INITIAL PROGRESS REPORT TO THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES

CONSUMER ADVOCACY AND OMBUDSMAN PROGRAMS IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

PREPARED BY THE ADVOCACY, CLIENT RIGHTS AND QUALITY IMPROVEMENT SECTION, DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES

APRIL 1, 2002

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INTRODUCTION

The General Assembly of North Carolina in its 2001 session enacted legislation to phase in implementation of mental health system reform at the state and local levels. Session Law 2001-437 (House Bill 381) includes, in Section 1.1, a redefinition of basic State policy. In pertinent part it states that:

> "The policy of the State is to assist individuals with needs for mental health, developmental disabilities, and substance abuse services in ways consistent with the dignity, rights, and responsibilities of all North Carolina citizens."

Part 2 of the act, in Section 2, provides for a MH/DD/SA Consumer Advocacy Program. As stated therein:

> "The General Assembly finds that many consumers of mental health, developmental disabilities, and substance abuse services are uncertain about their rights and responsibilities and how to access the public service system to obtain appropriate care and treatment.
>
> The General Assembly recognizes the importance of ensuring that consumers have information about the availability of services and access to resources to obtain timely quality care.
>
> There is established the MH/DD/SA Consumer Advocacy Program. The purpose of this program is to provide consumers, their families, and providers with the information and advocacy needed to locate appropriate services, resolve complaints, or address common concerns and promote community involvement.
>
> It is further the intent of the General Assembly that the Department [of Health and Human Services], within available resources and pursuant to its duties under this Chapter, ensure that the performance of the mental health care system in this State is closely monitored, reviews are conducted, findings and recommendations and reports are made, and that local and systemic problems are identified and corrected when necessary to promote the rights and interests of all consumers of mental health, developmental disabilities, and substance abuse services."

The law provides that the Secretary shall establish a State MH/DD/SA Consumer Advocacy Program in the Office of the Secretary of Health and Human Services and shall appoint a State Consumer Advocate. Other provisions define State and Local Consumer Advocacy Programs, specify the duties and authority of State and Local Consumer Advocates, and delineate other aspects of State and Local Program operations. A copy of Section 2, which amends Chapter 122C by adding Article 1A, is at Appendix 1.

Section 2 is effective July 1, 2002. However, Section 4 of the act states that Section 2 becomes effective that date only if funds are appropriated by the 2001 General Assembly, Regular Session 2002, for that purpose.

Part 3 of the act at Section 3. (c) includes an associated provision that directs:

> "The Secretary [of DHHS] shall study consolidating the Quality of Care Consumer Advocacy Program[1] as provided in Section 2 of this act with other consumer advocacy or ombudsman programs in the Department of Health and Human Services. The study shall include:
>
> (1) An analysis of the budgetary implications of consolidation;
> (2) Strategies for local interagency collaboration and coordination of ombudsman and consumer assistance services; and
> (3) The possible effects of the consolidation on quality of care, service delivery, and consumer assistance for each affected consumer population. The Secretary shall report the findings and recommendations, including enabling legislation, to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on or before March 1, 2002."

The nature and scope of the study demand a careful and collaborative approach to the task. The potential real and perceived effects on a wide array of consumer populations, the varied and strongly held positions and perspectives on consumer involvement, and the special interest advocacy and territoriality of affected groups and/or agencies are among issues to be considered. Coupled with an acknowledged late start on the study, these matters effectively barred compliance with the stated report deadline.

In an understanding response to the above, the Committee extended the study report due date to April 1, 2002, with a stipulation that an initial progress report by that date be followed by presentation of a final report of findings and recommendations on a Committee-approved schedule. [This is an assumption on my part; needs to be confirmed/corrected through discussion with Peggy Balak and/or Sherry Harrison.]

This first progress report addresses some conceptual and definitional issues and presents information on existing consumer advocacy and ombudsman programs within DHHS. Based on initial data secured, it identifies matters and poses questions that require further review to ensure a balanced and inclusive response to the study mandate. It includes recommendations for next steps in the study and a proposed final report deadline.

