobile seniors. With full occupancy, cost

per resident is less than \$15,000 per year, which is less than half the cost of Pioneers' Home residency and one-quarter the cost of a private nursing home.

The Senior Citizens Ombudsman was established as a position on the Commission's staff in FY 1987, though it had previously been a grantee position. The Ombudsman investigates complaints from seniors statewide, including those in nursing homes. Through the Ombudsman's activities the Commission stays informed about the long term care network.

INCREMENT/DECREMENT DESCRIPTION (Limit to 98 characters) Adult Day Care Services for Dependent Persons			
AGENCY CONTACT/PHONE NUMBER: Ruth A. Gulyas / 465-3250			
DESCRIBE WHY THIS INCREMENT/DECREMENT IS NEEDED AND WHAT IT PURCHASES: The number of older Alaskans aged 65 and over has grown by more than forty-five percent between 1980 and 1985, an increase larger than any other state. This rate is even greater for the 75+ population. It is projected that Alaska's 05+ population will increase by 250% by 1995. This is the age segment which places the greatest demand upon health and social services including nursing home care. It is this group to whom the Commission's community-based services are targeted with the goal of enabling individuals to avoid costly nursing home care. Adult day care services contribute greatly to this goal. Based upon current utilization, the number of nursing home residents who are 65 years and older will increase 291 percent by the year 2000. Since nearly 100 percent of nursing home costs are paid by the government, this represents a future funding liability in excess of \$200 million unless steps are taken to expand less costly community care. The State may save \$20.00 in long-term care cost for every dollar spent on adult day care. This increase will begin adult day care in three communities (Homer, Fairbanks and one undetermined community). This is based on an average annual cost of \$3,000 per client times 30 clients for \$90,000. An additional \$20,000 is to meet increased demand of existing adult day care programs.			
CHIEF	EXPENDITURE BY OBJECT	AGENCY REQ.	GOV'S REQ.
100	Personal Services		
200	Travel		
300	Contractual Services		
400	Supplies		
500	Equipment		
600	Lands, Buildings, Etc.		
700	Grants, Claims, Etc.	118.0	
800	Miscellaneous		
	TOTAL	118.0	
	I-A Transfer (NON-ADD)		
1002	Federal Receipts		
1003	General Fund Match		
1004	General Fund	118.0	
1005	Program Receipts/CF		
1007	I-A Receipts		
POSITION INFORMATION	PFI		
	PPF		
	Non Permanent		
	Staff Months		
<input checked="" type="checkbox"/> Enhance Existing Service Compared to FY 88 <input type="checkbox"/> New Service Compared to FY 88 <input type="checkbox"/> Continuation of FY 88 Service Level		<input type="checkbox"/> Formula Program	
IMPACT FROM CAPITAL PROJECT (NAME)			
Chapter _____ SLA _____ Page/Line _____			

9/1501/C5/1116-01/2

C5 INCREMENT/DECREMENT REQUEST
Agency Priority 1 of 1

AGENCY Administration
 BRU Older Alaskans Commission
 COMPONENT Older Alaskans Commission
 PROJECT Adult Day Care Services

FY 89

Page 1 of 1
Revised Date: _____

B2 BRU ISSUES

AGENCY Administration
 BRU Older Alaskans Commission

Page 2 of 4
Revised Date: _____

FY 89

INCREMENT/DECREMENT DESCRIPTION (Limit to 98 characters)
Nutrition Services Expansion

AGENCY CONTACT/PHONE NUMBER:
Ruth A. Gulyas / 465-3250

DESCRIBE WHY THIS INCREMENT/DECREMENT IS NEEDED AND WHAT IT PURCHASES:
 Nutritious meals play an essential role in the physical and mental well-being of Alaska's aging population. In many instances, a Commission funded meal which provides one-third of the recommended dietary allowances is the older person's only meal. A study of the nutritional risk of elderly Americans reveals that nearly one in five does not have enough money to purchase adequate food.

This increment will:

- 1) Increase the 28 existing home-delivered meal programs to one meal per day, seven days per week. The current home-delivered meal programs are funded to provide only three to five meals to homebound elderly. \$320.2
 - 2) Increase congregate nutrition services to five days per week for six grantees currently providing meal services less than five days per week. \$ 80.4
 - 3) Begin senior nutrition services to four of the sixteen unserved rural communities that have perviously expressed interest in developing a nutrition program for the elderly. \$120.0
- TOTAL \$528.6**

CODE	EXPENDITURE BY OBJECT	AGENCY REQ.	GOV'S REQ.
100	Personal Services		
200	Travel		
300	Contractual Services		
400	Supplies		
500	Equipment		
600	Lands, Buildings, Etc.		
700	Grants, Claims, Etc.	528.6	
800	Miscellaneous		
TOTAL		528.6	
I-A Transfer (NON-ADD)			
1002	Federal Receipts		
1003	General Fund Match		
1004	General Fund	528.6	
1005	Program Receipts/CF		
1007	I-A Receipts		
POSITION INFORMATION			
PFT			
PPT			
Non Permanent			
Staff Months			

