

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

SB 442, CSSB 442 142

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SENATE COMMITTEE REPORT

FURTHER

3/23/88

DATE TURNED INTO OFFICE

4/7/88

Mr. President:

Finance

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 _____) [] same title
[x] or adopt _____ CS SB 442 (SA)) [x] new title

[] attached amendment(s) and

[x] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted _____

Committee [] attached or [] adopted fiscal note(s)

[x] new [] updated or [] previous

[] zero [x] fiscal impact

53.5

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Paul H. ...
Walter ...
John ...

Paul H. ... do pass

Chairman signature and recommendation

[] Committee Backup attached

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Protect elderly and estab-
lishing older Alaskans ombudsman
Sponsor: Hehling
Requestor: _____

Agency Affected: Administration
BRU: Older Alaskans Commission
Components: _____

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						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS		53.5	67.7	78.1	78.1	78.1
OTHER						
TOTAL		53.5	67.7	78.1	78.1	78.1

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *Rick Halford*
Division: _____

Phone: _____
Date: _____

Approved by Commissioner: Senator Rick Halford
Agency: Senate Finance Committee

Date: 4/7/88

Distribution (by preparer):

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

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) If a person makes a good faith complaint described in
2 AS 44.21.232, an employer or supervisor of the person, or a public or
3 private agency or entity that provides benefits, services, or housing
4 to the person, may not discharge, demote, transfer, reduce the pay or
5 benefits or work privileges of, prepare a negative work performance
6 evaluation of, deny or withhold benefits or services, evict, or take
7 other detrimental action against the person because of the complaint.
8 The person making the complaint may bring a civil action for compensa-
9 tory and punitive damages against an employer, supervisor, agency, or
10 entity that violates this subsection. In the civil action there is a
11 rebuttable presumption that the detrimental action was retaliatory if
12 it was taken within 90 days after the complaint was made.

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

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

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

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

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

- 1 (1) "commission" means the Older Alaskans Commission;
- 2 (2) "long term care facility" means a foster home or other
- 3 residential facility for dependent adults that is required to be
- 4 licensed under AS 47.35 and a nursing home as defined in AS 08.70.180;
- 5 (3) "office" means the office of the long term care ombuds-
- 6 man;
- 7 (4) "older Alaskan" means a resident who is 60 years of age
- 8 or older;
- 9 (5) "ombudsman" means the long term care ombudsman hired
- 10 under AS 44.21.231;
- 11 (6) "senior citizen housing" has the meaning given in
- 12 AS 44.47.620(e).

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

14 (h) If a person makes a good faith report of harm under this

15 section, an employer or supervisor of the person, or a public or

16 private agency or entity that provides benefits, services, or housing

17 to the person, may not discharge, demote, transfer, reduce the pay or

18 benefits or work privileges of. prepare a negative work performance

19 evaluation of, deny or withhold benefits or services, evict, or take

20 other detrimental action against the person because of the report.

21 The person making the report may bring a civil action for compensatory

22 and punitive damages against an employer, supervisor, agency, or

23 entity that violates this subsection. In the civil action there is a

24 rebuttable presumption that the detrimental action was retaliatory if

25 it was taken within 90 days after the report of harm was made.

3/4/88 A (8a) B

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 442

PUBLISH DATE: _____

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, Kerdtula, 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-
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REVENUE		-0-	-0-	-0-	-0-	-0-
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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. Side Phone: 465-3250

Division: Older Alaskans Commission Date: _____

Approved by Commissioner: John M. Andrews Date: 3/2/88

Agency: Administration

Distribution (by preparer):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

Revised by SFC 4/7/88
MAR 1988

LEGISLATIVE FINANCE

Position Title Paralegal Assistant I			No. of Positions 1	Range/Step 13	Org. Unit GGU
Time Status FT	Staff Months 12		Location Anchorage		Election District
Type of Expenditure			Justification		
		Amount	<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>		
1	2	3			
Salary	36.1				
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



Older Alaskans Commission

Box C
Juneau, Alaska 99811-0209
967/465-3250

POSITION PAPER

CSSB 442 (State Affairs) ESTABLISHING THE OFFICE OF THE LONG-TERM CARE OMBUDSMAN

The Older Alaskan Commission strongly supports the passage of CSSB 442, as it will enable Alaska to meet new mandatory requirements for receipt of federal funds under the Older Americans Act of 1987.

FEDERAL FUNDING REQUIREMENTS MET BY CSSB 442

The Older Alaskans Commission receives just over four million dollars in federal funds under Titles III and IV of the Older Americans Act. These federal dollars, plus three million in State General Funds, provide crucial home and community-based care services to over 19,000 senior citizens in Alaska.

In order to receive the Older Americans Funds, the State, through the Commission, must have in place an approved State Plan which provides assurances that Alaska meets all requirements in the Older Americans Act. Alaska's next State Plan is due in August 1988, and must show compliance--or good faith efforts to comply--with the 1987 federal changes.

The primary changes in the 1987 reauthorization of the Older Americans Act which would require state legislative action are all related to the long-term care ombudsman programs run by the states.

Although the Older Americans Act has mandated for nearly a decade that each state office on aging must operate an ombudsman program for the investigation of complaints made by nursing home residents, the 1987 federal statute requires each state government to put more "teeth" into its ombudsman program.

Specifically, in the 1987 Older Americans Act, Congress declared that every state Long-Term Care (LTC) Ombudsman program must meet these minimum criteria:

- a. "independence" of the LTC Ombudsman Office;
- b. legal authority for the LTC Ombudsman to bring administrative or legal actions on behalf of complainants;
- c. legal guarantee of Ombudsman access to LTC facilities, residents, and residents' records;

- d. legal guarantee of confidentiality for the records of the LTC Ombudsman;
- e. immunity from civil and criminal liability for persons who complain or report to the Ombudsman;
- f. legal prohibition and sanctions against interference with the work of the LTC Ombudsman; and
- g. legal prohibitions and sanctions to prevent "retaliation" against complainants or reporters to the Ombudsman ("whistle-blower protection").

CSSB 442 (State Affairs) will bring Alaska's Long-Term Care Ombudsman program into compliance with these new 1987 federal requirements, by providing requisite statutory authority to implement Congressional intent.