The study is being conducted under direction from a subgroup of a State Plan Implementation Committee of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS). Ms. Debbie Kinert, R.N., M.S.N., parent of a consumer, is Chair of the subgroup. Subgroup participants include consumers, family members, advocates, DHHS consumer advocacy and ombudsman program staff and other Division and DHHS staff. (As of March 26, the subgroup was moved from the Quality of Care Committee to the Administrative Infrastructure/ Processes Committee to enhance opportunities for coordination with allied State Plan implementation activities.)

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[1] Whereas Section 3 of the act refers to a "Quality of Care Consumer Advocacy Program" Section 2 refers to the same as the "MH/DD/SA Consumer Advocacy Program."

CONCEPT AND DEFINITIONAL ISSUES

Advocacy – *n*. Active support, as of a cause, idea, or policy.

Advocate – *tr.v*. To speak in favor of; recommend. *n*. 1. A person who argues for a cause; supporter or defender. 2. A person who pleads in another's behalf; intercessor.

Ombudsman – n. 1. A government official, esp. in Scandinavian countries, who investigates citizens' complaints against the government or its functionaries. 2. One that investigates complaints, as from consumers, reports findings, and assists in achieving fair settlements.[2]

The MH/DD/SA Consumer Advocacy Program

The purpose of the prospective MH/DD/SA Consumer Advocacy Program as stated in Section 2 (122C-10) is:

- To provide consumers, their families, and providers with the information and advocacy needed to locate appropriate services;
- Resolve complaints; or
- Address common concerns and promote community involvement.

Section 2 (122C-10) also includes a statement on the further intent of the General Assembly that the Department [of Health and Human Services] will ensure that:

- The performance of the mental health care system in this State is closely monitored;
- Reviews are conducted, findings and recommendations and reports are made: and
- Local and systemic problems are identified and corrected when necessary to promote the rights and interests of all consumers of mental health, developmental disabilities, and substance abuse services.

The duties prescribed for the State [MH/DD/SA] Consumer Advocate (122C-13) and the Local [MH/DD/SA] Consumer Advocates (122C-14) include elements of the stated purpose and, to a lesser extent, some aspects of the "further intent" language in 122C-10. They consist of informational, complaint resolution and related functions often associated with customer service or customer assistance operations. Additional duties include on-site monitoring of conditions and services and evaluations of the quality of care provided. The promotion of "community involvement" is another major charge.

The State Consumer Advocate is to "establish procedures for processing and resolving complaints at the State and local levels….[and] for coordinating complaints with local human rights committees and the State protection and advocacy agency."

State and Local Advocates are to attempt to resolve complaints using, whenever possible, informal mediation, conciliation, and persuasion. Complaints that cannot be resolved in this manner are to be referred to the appropriate licensing agency.

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[2] *The American Heritage Dictionary*, Second College Edition, 1991

The State Consumer Advocate is to submit an annual report to the General Assembly and the DHHS Secretary. The report is to contain "data and findings regarding the types of problems experienced and complaints reported by or on behalf of providers, consumers, and employees of providers, as well as recommendations to resolve identified issues and to improve the administration of MH/DD/SA services throughout the State."

The State Long-Term Care Ombudsman Program

The prospective MH/DD/SA Consumer Advocacy Program appears to be modeled on the State Long-Term Care Ombudsman Program/Office established by NCGS 143B-181.15 - .25. The duties specified for the State Ombudsman (143B-181.18) and for the Regional Ombudsman (143B-181.19) are similar in many regards to those assigned to the State and Local MH/DD/SA Consumer Advocates. The Long-Term Care Ombudsman Program is, by law, established in the DHHS Division of Aging. A copy of NCGS 143B-181.15 *et seq* is at Appendix 2. Additional information on the program is included in the initial survey data presented below.

The Managed Care Patient Assistance Program

The 2001 session of the General Assembly also enacted a law to establish a Managed Care Patient Assistance Program (Session Law 2001-446). Effective January 1, 2002, the Program is to be established in an existing State agency or department designated by the Governor. The Program Director is appointed by the Governor. (To date, a decision has not been made on the organizational placement of the program.) A copy of NCGS 143-730 is at Appendix 3. Notice is taken of this program given the partial similarity to the proposed MH/DD/SA Consumer Advocacy Program and its recent contemporaneous legislative establishment.