<input checked="" type="checkbox"/> Enhance Existing Service Compared to FY 88	<input type="checkbox"/> Formule Program
<input type="checkbox"/> New Service Compared to FY 88	
<input type="checkbox"/> Continuation of FY 88 Service Level	

IMPACT FROM CAPITAL PROJECT (NAME)
 Chapter _____ SLA _____ Page/Line _____

9/1501/C5/1116-01/4

C5 INCREMENT/DECREMENT REQUEST
 Agency Priority 2 of 3

AGENCY Administration
 BRU Older Alaskans Commission
 COMPONENT Older Alaskans Commission
 PROJECT Nutrition Services

FY 89

Page 1 of 1
 Revised Date: _____

B2 BRU ISSUES

AGENCY Administration
 BRU Older Alaskans Commission

FY 89

Page 3 of 4
 Revised Date: _____

Original sponsors: Uehling, Kerttula
and Szymanski

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 442 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Older Alaskans Commission and
7 the protection of elderly persons; and establishing
8 the office of the long term care ombudsman."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 44.21.230(b) is amended to read:

11 (b) To accomplish its duties, the commission may

12 (1) review, evaluate, and comment upon state programs
13 concerned with the problems and the needs of older Alaskans;

14 (2) collect facts and statistics, and make studies of
15 conditions and problems pertaining to the employment, health, finan-
16 cial security, social welfare, and other concerns that bear upon the
17 well-being of older Alaskans;

18 (3) provide information about public programs that would be
19 of interest or benefit to older Alaskans;

20 (4) appoint special committees, which may include persons
21 who are not members of the commission, to complete necessary studies;

22 (5) promote community education efforts regarding the
23 problems and concerns of older Alaskans;

24 (6) contract for necessary services;

25 (7) consult and cooperate with persons, organizations, and
26 groups interested in or concerned with programs of assistance to older
27 Alaskans;

28 (8) advocate improved programs of benefit to older Alas-
29 kans; and

1 (9) set standards for levels of services for older Alaskans
2 for programs administered by the commission; and

3 (10) adopt regulations necessary for the administration of
4 AS 44.21.200 - 44.21.240 and to comply with federal law.

5 * Sec. 2. AS 44.21 is amended by adding new sections to read:

6 Sec. 44.21.231. OFFICE OF THE LONG TERM CARE OMBUDSMAN. (a)
7 The office of the long term care ombudsman is established in the
8 commission.

9 (b) The ombudsman shall be hired by the commission. A member of
10 the commission who has a financial interest in a long term care facil-
11 ity in the state, or who has any other conflict of interest, may not
12 participate in the hiring of the ombudsman. The ombudsman is a
13 full-time position in the classified service.

14 (c) The ombudsman may not have a financial interest in a long
15 term care facility in the state. The commission shall adopt regula-
16 tions to ensure that the ombudsman, and employees and volunteers of
17 the office, do not have a conflict of interest or an appearance of a
18 conflict of interest.

19 Sec. 44.21.232. DUTIES AND POWERS OF THE LONG TERM CARE OMBUDS-
20 MAN. (a) The ombudsman shall investigate and resolve a complaint
21 made by or on behalf of an older Alaskan who resides in a long term
22 care facility in the state if the complaint relates to a decision,
23 action, or failure to act by a provider or a representative of a
24 provider of long term care services, or by a public agency or social
25 services agency, that may adversely affect the health, safety, wel-
26 fare, or rights of the older Alaskan.

27 (b) The ombudsman may investigate and resolve a complaint made
28 by or on behalf of an older Alaskan relating to the long term care or
29 residential circumstances of the older Alaskan. Complaints under this

1 subsection may relate to any issue not covered under (a) of this
2 section, including the older Alaskan's landlord, senior citizen hous-
3 ing, a public assistance program, a public grant program for services
4 to older Alaskans, public utilities, health care facilities, and
5 health care providers.

6 (c) The ombudsman may

7 (1) subpoena witnesses, compel their attendance, require
8 the production of evidence, administer oaths, and examine any person
9 under oath in connection with a complaint described under (a) of this
10 section; the powers described in this paragraph shall be enforced by
11 the superior court;

12 (2) pursue administrative, legal, or other appropriate
13 remedies on behalf of an older Alaskan who resides in a long term care
14 facility in the state.

15 Sec. 44.21.233. TRAINING AND CERTIFICATION OF STAFF. (a) The
16 ombudsman shall provide for the training and certification of office
17 staff, including volunteers and other representatives of the office.
18 Training must include instruction in federal, state, and local laws
19 and policies relating to long term care facilities in the state, and
20 in investigative techniques. The ombudsman may require other appro-
21 priate training. The ombudsman may decertify a person under this
22 section for good cause in accordance with regulations adopted by the
23 commission.