CSSB 442 also grants regulation-making authority to the Older Alaskans Commission, which will enable the OAC's LTC Ombudsman to comply with several other less significant technical changes in the 1987 federal act.

CSSB 442 not only strengthens and expands Alaska's senior ombudsman program, but it is also the first specific statutory foundation for the program. To date, the senior ombudsman program in Alaska has operated without any state statutory powers and the senior ombudsman handled complaints based solely on the power of persuasion.

BENEFITS TO SENIORS IN LONG-TERM CARE FACILITIES

This bill offers major new protections to residents of nursing homes, adult residential homes, and adult foster homes in Alaska. The Long-Term Care Ombudsman will be empowered to act as a personal advocate for these dependent senior citizens, a service not now available from any federal, state, or local agency.

Families of LTC residents will have additional assurance of quality care, and of an effective mechanism for curing individual grievances, through the Office of the LTC Ombudsman. Trained and certified local volunteer ombudsman will be a visible presence in each nursing or boarding home, available on a regular and frequent basis to concerned residents or families.

A valuable "extra" in CSSB 442 is the extension of protection against retaliation to any person who complains about or reports any type of elder abuse, whether or not in a LTC facility, under AS 47.24.010. The Commission applauds this enhancement to Alaska's Elder Abuse Law.

STAFFING OF THE ALASKA LONG-TERM CARE OMBUDSMAN OFFICE

The Older Alaskans Ombudsman program now consists of one staffer, operating out of Anchorage. He operates without clerical or administrative support, except for central administration from the Juneau office. Because of the

limited staff and travel funds, he does not visit long-term care facilities except when he receives a phone complaint. The Older Alaskans Commission believes that the LTC Ombudsman needs an assistant if he is to maintain his current caseload of senior complaint-handling and also recruit, train and supervise volunteers in every community where there is a long-term care facility.

Unfortunately, the 1987 Congress, while it passed the amendments which require a much more active and formal role for the LTC Ombudsman, did not appropriate new federal funds to the states for carrying out this new advocacy mission. States are expected to use either state funds or other Older American Act federal funds for the expanded Ombudsman program. Because the Commission's FY 89 budget is at maintenance level, the Commission felt it was more appropriate to seek new state general funds for this program rather than to reduce the FY 89 grants budgets for senior meals, transportation, or in-home care services.

If the bill is passed without the fiscal note, the LTC Ombudsman Office will attempt to meet the spirit of the new federal mandate, but will need to restrain its actual activities in keeping with its present staff of one. This would probably mean that it could take up to five years before the Ombudsman could develop training procedures and actually achieve trained volunteer corps in all communities with LTC facilities. Whether one person could ever adequately supervise that many volunteers is problematic.

If this bill passes without any additional funding, the Commission will probably need, in another year in the near future, to seek a position and funds again, or to divert funding from other grant programs.

CONCLUSION

The Older Alaskans Commission strongly supports CSSB 442 (State Affairs), whether or not the fiscal note passes with it this year. The Commission, and the State, must comply with these new federal requirements to keep federal funding from the Older Americans Act. More importantly, senior Alaskans in long-term care facilities deserve the same protection and advocacy services as will now be available throughout the nation. This bill is a great service to everyone concerned about quality long-term care.

APPROVED BY:

for Connie Sipe, Director
Dove M. Kull, Chair
Legislative Committee
Older Alaskans Commission
Date: March 25, 1988

REVIEWED BY:

for James S. Fox, Deputy Commissioner
John M. Andrews, Commissioner
Department of Administration

Date: March 25, 1988



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)." "

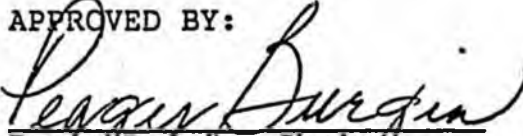
Page 5, before line 13, insert new definitions:

(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



Ombudsman

March 3, 1988

RECEIVED

MAR 4 1988

State of Alaska

Reply to:

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



P.O. Box W0
Juneau, Alaska 99811
(907) 465-4970

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

Dear Senator *Mitch* 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



State of Alaska

Reply to:

- 3201 C Street, Suite 403
Anchorage, Alaska 99503
(907) 683-3673
- P.O. Box W0
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:

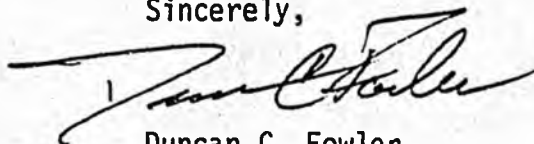
- (1) Provide immunity from liability for the staff and volunteers of the new office (Sec. 44.21.236);
- (2) Provide access to confidential records (Sec.44.21.234);
- (3) Require the records of the office be confidential (Sec. 44.21.235); and especially
- (4) Provide protection from employer retribution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

Duncan C. Fowler
Ombudsman

DCF:pjc

SB 442

§ 44.21.200

ALASKA STATUTES

§ 44.21.200

Article 4. Older Alaskans Commission.

Section

- 200. Older Alaskans Commission
- 210. Meetings
- 220. Compensation

Section

- 230. Powers, duties, and limitations
- 240. Definitions

Sec. 44.21.200. Older Alaskans Commission. (a) The Older Alaskans Commission is established in the Department of Administration. The members of the commission include

- (1) the commissioner of the Department of Administration or the commissioner's designee;
- (2) the commissioner of the Department of Community and Regional Affairs or the commissioner's designee;
- (3) the commissioner of the Department of Health and Social Services or the commissioner's designee;
- (4) the chairman of the Pioneers' Homes Advisory Board appointed under AS 44.21.100 — 44.21.130; and
- (5) seven Alaskans selected on the basis of their knowledge and demonstrated interest in the concerns of older Alaskans, appointed by the governor in accordance with (b) of this section.

(b) After requesting from senior citizens' organizations the names of persons who are qualified for and interested in serving on the commission, the governor shall appoint the members of the commission under (a)(5) of this section. Appointments shall be made by the governor to assure representation of low-income persons and minorities, and representation from rural and urban areas of the state, and to secure statewide geographical representation on the commission. At least six of the persons appointed by the governor shall be 60 years of age or older. At least two of these persons shall be 65 years of age or older. Each member appointed by the governor shall be a resident of the state.