The stated purpose of the Managed Care Patient Assistance Program is to "provide information and assistance to individuals enrolled in managed care plans." The following are among the six enumerated duties and responsibilities of the Program:

- Develop and distribute educational and informational materials for consumers, explaining their rights and responsibilities as managed care plan enrollees;
- Answer inquiries posed by consumers and refer inquiries of a regulatory nature to staff within the Department of Insurance;
- Advise managed care plan enrollees about the utilization review process; and
- Assist enrollees with the grievance, appeal, and external review procedures established by Article 50 of Chapter 58 of the General Statutes.

The Director is charged to report to the General Assembly annually on program activities, including "the types of appeals, grievances, and complaints received and the outcome of these cases."

Concept Blending and Definitional Uncertainty

The above State laws incorporate, in varied ways, the concepts of consumer assistance, advocacy and ombudsman. In the cases of the MH/DD/SA Consumer Advocacy Program and the Long-Term Care Ombudsman Program there is the additional element of community building initiatives. In each case, these are hybrid programs with goals,

powers and duties that admit to identification more as "both/and" rather than "either/or" advocacy and ombudsman. None is in the classic ombudsman concept (see below).

This admixture is reflected in the language in Section 3, which includes all three terms in describing the scope of the subject study. Accordingly, and in the absence of associated North Carolina statutory definitions, it is difficult to discern with a comfortable degree of certainty whether the legislative intent of the prospective MH/DD/SA Consumer Advocacy Program was to continue this blended concept. The following information is supplied to assist in understanding some of the concepts involved and in helping to formulate questions that bear on the intention and the direction of a future "consolidation" of existing and prospective programs.

The Ombudsman Concept

The Ombudsman term/concept has gained recognition in the United States and elsewhere. The U.S. Ombudsman Association (USOA), the national organization of public sector ombudsman, addresses the distinction between an ombudsman's responsibilities and advocacy in a paper on the public sector ombudsman.[3]

USOA describes an Ombudsman's powers and responsibilities as follows:

> "The essential characteristics of an Ombudsman's Office are independence, the ability to investigate complaints which often includes subpoena power, the ability to criticize government agencies and to recommend changes that may be issued in public reports. An Ombudsman, however has no enforcement or disciplinary powers.
>
> The Ombudsman is a paradox, being both powerful and powerless at the same time. They can investigate complaints, choosing which are the most important and initiate investigations without complaints. They set an agenda by what they choose to investigate. They can determine whether a complaint is justified and seek remedies for it. They can compel people to talk to them and produce records, subject to protections witnesses have in court. But they cannot make an agency do anything. They can, however, make their reports public. Aside from choosing what questions to ask and issuing subpoenas, their powers are mainly persuasion and publicity.
>
> An Ombudsman generally does not have the power to investigate the people who appoint the ombudsman and other elected officials, and does not have the power to look at the judicial acts of courts. Voters have remedies such as recall or impeachment for elected officials. Unfavorable court decisions can be appealed to a higher court. Complaints about judicial misconduct may result in an administrative sanction of a judge or rejection of an incumbent at the polls. The ombudsman is not an alternative to these traditional remedies."

On the issue of the advocacy-ombudsman relationship, the USOA paper states:

> "Ombudsman perform an unusual role in government. While they receive complaints from the public, their job is not to become an advocate for the

[3] *Public Sector Ombudsman*, © Copyright 2002, United States Ombudsman Association

> complainant or the governments they have jurisdiction over. Ombudsman are charged with collecting and evaluating all of the facts regarding a matter as a neutral investigator. They determine if there was an error, unfairness or harm by the agency involved, or no basis to the complaint. Ombudsman make recommendations to correct wrongs done to individuals to improve the administration of government. If their recommendations are not accepted and good reasons not given, the ombudsman may become an advocate for their implementation."

The USOA's Model Ombudsman Act for State Governments, February 1997, states the Legislative Purpose as follows:

> It is the intent of the legislature to establish, in addition to other remedies or rights of appeal of any person under state law, an independent, impartial, state office, readily available to the public, responsible to the legislature, empowered to investigate the acts of state [and local] administrative agencies and to recommend appropriate changes toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency and justice in the administration of state [and local] laws.