24 (b) An employee, volunteer, or other representative of the
25 office may not investigate a complaint under AS 44.21.232 unless
26 certified as having completed training under this section and approved
27 by the ombudsman as qualified to investigate the complaint.

28 Sec. 44.21.234. ACCESS TO LONG TERM CARE FACILITIES, OLDER
29 ALASKANS, AND RECORDS. (a) A person may not deny access to a long

1 term care facility or to an older Alaskan by the ombudsman or an
2 employee, volunteer, or other representative of the office.

3 (b) Notwithstanding the provisions of AS 44.21.232(c)(1), the
4 ombudsman may obtain medical or other records of an older Alaskan who
5 resides in a long term care facility in the state only with the con-
6 sent of the older Alaskan or the older Alaskan's legal guardian or, if
7 the older Alaskan is unable or incompetent to consent and does not
8 have a legal guardian, only with a court order.

9 Sec. 44.21.235. CONFIDENTIALITY. (a) Records obtained or
10 maintained by the ombudsman are confidential, are not subject to
11 inspection or copying under AS 09.25.110 - 09.25.120 and, except as
12 provided in (b) of this section, may be disclosed only at the dis-
13 cretion of the ombudsman.

14 (b) The identity of a complainant or an older Alaskan on whose
15 behalf a complaint is made may not be disclosed without the consent of
16 the identified person or the person's legal guardian, unless required
17 by court order.

18 Sec. 44.21.236. IMMUNITY FROM LIABILITY. (a) A person who, in
19 good faith, makes a complaint described in AS 44.21.232 is immune from
20 civil or criminal liability that might otherwise exist for making the
21 complaint.

22 (b) The ombudsman, or an employee, volunteer, or other represen-
23 tative of the office, is immune from civil or criminal liability for
24 the good faith performance of official duties.

25 Sec. 44.21.237. INTERFERENCE WITH THE LONG TERM CARE OMBUDSMAN
26 AND RETALIATION PROHIBITED. (a) A person may not intentionally
27 interfere with the ombudsman, or an employee, volunteer, or represen-
28 tative of the office, in the performance of official duties under
29 AS 44.21.232.

1 (b) An employer or supervisor of a person who, in good faith,
2 makes a complaint described in AS 44.21.232 may not discharge, demote,
3 transfer, reduce the pay or benefits or work privileges of, prepare a
4 negative work performance evaluation of, or take other detrimental
5 action against the person because of the complaint. The person making
6 the complaint may bring a civil action for compensatory and punitive
7 damages against an employer or supervisor who violates this subsec-
8 tion. In the civil action there is a rebuttable presumption that the
9 detrimental action by the employer or supervisor was retaliatory if it
10 was taken within 90 days after the complaint was made.

11 (c) A person who violates this section is guilty of a class B
12 misdemeanor.

13 Sec. 44.21.238. LEGAL COUNSEL FOR THE LONG TERM CARE OMBUDSMAN.
14 The attorney general shall provide legal advice and representation in
15 connection with any matter relating to the powers, duties, and opera-
16 tion of the office, and in any legal action brought against the om-
17 budsman or an employee, volunteer, or other representative of the
18 office. If the attorney general cannot provide legal advice or repre-
19 sentation because of a conflict of interest, the ombudsman may employ
20 private legal counsel.

21 Sec. 44.21.239. COOPERATIVE AGREEMENTS. The commission shall
22 enter into cooperative agreements concerning the operations of the
23 office, including protocols for investigations, with state and local
24 agencies that have jurisdiction over long term care facilities or over
25 the abuse and neglect of older Alaskans.

26 * Sec. 3. AS 44.21.240 is amended to read:

27 Sec. 44.21.240. DEFINITIONS. In AS 44.21.200 - 44.21.240,

28 (1) "commission" means the Older Alaskans Commission;

29 (2) "long term care facility" means a foster home or other

1 residential facility for dependent adults that is required to be
2 licensed under AS 47.35 and a nursing home as defined in AS 08.70.180;

3 (3) "office" means the office of the long term care ombuds-
4 man;

5 (4) "older Alaskan" means a resident who is 60 years of age
6 or older;

7 (5) "ombudsman" means the long term care ombudsman hired
8 under AS 44.21.231;

9 (6) "senior citizen housing" has the meaning given in
10 AS 44.47.620(e).

11 * Sec. 4. AS 47.24.010 is amended by adding a new subsection to read:

12 (h) An employer or supervisor of a person who, in good faith,
13 makes a report of harm under this section may not discharge, demote,
14 transfer, reduce the pay or benefits or work privileges of, prepare a
15 negative work performance evaluation of, or take other detrimental
16 action against the person because of the report. The person making
17 the report may bring a civil action for compensatory and punitive
18 damages against an employer or supervisor who violates this subsec-
19 tion. In the civil action there is a rebuttable presumption that the
20 detrimental action by the employer or supervisor was retaliatory if it
21 was taken within 90 days after the report of harm was made.
22
23
24
25
26
27
28
29