(c) The persons appointed under (a)(5) of this section serve overlapping four-year terms, and serve at the pleasure of the governor. A member may be reappointed, but a member appointed under (a)(5) of this section may not serve more than two consecutive terms or eight consecutive years, whichever is longer.

(d) If a person appointed under (a)(5) of this section fails to attend three consecutive meetings of the commission, a majority of the members of the commission may request the governor to terminate the membership of the member and to fill the vacancy.

(e) A vacancy in the membership of persons appointed under (a)(5) of this section shall be filled by appointment by the governor. The person appointed shall serve for the unexpired portion of the term. (§ 2 ch 79 SLA 1981)

Cross references. — For provisions related to the commission's initial membership, see § 13, ch 79, SLA 1981, in the

Temporary and Special Acts.

Editor's notes. — Section 13, ch. 79, SLA 1981, provides: "INITIAL MEM-

BERSHIP AND MEETING OF COMMISSION. (a) Of the seven public members first appointed by the governor to the Older Alaskans Commission under AS 44.21.200(a)(5),

- (1) three shall serve a term of two years;
- (2) two shall serve a term of three years;
- (3) two shall serve a term of four years.

(b) In making appointments of the first public members of the Older Alaskans

Commission under AS 44.21.200(a)(5), the governor shall designate an expiration date of the terms of members first appointed in accordance with (a) of this section.

(c) The governor shall determine the date and place of the first meeting of the Older Alaskans Commission; however, that meeting shall be held not later than September 13, 1981.

Sec. 44.21.210. Meetings. (a) The commission shall meet at the call of the chairperson, at the request of a majority of the members, or at a regularly scheduled time as determined by a majority of the members. The commission shall meet at least six times each year.

(b) The members of the commission listed in AS 44.21.200(a)(1) — (4) may not vote on matters before the commission. A majority of the members of the commission listed in AS 44.21.200(a)(5) constitutes a quorum for conducting business and exercising the powers of the commission.

(c) The commission shall elect one of its members as chairperson, and may select other officers it considers necessary. (§ 2 ch 79 SLA 1981)

Sec. 44.21.220. Compensation. Members of the commission receive no compensation for their services, but are entitled to per diem and travel allowances authorized by law for other boards and commissions under AS 39.20.180. (§ 2 ch 79 SLA 1981)

Sec. 44.21.230. Powers, duties, and limitations. (a) The commission shall

(1) formulate a comprehensive statewide plan that identifies the concerns and needs of older Alaskans and, with reference to the plan adopted, prepare and submit to the governor and legislature an annual analysis and evaluation of the services that are provided to older Alaskans;

(2) make recommendations directly to the governor and legislature with respect to legislation, regulations, and appropriations for programs or services that benefit older Alaskans;

(3) encourage and aid the development of municipal commissions serving older Alaskans and community-oriented programs and services for the benefit of older Alaskans;

(4) employ an executive director who serves at the pleasure of the commission;

(5) help older Alaskans lead dignified, independent, and useful lives;

(6) request and receive reports and audits from state agencies and local institutions concerned with the conditions and needs of older Alaskans;

(7) administer, with the approval of the commissioner of administration, federal programs as provided under 42 U.S.C. 3001 — 3045i (Older Americans Act), as amended; and

(8) administer, with the approval of the commissioner of administration, state programs as provided under AS 47.65.010 — 47.65.060.

(b) To accomplish its duties, the commission may

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

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

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

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

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

(6) contract for necessary services;

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

(8) advocate improved programs of benefit to older Alaskans; and

(9) set standards for levels of services for older Alaskans for programs administered by the commission.

(c) The commission may not investigate, review, or undertake any responsibility for the longevity bonus program (AS 47.45.010 — 47.45.170) or the Alaska Pioneers' Homes (AS 47.25.010 — 47.25.100). (§ 2 ch 79 SLA 1981)

Editor's notes. — Section 14 of ch. 79, SLA 1981, provides: "TRANSFER OF PROGRAM RESPONSIBILITIES. The following are transferred to the Older Alaskans Commission in the Department of Administration:

(1) the programs conducted under the Older Americans Act, P.L. 89-73, as amended, and the persons who administer those programs in the division of adult and aging services, Department of Health and Social Services;

(2) the programs conducted under AS 47.65.010 — 47.65.060, and the persons who administer those programs in the

division of adult and aging services, Department of Health and Social Services; and

(3) the Governor's Advisory Committee on Aging."

Section 15 of ch. 79, SLA 1981, provides: "CONTINUING RESPONSIBILITY OF THE DEPARTMENT OF ADMINISTRATION. This Act does not affect the responsibility of the Department of Administration for the Alaska longevity bonus program (AS 47.45.010 — 47.45.170) or the Alaska Pioneers' Homes (AS 47.25.010 — 47.25.110)."

Sec. 44.21.240. Definitions. In AS 44.21.200 — 44.21.240, "commission" means the Older Alaskans Commission. (§ 2 ch 79 SLA 1981)

SB 442

§ 47.24.010 WELFARE, SOCIAL SERVICES AND INSTITUTIONS § 47.24.010

Effect of amendments. — The 1984 amendment repealed paragraph (8), which defined "disposable earnings."

Chapter 24. Protection of the Elderly.

Section	Section
10. Reports of harm	60. Authority of the department
20. Action on reports	70. Regulations
30. Protective services	75. Quarterly report
40. Review and referral	100. Definitions
50. Confidentiality of reports	

Cross references. — For statement of legislative purpose in enacting AS 47.24, see § 1, ch. 36, SLA 1983, in the Temporary and Special Acts.

81 C.J.S., Social Security and Public Welfare, § 1 et seq.
 Licensing and regulation of nursing or rest homes, 97 ALR2d 1187.

Collateral references. — 70 Am. Jur. 2d, Social Security and Medicare, § 1 et seq.

Sec. 47.24.010. Reports of harm. (a) The following persons who, in the performance of their professional duties, have reasonable cause to believe that an elderly person has suffered harm shall, not later than 24 hours after first having cause for the belief, report the harm to the Department of Health and Social Services:

- (1) a physician or other licensed health care provider;
- (2) a mental health professional as defined in AS 47.30.915(11);
- (3) a pharmacist;
- (4) an administrator of a nursing home, residential care or health care facility;
- (5) a guardian or conservator;
- (6) a police officer;
- (7) a village public safety officer;
- (8) a village health aide;
- (9) a social worker;
- (10) a member of the clergy;
- (11) a staff employee of a project funded by the Older Alaskans Commission;
- (12) an employee of a homemaker program or home health aide program;
- (13) an emergency medical technician or a paramedic in the mobile intensive care program.