In a comment on this basic element of the model act, the USOC observes that the term Ombudsman is distinctive and should be used only when the legislation provides for an independent official who receives complaints against government agencies and who, after investigation, may, if the complaints are justified, make recommendations to remedy the complaints.

Advocacy Services

The concept of advocacy is so broad and diverse in nature, range, perception, goal, and operation that it presents a formidable challenge to definition, except in a particular application. For the purpose of this study, however, notice is taken of the concept of Social Advocacy Services as a set of service-specific standards established by the Council on Accreditation for Children and Family Services, Inc. (COA).[4]

The COA definition is as follows:

> Social Advocacy Services promote change and improvement in social institutions, systems, legislation, and practices that affect individuals, families, groups, and communities through a planned organizational service to which personnel and organizational resources are allocated, and which involves the active participation of the organization in partnership with relevant community stakeholders.

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[4] *Standards and Self-Study Manual, Private and Public Organizations*, 7th Edition, Volume 2, Copyright 2001 by the Council on Accreditation

SURVEY OF DHHS DIVISIONS AND OFFICES

As a first step in the study, DHHS Divisions and Offices were surveyed to discover and/or confirm the existence of defined programs that offer Consumer Advocacy and/or Ombudsman-type services.

The earlier acknowledged late start on the study, together with the press of a looming initial report deadline, led the Subgroup to adopt a work plan that divided internal survey activities into two parts. An initial survey was designed to elicit basic information about existing programs within DHHS. A second, follow-up survey will request information and opinions about the potential advantages and disadvantages of consolidation and other pertinent data.

A copy of the initial survey instrument (Survey #1) is at Appendix 4.

In the absence of clearly defined concepts of Consumer Advocacy and Ombudsman, the initial survey invited DHHS Divisions and Offices to "self identify" their program(s) that might come under the rubric of consumer advocacy and/or ombudsman. Additionally, the respondents were asked to comment on conceptual variations and significant differences that may exist between the consumer advocacy and ombudsman functions in current operation.

Five DHHS Divisions and Offices reported having a consumer advocacy and/or ombudsman program. The following DHHS Divisions and Offices did not respond to Survey #1:

- Division of Facility Services
- Division of Health Services
- Division of Services for the Deaf and Hard of Hearing
- Office of Minority Health

There was no response from the following Sections of the DMH/DD/SAS:

- Adult Mental Health Services
- Child and Family Services
- Developmental Disabilities Services.

TABLE 1 presents a summary of selected results of Survey #1. The table does not include the survey items pertaining to budgetary issues. Responses to these questions were incomplete. This is attributed to the fact of the extremely short survey "turnaround" and the current imperative executive attention to the preparation of SFY 02-03 budget plans and proposals.

Survey #1 requested respondents to state their primary program mission and to provide a brief program description. The results are presented at Appendix 5.

MATTERS REQUIRING FURTHER REVIEW

Due to time constraints, neither Survey #1 nor other standard study protocols allowed for the full or adequate examination of all aspects of the study as outlined in the statutory directive. An appropriately comprehensive examination of these issues is needed. The design for the next phase of the study should:

- Allow for further input by potentially affected stakeholders;
- Be sufficient to develop sound recommendations that could include the presentation of proposed enabling or alternative legislation; and
- Be coordinated with other pertinent State Plan implementation activities and timetables to the extent possible and appropriate.

The issues of concept blending and definitional ambiguity need further consideration and refinement. Survey #1 responses added the particulars of a distinct and federally mandated information and referral service to the broader consumer assistance concept. The responses confirm the absence of a classic ombudsman as described by the USOA.

Some Survey #1 respondents although reporting no separate or structured consumer advocacy program, nonetheless alluded to the client advocacy dimensions that inherently reside in many services and supports available through DHHS and the MH/DD/SAS system. The management and staff often include those from the "helping professions" with an innate client advocacy disposition.

The study also generated questions related to the five-year State Plan for Mental Health, Developmental Disabilities and Substance Abuse Services Plan[5]. The Plan states the principles and vision on which it rests. That vision includes the following:

Consumers will have (among other opportunities):
- Meaningful input into the design and planning of the service system;
- Information about services, how to access them, and how to voice complaints;
- Easy, immediate access to appropriate services;
- Safe and humane living conditions in communities of their choice;
- Satisfaction with the quality and quantity of services; and
- Access to an orderly, fair and timely system of arbitration and resolution.

With regard to study coordination with State Plan implementation activities, particular notice is taken of the Plan's intended creation of an Office of Consumer Affairs in the Division of MH/DD/SAS. The Plan states a consumer who reports directly to the Division Director and is a member of the Division's management team will lead the office. It does not, however, specify the functions and duties of the Office of Consumer Affairs and/or the Office Director.

A November 2000 report, *Offices of Consumer Affairs: A Pathway to Effective Public Mental Health Services*, was issued by the National Technical Assistance Center for State Mental Health Planning. It was designed to encourage state mental health agencies to consider establishing an Office of Consumer Affairs as a mechanism to help ensure that consumers have a strong voice in state mental health policy development, planning and practice. The report lists six primary areas of responsibility typically assigned to an Office of Consumer Affairs. One such area is "addressing complaints and grievances." The report cautions, however, that the office should not have sole responsibility in this area.

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[5] *State Plan 2001: Blueprint for Change,* November 30, 2001

The information secured to date generates a number of questions to be considered in the next study phase. They include:

- What do the current organizational arrangements and statutory constraints (State and Federal) mean for potential consolidation of existing and prospective advocacy and ombudsman programs and services?

- Can the issues of concept and definitional variety and ambiguity be resolved for common and effective application to all programs?

- Can consolidation be used both to enrich existing programs without loosing their identity and to expand, enhance, clarify and simplify citizen and consumer access to information, advocacy and ombudsman services?

- Might advocacy, in its various and budding formulations as distinct from information and consumer assistance services, be more properly and better achieved through established and emerging external advocacy groups and organizations?

- Would an independent agency, by whatever name, legislatively charged with client service responsibilities (e.g., concerns and complaints about services; questions about rights; grievances; investigations, etc.) better achieve public policy objectives than multiple or consolidated programs within DHHS?

- Will the design of the proposed DMH/DD/SAS Office of Consumer Affairs include responsibilities for addressing complaints and grievances?

RECOMMENDED NEXT STEPS

In the light of the above, the following recommendation is respectfully submitted:

- The further design and conduct of the balance of the study (Phase 2) will be such as to present a final report and recommendations to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services by May 15, 2002.

This second phase will address the three items specified in Section 3. (c) of Session Law 2001-437.

TABLE 1

STUDY OF CONSUMER ADVOCACY AND OMBUDSMAN PROGRAMS
IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUMMARY OF SELECTED RESULTS OF SURVEY #1 - MARCH 2002

DHHS UNIT→	OFFICE OF AGING	OFFICE OF CITIZEN SERVICES	OFFICE OF EDUCATION	DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES	DIVISION OF VOCATIONAL REHABILITATION – DIVISON OF SERVICES FOR THE BLIND
SURVEY ITEM ↓					
PROGRAM NAME	STATE LONG TERM CARE OMBUDSMAN PROGRAM	DHHS OMBUDSMAN PROGRAM	OMBUDSMAN	(1) ADVOCACY AND CLIENT RIGHTS BRANCH; (2) MENTAL HEALTH FACILITIES INTERNAL ADVOCACY DEPARTMENTS	CLIENT ASSISTANCE PROGRAM; (JOINT DVR/DSB PROGRAM)
PRIMARY FUNCTION	OMBUDSMAN	OMBUDSMAN	OMBUDSMAN	(1) & (2) CONSUMER ADVOCACY	CONSUMER ADVOCACY
NC STATUTORY AUTHORITY	NCGS 143B-181.15 - .25 (ESTABLISHED IN COMPLIANCE WITH PROVISIONS OF THE FEDERAL OLDER AMERICANS ACT OF 1965, AS AMENDED)	NONE (1973 FEDERAL MANDATE FOR INFORMATION AND REFERRAL SERVICES FOR OLDER ADULTS; DHHS INFO & REF SERVICE AND CARE-LINE CREATED IN RESPONSE)	NONE	NONE	NONE (ESTABLISHED UNDER AUTHORITY OF TITLE 1, PART B, SECTION 112, FEDERAL REHABILITATION ACT OF 1973, AS AMENDED)
YEAR PROGRAM STARTED IN UNIT	1976	1975	1996	2000	1984