(b) A report of harm made under this section may include the name and address of the person reporting the harm and shall include

- (1) the name and address of the elderly person;

(2) information relating to the nature and extent of the harm;

(3) other information that the person reporting the harm believes might be helpful in an investigation of the case or in providing protection for the elderly person.

(c) A person who fails to comply with this section is guilty of a violation as defined in AS 11.81.900(b).

(d) This section does not prohibit a person listed in (a) of this section from reporting cases of economic or physical harm to an elderly person that have come to the person's attention in a nonprofessional capacity. This section does not prohibit any other person from reporting economic harm to an elderly person that the person has reasonable cause to believe is a result of theft, fraud, or coercion by a caretaker of the elderly person, or physical harm to an elderly person that the person has reasonable cause to believe is a result of abuse, neglect, or abandonment.

(e) If immediate action is necessary to protect the elderly person from imminent harm, the person shall make the report of harm to a police officer or a village public safety officer. The police officer or village public safety officer shall take immediate action to protect the elderly person and shall, at the earliest opportunity, notify the department.

(f) A person who, in good faith makes a report of economic or physical harm to an elderly person under this chapter, or who participates in judicial proceedings related to the submission of reports under this chapter, is immune from any civil or criminal liability that might otherwise be incurred or imposed.

(g) Failure to make a report under subsections (a) and (d) of this section is not the basis of civil liability unless otherwise provided by law. (§ 2 ch 36 SLA 1983)

Sec. 47.24.020. Action on reports. (a) Upon receiving a report of harm, the department shall promptly initiate an investigation to determine the economic or physical condition of the elderly person named in the report and whether action or services are needed for the protection of the elderly person. The department shall personally interview the elderly person during the investigation unless the elderly person is unconscious or otherwise physically or mentally impaired to such an extent as to be unable to respond to questions.

(b) The department shall prepare a written report of the investigation, including findings, recommendations, and a determination of whether and what kind of protective services are to be offered to the elderly person. Upon request, the person who reported harm to the elderly person shall be notified of the status of the investigation. The department shall provide to the Department of Law a copy of each report of an investigation of harm to an elderly person if the report of harm is confirmed to be true.

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

March 24, 1988

MEMORANDUM

To: Senator Rick Halford, Co-Chair
Senator John Binkley, Co-Chair
Senate Finance Committee

From: Senator Rick Uehling

Subject: CSSB 442 (State Affairs)

I have asked staff to provide the following background to CSSB 442, "an Act relating to the Older Alaskans Commission and the protection of elderly persons; and establishing the office of the long term care ombudsman."

CSSB 442 (State Affairs) is designed to do two things in order 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.

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

2) 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.

The State Affairs Committee substitute version of the bill incorporates the suggestions of the Older Alaskans Commission in broadening 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. These inclusions are in keeping with the intent of the 1987 federal legislation.

Further, the Committee substitute version of the bill allows 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 would now be able to assist with seniors' housing, utility or health care problems.



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:~~

and of Indian tribes

(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.~~

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).

(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.

(D) 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 assurance 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 that State;~~

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

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

(iii) ~~and~~ 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 assure 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} 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
(E) 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

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;

IMPLICATIONS FOR ^{State} ~~Area~~ AGENCIES ON AGING

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

1987 AMENDMENTS - ADDITIONS/DELETIONS

State
IMPLICATIONS FOR ~~AREA~~ AGENCIES ON /GIRG

(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 (II);

(C)(i) 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 assure 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

STATE OF ALASKA
THE LEGISLATURE

PGUCHY STATE CAPITOL
JUNEAU, ALASKA 99811
707 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 24, 1988

SUBJECT: Sectional analysis of CSSB 442 -- Older Alaskans Commission and long term care ombudsman

TO: Senator Rick Uehling

FROM: Edward H. Hein *EHA*
Legislative Counsel

Section 1 authorizes the Older Alaskans Commission to adopt regulations necessary to administer statutes governing the commission and the office of the long term care ombudsman.

Sec. 2 adds several new sections to the statutes to comply with recent changes in the federal Older Americans Act. Sec. 44.21.231 establishes the office of the long term care ombudsman in the Older Alaskans Commission; directs the commission to hire the ombudsman, which is a full-time position in the classified service of state employment; prohibits conflicts of interest in the hiring of the ombudsman and among employees and volunteers of the office of the ombudsman.

Sec. 44.21.232 sets out the duties and powers of the long term care ombudsman. Subsection (a) requires investigations of complaints made by or on behalf of older Alaskans who reside in long term care facilities in the state. The complaints under (a) must relate to decisions, actions, or omissions by a long term care services provider or agency adversely affecting the older Alaskan's health, safety, welfare, or rights. Subsection (b) allows the ombudsman to investigate other complaints concerning any older Alaskan, so long as the complaints relate to long term care or residential circumstances. Under subsection (c), the ombudsman's powers are listed. These include investigatory tools, such as subpoenas enforceable by the courts, which apply only to mandatory investigations; and the general power to

pursue administrative, legal, or other remedies on behalf of older Alaskans.

Sec. 44.21.233 requires that the ombudsman's staff receive and be certified for training in federal, state, and local laws and policies and in investigative techniques before being allowed to investigate a complaint for the office.

Sec. 44.21.235 requires that the ombudsman's office be given access to long term care facilities, older Alaskans, and the medical or other records of older Alaskans who reside in long term care facilities, with the consent of the older Alaskan or legal guardian.

Sec. 44.21.235 requires the ombudsman to keep records and the identity of complainants and older Alaskans who are the subject of the complaint confidential, unless disclosure is consented to by the older Alaskan or required by court order.

Sec. 44.21.236 provides immunity from civil and criminal liability for persons making good faith complaints and for the ombudsman and staff in the good faith performance of official duties.