DHHS UNIT→	OFFICE OF AGING	OFFICE OF CITIZEN SERVICES	OFFICE OF EDUCATION	DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES	DIVISION OF VOCATIONAL REHABILITATION – DIVISON OF SERVICES FOR THE BLIND
PRINCIPAL EXPECTED PROGRAM OUTCOME(S)	FULL COMPLIANCE WITH OLDER AMERICANS ACT AND STATE STATUTORY MANDATES. RESIDENTS WILL RECEIVE TIMELY AND APPROPRIATE PROGRAM SERVICES, AND GRIEVANCES WILL BE THOROUGHLY INVESTIGATED AND EITHER RESOLVED OR REFERRED TO APPROPRIATE REGULATORY AGENCY.	SERVE AS CENTRAL POINT OF CONTACT FOR DHHS CUSTOMERS WHO HAVE PROBLEMS, COMPLAINTS OR INQUIRIES REGARDING SERVICES THAT DHHS OVERSEES OR ADMINISTERS; SERVE AS LIAISON BETWEEN EXTERNAL AND INTERNAL DHHS CUSTOMERS. FINAL EXPECTED OUTCOME IS TO RESOLVE OR PROVIDE A SOLUTION TO A COMPLAINT OR TO CLARIFY/ RESTATE INFORMATION FOR ACCURACY & TRY TO FIND OTHER AVENUES OF ASSISTANCE THAT MAY BE AVAILABLE	PROVIDING DIRECT CASE INVESTIGATION AND ADVOCACY ON INDIVIDUAL CASE PROBLEMS, AND CONSULTATION WITH OTHER AGENCIES ON STATE AND LOCAL LEVELS; HELPING TO FACILITATE A FAIR AND EQUITABLE RESOLUTION FOR EACH CASE	(1) CUSTOMER SATISFACTION; HELP CONTRIBUTE TO THE IMPROVEMENT OF SERVICES FOR ALL MH/DD/SAS CONSUMERS; (2) PROTECTION OF CONSUMER/ PATIENT RIGHTS AND MAINTAINING A THERAPEUTIC ENVIRONMENT CONDUCIVE TO COMFORTABLE, SAFE, NORMAL LIVING CONDITIONS AND APPROPRIATE TREATMENT; KEEP STAFF SENSITIVE TO THE RIGHTS AND NEEDS OF PATIENTS	CAP'S GOAL IN EVERY CASE SERVED IS TO RESOLVE THE CONSUMER'S CONCERN TO THE POINT OF RESOLUTION THAT IS MUTUALLY AGREEABLE TO THE CONSUMER AND THE REHABILITATION PROGRAM

DHHS UNIT→	OFFICE OF AGING	OFFICE OF CITIZEN SERVICES	OFFICE OF EDUCATION	DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES	DIVISION OF VOCATIONAL REHABILITATION – DIVISON OF SERVICES FOR THE BLIND
CUSTOMER/ CONSUMER POPULATIONS SERVED	OLDER ADULTS AGED 60 AND OLDER WHO RESIDE IN EITHER AN ADULT CARE HOME OR A NURSING HOME	ALL NC CITIZENS; DHHS SECRETARY AND SECRETARY'S OFFICE; ALL DHHS DIVISIONS/ OFFICES; OTHER STATE AND LOCAL GOVERNMENT AGENCIES; ELECTED OFFICIALS; PRIMARILY OUR EXTERNAL CUSTOMERS ARE EITHER LOW INCOME VERY NEEDY INDIVIDUALS WHO ARE TRYING TO ACCESS OR HAVE ACCESSED SERVICES THAT DHHS HAS OVERSIGHT OF JURISDICTION OR CONCERNED PARTIES WHO ARE REPRESENTING THEM.	NC SCHOOL FOR THE DEAF; EASTERN NC SCHOOL FOR THE DEAF; THREE EARLY INTERVENTION PROGRAMS FOR CHILDREN WHO ARE DEAF OR HARD OF HEARING; PRESCHOOL FOR VISUALLY IMPAIRED CHILDREN	(1) ALL MH/DD/SAS CONSUMERS; (2) MENTALLY ILL CHILDREN AND ADULTS IN STATE FACILITIES	TARGET POPULATIONS ARE THOSE WHO ARE DISABLED/ IMPAIRED