Sec. 44.21.237 makes it a class B misdemeanor to interfere with the ombudsman and staff in the performance of their official duties, or to retaliate against an employee, a recipient of agency benefits or services, or a tenant for making a complaint to the long term care ombudsman. Also provides a civil remedy for complainants who are victims of retaliation and establishes a presumption that detrimental actions taken within 90 days after the complaint was made are retaliatory.

Sec. 44.21.238 directs the attorney general to provide legal counsel to the office of the long term care ombudsman, unless the AG has a conflict of interest. In that event, the ombudsman may hire private legal counsel.

Sec. 44.21.239 requires the Older Alaskans Commission to enter into cooperative agreements with other state and local agencies to establish protocols for investigations and other activities of the office of the long term care ombudsman.

Senator Rick Uehling
Page 3
March 24, 1988

Sec. 3 adds definitions of "long term care facility", "office", "older Alaskan", "ombudsman", and "senior citizen housing".

Sec. 4 gives persons who report elderly abuse or neglect to the Department of Health and Social Services the same protections against retaliation and civil remedies as are provided for complainants to the long term care ombudsman. The penalty for retaliation in this instance is a violation, as provided in AS 47.24.010(c), rather than a class B misdemeanor as in Sec: 44.21.237(c).

EHH:bb
b4/057

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 DATE TURNED INTO OFFICE 3/23/88
Mr. President:

State Affairs Committee considered SB 442

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

Maoux
and recommended:

- replace with CS SB 442 (SA) same title
 new title
- attached amendment(s) and
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____
- letter of intent adopted and attached

FIN.

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

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

P. Kille
W. Hunt

Don McArthur
Chairman signature and recommendation

Committee Backup Attached

1 IN THE SENATE

BY UEHLING, KERTTULA
AND SZYMANSKI

2

SENATE BILL NO. 442

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 older Alaskans 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
29 Alaskans; 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 OLDER ALASKANS OMBUDSMAN. (a)
7 The office of the older Alaskans ombudsman is established in the
8 commission.

9 (b) The ombudsman shall be appointed by the commission for a
10 term of four years and may be reappointed. A member of the commission
11 who has a financial interest in a nursing home in the state, or who
12 has any other conflict of interest, may not participate in the ap-
13 pointment of the ombudsman. The ombudsman is a full-time position,
14 with compensation and conditions of employment determined by the
15 commission.

16 (c) The ombudsman may not have a financial interest in a nursing
17 home in the state. The commission shall adopt regulations to assure
18 that the ombudsman, and employees and volunteers of the office, do not
19 have a conflict of interest or an appearance of a conflict of inter-
20 est.

21 Sec. 44.21.232. DUTIES AND POWERS OF THE OMBUDSMAN. (a) The
22 ombudsman shall investigate and resolve a complaint made by or on
23 behalf of an older Alaskan who resides in a nursing home in the state
24 if the complaint relates to administrative action that may adversely
25 affect the health, safety, welfare, or rights of the older Alaskan;

26 (b) The ombudsman may

27 (1) subpoena witnesses, compel their attendance, require
28 the production of evidence, administer oaths, and examine any person
29 under oath in connection with a complaint described under (a) of this

1 section; the powers described in this paragraph shall be enforced by
2 the superior court;

3 (2) pursue administrative, legal, or other appropriate
4 remedies on behalf of an older Alaskan who resides in a nursing home
5 in the state.

6 Sec. 44.21.233. TRAINING AND CERTIFICATION OF OMBUDSMAN'S STAFF.

7 (a) The ombudsman shall provide for the training and certification of
8 office staff, including volunteers and other representatives of the
9 office. Training must include instruction in federal, state, and
10 local laws and policies relating to nursing homes in the state, and in
11 investigative techniques. The ombudsman may require other appropriate
12 training.

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

17 Sec. 44.21.234. OMBUDSMAN'S ACCESS TO NURSING HOMES AND PATIENT

18 RECORDS. (a) A person may not deny access to a nursing home or to an
19 older Alaskan by the ombudsman or an employee, volunteer, or other
20 representative of the office.

21 (b) Notwithstanding the provisions of AS 44.21.232(b)(1), the
22 ombudsman may obtain medical or other records of an older Alaskan who
23 resides in a nursing home in the state only with the consent of the
24 older Alaskan or the older Alaskan's legal guardian or, if the older
25 Alaskan is unable or incompetent to consent and does not have a legal
26 guardian, only with a court order.

27 Sec. 44.21.235. CONFIDENTIALITY. (a) Records obtained or

28 maintained by the ombudsman are confidential, are not subject to
29 inspection or copying under AS 09.25.110 - 09.25.120 and, except as

1 provided in (b) of this section, may be disclosed only at the dis-
2 cretion of the ombudsman.

3 (b) The identity of a complainant or an older Alaskan who re-
4 sides in a nursing home in the state may not be disclosed without the
5 consent of the identified person or the person's legal guardian,
6 unless required by court order.

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

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

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

18 (b) An employer or supervisor of a person who, in good faith,
19 makes a complaint described in AS 44.21.232(a) may not discharge,
20 demote, transfer, reduce the pay or benefits or work privileges of,
21 prepare a negative work performance evaluation of, or take other
22 detrimental action against the person because of the complaint. The
23 person making the complaint may bring a civil action for compensatory
24 and punitive damages against an employer or supervisor who violates
25 this subsection. In the civil action there is a rebuttable presump-
26 tion that the detrimental action by the employer or supervisor was
27 retaliatory if it was taken within 90 days after the complaint was
28 made.

29 (c) A person who violates this section is guilty of a class B

1 misdemeanor.

2 Sec. 44.21.238. LEGAL COUNSEL FOR OMBUDSMAN. The Attorney
3 General shall provide legal advice and representation in connection
4 with any matter relating to the powers, duties, and operation of the
5 office, and in any legal action brought against the ombudsman or an
6 employee, volunteer, or other representative of the office. If the
7 Attorney General cannot provide legal advice or representation because
8 of a conflict of interest, the ombudsman may employ private legal
9 counsel.

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

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

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

13 (2) "nursing home" has the meaning given in AS 08.70.180;

14 (3) "office" means the office of the older Alaskans ombuds-
15 man;

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

18 (5) "ombudsman" means the older Alaskans ombudsman appoint-
19 ed under AS 44.21.231.

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

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

1 was taken within 90 days after the report of harm was made.

CSSB

442

HOUSE COMMITTEE REPORT

(11)

Date referred: 4/25/88

FURTHER REFERRALS:

(L&C waived 4/25)

DATE: 5-3-88

The Finance Committee has considered CSSB 442(SA)

"An Act relating to the Older Alaskans Commission and the protection of elderly persons; and establishing the office of the long term care ombudsman."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published 3/23/88 Senate
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

Adams [Signature]

Durchat [Signature]

Larson [Signature]

Swack [Signature]

Boyer [Signature]

Wallis [Signature]

Brown [Signature]

Davis [Signature]

Rieger [Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]

[Signature]
Chairman's signature

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
 DRU Older Alaskans Commission
 Component _____

Page 1 of 1
 Revised Date _____

FY 89

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) If a person makes a good faith complaint described in
2 AS 44.21.232, an employer or supervisor of the person, or a public or
3 private agency or entity that provides benefits, services, or housing
4 to the person, may not discharge, demote, transfer, reduce the pay or
5 benefits or work privileges of, prepare a negative work performance
6 evaluation of, deny or withhold benefits or services, evict, or take
7 other detrimental action against the person because of the complaint.
8 The person making the complaint may bring a civil action for compensa-
9 tory and punitive damages against an employer, supervisor, agency, or
10 entity that violates this subsection. In the civil action there is a
11 rebuttable presumption that the detrimental action was retaliatory if
12 it was taken within 90 days after the complaint was made.

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

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

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

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

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

- 1 (1) "commission" means the Older Alaskans Commission;
2 (2) "long term care facility" means a foster home or other
3 residential facility for dependent adults that is required to be
4 licensed under AS 47.35 and a nursing home as defined in AS 08.70.180;
5 (3) "office" means the office of the long term care ombuds-
6 man;
7 (4) "older Alaskan" means a resident who is 60 years of age
8 or older;
9 (5) "ombudsman" means the long term care ombudsman hired
10 under AS 44.21.231;
11 (6) "senior citizen housing" has the meaning given in
12 AS 44.47.620(e).

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

14 (h) If a person makes a good faith report of harm under this
15 section, an employer or supervisor of the person, or a public or
16 private agency or entity that provides benefits, services, or housing
17 to the person, may not discharge, demote, transfer, reduce the pay or
18 benefits or work privileges of, prepare a negative work performance
19 evaluation of, deny or withhold benefits or services, evict, or take
20 other detrimental action against the person because of the report.
21 The person making the report may bring a civil action for compensatory
22 and punitive damages against an employer, supervisor, agency, or
23 entity that violates this subsection. In the civil action there is a
24 rebuttable presumption that the detrimental action was retaliatory if
25 it was taken within 90 days after the report of harm was made.

(A) by inserting “, or any separate organizational unit within such agency,” after “area” the first place it appears, and
 (B) by striking “engage” and inserting “and will engage only”.

SEC. 125. AREA PLANS.

Section 306(a)(6)(A) of the Older Americans Act of 1965 (42 U.S.C. 3026(a)(6)(A)) is amended by inserting “, and public hearings on,” after “evaluations of”.

SEC. 126. DAYCARE AND RESPITE SERVICES PROVIDED BY VOLUNTEERS.

Section 306(a)(6)(E) of the Older Americans Act of 1965 (42 U.S.C. 3026(a)(6)(E)) is amended—

- (1) by inserting “or adults, and respite for families,” after “for children”, and
- (2) by inserting “, adults, and families” after “to children”.

SEC. 127. COORDINATION OF CERTAIN PROGRAMS RELATING TO OLDER VICTIMS OF ALZHEIMER'S DISEASE.

Section 306(a)(6) of the Older Americans Act of 1965 (42 U.S.C. 3026(a)(6)) is amended—

- (1) in subparagraph (J) by striking “and” at the end,
- (2) in subparagraph (K) by striking the period at the end and inserting “, and”, and
- (3) by adding at the end the following:

“(L) coordinate the categories of services specified in paragraph (2) for which the area agency on aging is required to expend funds under part B, with activities of community-based organizations established for the benefit of victims of Alzheimer's disease and the families of such victims.”.

SEC. 128. PUBLIC HEARINGS.

Section 307(a)(8) of the Older Americans Act of 1965 (42 U.S.C. 3027(a)(8)) is amended by inserting “, and public hearings on,” after “evaluations of”.

SEC. 129. OMBUDSMAN OFFICE AND PROGRAM.

(a) TECHNICAL ASSISTANCE.—Section 301 of the Older Americans Act of 1965 (42 U.S.C. 3021) is amended by adding at the end the following:

“(c) The Commissioner shall provide technical assistance and training (by contract, grant, or otherwise) to State long-term care ombudsman programs established under section 307(a)(12), and to individuals designated under such section to be representatives of a long-term care ombudsman, in order to enable such ombudsmen and such representatives to carry out the ombudsman program effectively.”.

(b) STUDY OF OMBUDSMAN PROGRAM.—(1) The Commissioner on Aging shall conduct a study concerning involvement in the ombudsman program established under section 307(a)(12) of the Older Americans Act of 1965 (42 U.S.C. 3027(a)(12)) and its impact upon issues and problems affecting—

- (A) residents of board and care facilities and other similar adult care homes who are older individuals (as defined in section 302(10) of such Act), including recommendations for

expanding and improving ombudsman services in such facilities, and

- (B) the effectiveness of recruiting, supervising, and retaining volunteer ombudsmen.

(2) The Commissioner shall prepare and submit a report to the Congress on the findings and recommendations of the study described in paragraph (1) not later than December 31, 1989.

(c) AUTHORIZATION OF APPROPRIATIONS.—(1) Section 303(a) of the Older Americans Act of 1965 (42 U.S.C. 3023(a)), as amended by section 122(a), is amended—

- (A) by inserting “(1)” after “(a)”, and
- (B) by adding at the end the following:

“(2) Subject to subsection (h), there are authorized to be appropriated \$20,000,000 for fiscal year 1988 and such sums as may be necessary for each of the fiscal years 1989, 1990, and 1991 to carry out section 307(a)(12).”.

(2) Section 308(b)(5) of the Older Americans Act of 1965 (42 U.S.C. 3028(b)(5)) is amended—

- (A) in subparagraph (A) by striking “subsection (a)” and inserting “subsection (a)(1)”, and
- (B) in subparagraph (B) by inserting “subsections (a)(1) and (b) of” after “under” the first place it appears.

(d) STATE PLANS.—Section 307(a)(12) of the Older Americans Act of 1965 (42 U.S.C. 3027(a)(12)) is amended to read as follows:

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

“(A) The State agency will establish and operate, either directly or by contract or other arrangement with any public agency or other appropriate private nonprofit organization, other than an agency or organization which is responsible for licensing or certifying long-term care services in the State or which is an association (or an affiliate of such an association) of long-term care facilities (including any other residential facility for older individuals), an Office of the State Long-Term Care Ombudsman (in this paragraph referred to as the ‘Office’) and shall carry out through the Office a long-term care ombudsman program which provides 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 action, inaction, or decisions of providers, or their representatives, of long-term care services, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare, or rights of such residents;

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

“(iii) carry out such other activities as the Commissioner deems appropriate.

“(B) The State agency will 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

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the written consent of such complainant or resident, or upon court order.

"(C) The State agency will 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.

"(D) The State agency will establish procedures to assure 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 the individual's legal representative, consents in writing to such disclosure; or

"(ii) such disclosure is required by court order.

"(E) In planning and operating the ombudsman program, the State agency will consider the views of area agencies on aging, older individuals, and provider agencies.

"(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;

"(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 (42 U.S.C. 6001 et seq.) and under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (Public Law 99-319); 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 any resident or employee for having filed a complaint with, or providing information to, the Office;

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

"(iv) ensure that representatives of the Office shall have—

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

"(II) 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

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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.”.

(e) **MINIMUM EXPENDITURE FOR OMBUDSMAN SERVICES.**—Section 307(a)(21) of the Older Americans Act of 1965 (42 U.S.C. 3027(a)(21)) is amended to read as follows:

“(21) The State plan shall provide that the State agency, from funds allotted under section 304(a) for part B and for paragraph (12) (relating to the State long-term care ombudsman) shall expend to carry out paragraph (12), for each fiscal year in which the allotment for part B for the State is not less than the allotment for fiscal year 1987 for part B for such State, an amount which is not less than the amount expended from funds received under this Act by such State in fiscal year 1987 to carry out paragraph (12) as in effect before the effective date of the Older Americans Act Amendments of 1987. This paragraph shall not apply to American Samoa, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.”.

SEC. 130. FLEXIBILITY OF SERVICES; LEGAL ASSISTANCE.

(a) **AREA PLANS.**—(1) Section 306(a)(2) of the Older Americans Act of 1965 (42 U.S.C. 3026(a)(2)) is amended by inserting “, as required under section 307(a)(22),” after “adequate proportion”.

(2) Section 306(b)(2) of the Older Americans Act of 1965 (42 U.S.C. 3026(b)(2)) is amended by adding at the end the following:

“(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.

“(D) 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).”.

(b) **MINIMUM EXPENDITURE OF FUNDS.**—Section 307(a) of the Older Americans Act of 1965 (42 U.S.C. 3027(a)) is amended by adding at the end the following:

“(22) The plan shall specify a minimum percentage of the funds received by each area agency for part B that will be expended, in the absence of the waiver granted under section 306(b)(1), by such area agency to provide each of the categories of services specified in section 306(a)(2).”.

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SEC. 131. DOCUMENTATION REGARDING MINORITY PARTICIPATION.

(a) **AREA PLANS.**—Section 306(a)(5)(A) of the Older Americans Act of 1965 (42 U.S.C. 3026(a)(5)(A)) is amended—

(1) by inserting “(i)” after “(5)(A)”, and

(2) in subparagraph (A)(i), as so redesignated—

(A) by striking “and” at the end, and

(B) by inserting after clause (i) the following:

“(ii) provide assurances that the area agency will include in each agreement made with a provider of any service under this title, a requirement that such provider will—

“(I) specify how the provider intends to satisfy the service needs of low-income minority individuals in the area served by the provider; and

“(II) attempt to provide services to low-income minority individuals in at least the same proportion as the population of low-income minority older individuals bears to the population of older individuals of the area served by such provider; and

“(iii) with respect to the fiscal year preceding the fiscal year for which such plan is prepared—

“(I) identify the number of low-income minority older individuals in the planning and service area; and

“(II) describe the methods used to satisfy the service needs of such minority older individuals; and”.

(b) **STATE PLAN.**—Section 307(a) of the Older Americans Act of 1965 (42 U.S.C. 3027(a)), as amended by section 130(c), is amended by adding at the end the following:

“(23) The plan shall, with respect to the fiscal year preceding the fiscal year for which such plan is prepared—

“(A) identify the number of low-income minority older individuals in the State; and

“(B) describe the methods used to satisfy the service needs of such minority older individuals.”.

SEC. 132. TARGETING OF SERVICES.

(a) **ORGANIZATION.**—(1) Section 305(a)(1)(E) of the Older Americans Act of 1965 (42 U.S.C. 3025(a)(1)(E)) is amended—

(A) by striking “the distribution of older individuals who have low incomes residing in such areas”, and

(B) by inserting after “legal services,” the following: “the distribution of older individuals who have greatest economic need (with particular attention to low-income minority individuals) residing in such areas, the distribution of older individuals who have greatest social need (with particular attention to low-income minority individuals) residing in such areas.”.

(2) Section 305(a)(2) of the Older Americans Act of 1965 (42 U.S.C. 3025(a)(2)) is amended—

(A) in subparagraph (D) by striking “and” at the end,

(B) in subparagraph (E) by striking the period at the end and inserting “; and”, and

(C) by inserting after subparagraph (E) the following:

“(F) assure the use of outreach efforts that will identify individuals eligible for assistance under this Act, with special emphasis on older individuals with the greatest economic or social needs (with particular attention to low-income minority individuals) and inform such individuals of the availability of such assistance.”.

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

April 25, 1988

M E M O R A N D U M

To: Representative Albert P. Adams, Chair
House Finance Committee

From: Senator Rick Uehling

Subject: CSSB 442 (State Affairs)

I have asked staff to provide the following background to CSSB 442, "an Act relating to the Older Alaskans Commission and the protection of elderly persons; and establishing the office of the long term care ombudsman."

The Older Alaskans Commission receives over \$4 million in federal funds under Titles III and IV of the Older Americans Act. The State of Alaska could lose these funds if it does not have an approved state plan which shows that Alaska is in compliance with the 1987 federal amendments to the Older Americans Act.

CSSB 442 (State Affairs) is designed, therefore, to do two things in order 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.

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

2) 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

Page Two

ensure 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.

The State Affairs Committee substitute version of the bill incorporates the suggestions of the Older Alaskans Commission in broadening 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. These inclusions are in keeping with the intent of the 1987 federal legislation.

Further, the Committee substitute version of the bill allows 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 would now be able to assist with senior' housing, utility or health care problems.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

Page Two

ensure 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.

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Further, the Committee substitute version of the bill allows 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 would now be able to assist with senior' housing, utility or health care problems.



Older Alaskans Commission

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

POSITION PAPER

CSSB 442 (State Affairs) ESTABLISHING THE OFFICE OF THE LONG-TERM CARE OMBUDSMAN

The Older Alaskan Commission strongly supports the passage of CSSB 442, as it will enable Alaska to meet new mandatory requirements for receipt of federal funds under the Older Americans Act of 1987.

FEDERAL FUNDING REQUIREMENTS MET BY CSSB 442

The Older Alaskan Commission receives just over four million dollars in federal funds under Titles III and IV of the Older Americans Act. These federal dollars, plus three million in State General Funds, provide crucial home and community-based care services to over 19,000 senior citizens in Alaska.

In order to receive the Older Americans Funds, the State, through the Commission, must have in place an approved State Plan which provides assurances that Alaska meets all requirements in the Older Americans Act. Alaska's next State Plan is due in August 1988, and must show compliance--or good faith efforts to comply--with the 1987 federal changes.

The primary changes in the 1987 reauthorization of the Older Americans Act which would require state legislative action are all related to the long-term care ombudsman programs run by the states.

Although the Older Americans Act has mandated for nearly a decade that each state office on aging must operate an ombudsman program for the investigation of complaints made by nursing home residents, the 1987 federal statute requires each state government to put more "teeth" into its ombudsman program.

Specifically, in the 1987 Older Americans Act, Congress declared that every state Long-Term Care (LTC) Ombudsman program must meet these minimum criteria:

- a. "independence" of the LTC Ombudsman Office;
- b. legal authority for the LTC Ombudsman to bring administrative or legal actions on behalf of complainants;
- c. legal guarantee of Ombudsman access to LTC facilities, residents, and residents' records;

- d. legal guarantee of confidentiality for the records of the LTC Ombudsman;
- e. immunity from civil and criminal liability for persons who complain or report to the Ombudsman;
- f. legal prohibition and sanctions against interference with the work of the LTC Ombudsman; and
- g. legal prohibitions and sanctions to prevent "retaliation" against complainants or reporters to the Ombudsman ("whistle-blower protection").

CSSB 442 (State Affairs) will bring Alaska's Long-Term Care Ombudsman program into compliance with these new 1987 federal requirements, by providing requisite statutory authority to implement Congressional intent.

CSSB 442 also grants regulation-making authority to the Older Alaskans Commission, which will enable the OAC's LTC Ombudsman to comply with several other less significant technical changes in the 1987 federal act.

CSSB 442 not only strengthens and expands Alaska's senior ombudsman program, but it is also the first specific statutory foundation for the program. To date, the senior ombudsman program in Alaska has operated without any state statutory powers and the senior ombudsman handled complaints based solely on the power of persuasion.

BENEFITS TO SENIORS IN LONG-TERM CARE FACILITIES

This bill offers major new protections to residents of nursing homes, adult residential homes, and adult foster homes in Alaska. The Long-Term Care Ombudsman will be empowered to act as a personal advocate for these dependent senior citizens, a service not now available from any federal, state, or local agency.

Families of LTC residents will have additional assurance of quality care, and of an effective mechanism for curing individual grievances, through the Office of the LTC Ombudsman. Trained and certified local volunteer ombudsman will be a visible presence in each nursing or boarding home, available on a regular and frequent basis to concerned residents or families.

A valuable "extra" in CSSB 442 is the extension of protection against retaliation to any person who complains about or reports any type of elder abuse, whether or not in a LTC facility, under AS 47.24.010. The Commission applauds this enhancement to Alaska's Elder Abuse Law.

STAFFING OF THE ALASKA LONG-TERM CARE OMBUDSMAN OFFICE

The Older Alaskans Ombudsman program now consists of one staffer, operating out of Anchorage. He operates without clerical or administrative support, except for central administration from the Juneau office. Because of the

limited staff and travel funds, he does not visit long-term care facilities except when he receives a phone complaint. The Older Alaskans Commission believes that the LTC Ombudsman needs an assistant if he is to maintain his current caseload of senior complaint-handling and also recruit, train and supervise volunteers in every community where there is a long-term care facility.

Unfortunately, the 1987 Congress, while it passed the amendments which require a much more active and formal role for the LTC Ombudsman, did not appropriate new federal funds to the states for carrying out this new advocacy mission. States are expected to use either state funds or other Older American Act federal funds for the expanded Ombudsman program. Because the Commission's FY 89 budget is at maintenance level, the Commission felt it was more appropriate to seek new state general funds for this program rather than to reduce the FY 89 grants budgets for senior meals, transportation, or in-home care services.

If the bill is passed without the fiscal note, the LTC Ombudsman Office will attempt to meet the spirit of the new federal mandate, but will need to restrain its actual activities in keeping with its present staff of one. This would probably mean that it could take up to five years before the Ombudsman could develop training procedures and actually achieve trained volunteer corps in all communities with LTC facilities. Whether one person could ever adequately supervise that many volunteers is problematic.

If this bill passes without any additional funding, the Commission will probably need, in another year in the near future, to seek a position and funds again, or to divert funding from other grant programs.

CONCLUSION

The Older Alaskans Commission strongly supports CSSB 442 (State Affairs), whether or not the fiscal note passes with it this year. The Commission, and the State, must comply with these new federal requirements to keep federal funding from the Older Americans Act. More importantly, senior Alaskans in long-term care facilities deserve the same protection and advocacy services as will now be available throughout the nation. This bill is a great service to everyone concerned about quality long-term care.

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Date: March 25, 1988

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Date: March 25, 1988