DHHS UNIT→	OFFICE OF AGING	OFFICE OF CITIZEN SERVICES	OFFICE OF EDUCATION	DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES	DIVISION OF VOCATIONAL REHABILITATION – DIVISON OF SERVICES FOR THE BLIND
SERVES PERSONS WITH MH/DD/SA NEEDS	N/A – BUT OCCASIONALLY PROVIDE RIGHTS ADVOCACY AND GRIEVANCE INVESTIGATIVE SERVICES TO PERSONS WITH THESE NEEDS WHO RESIDE IN LONG TERM CARE FACILITIES	YES	NO	YES	YES, IF INDIVIDUAL SITUATION IS APPROPRIATE FOR THE INDEPENDENT LIVING OR VR PROGRAMS IN DVRS AND DSB
SERVICE AREA	STATEWIDE	STATEWIDE	STATEWIDE	(1) STATEWIDE; (2) INDIVIDUAL MH FACILITY	STATEWIDE
INTERACTION WITH DHHS PROGRAMS	COUNCIL FOR DEVELOPMENTAL DISABILITIES; GOVERNOR'S ADVISORY COUNCIL ON AGING; SENIOR TAR HEEL LEGISLATURE	EVERY ADVOCACY AND OMBUDSMAN PROGRAM WITHIN DHHS	DMH/DD/SAS; DIVISION OF SOCIAL SERVICES	ADVOCACY AND OMBUDSMAN WITHIN DHHS; CARE-LINE; CLIENT RIGHTS REPRESENTATIVES IN AREA PROGRAMS	CARE-LINE
INTERACTION WITH PROGRAMS/ AGENCIES OUTSIDE DHHS	GACPD*; FRIENDS OF RESIDENTS IN LONG TERM CARE; AARP; NC ALZHEIMER'S ASSOCIATION CHAPTERS	WIDE ARRAY OF STATE AND LOCAL AGENCIES, LEGISLATORS, ADVOCACY GROUPS & CITIZEN ORGANIZATIONS	N/A	GACPD; DPI, ADVOCACY ASSOCIATIONS	GACPD; DISABILITY SUPPORT AND ADVOCACY GROUPS; PROTECTION & ADVOCACY PROGRAMS; INDEPENDENT LIVING CENTERS

*GOVERNOR'S ADVOCACY COUNCIL FOR PERSONS WITH DISABILITIES

DHHS UNIT→	OFFICE OF AGING	OFFICE OF CITIZEN SERVICES	OFFICE OF EDUCATION	DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES	DIVISION OF VOCATIONAL REHABILITATION – DIVISON OF SERVICES FOR THE BLIND
NUMBER OF FULL TIME POSITIONS	3	13	1	(1) 3; (2) 22	4
STAFF LOCATED OUTSIDE RALEIGH	NO	NO	NO	(1) NO; (2) YES	NO
FUNDING SOURCES	15% STATE; 85% FEDERAL	57% STATE; 43% FEDERAL	100% STATE	(1) & (2) 100 % STATE	100% FEDERAL

CA&O Study Progress Report – Table 1

APPENDIX 1

STUDY OF CONSUMER ADVOCACY AND OMBUDSMAN PROGRAMS
IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

SESSION LAW 2001-437, SECTION 2
MH/DD/SA CONSUMER ADVOCACY PROGRAM

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

SESSION LAW 2001-437
HOUSE BILL 381

AN ACT TO PHASE IN IMPLEMENTATION OF MENTAL HEALTH SYSTEM REFORM AT THE STATE AND LOCAL LEVEL.

PART 2. MH/DD/SA CONSUMER ADVOCACY PROGRAM

SECTION 2. Effective July 1, 2002, Chapter 122C of the General Statutes is amended by adding the following new Article to read:

"Article 1A.
"MH/DD/SA Consumer Advocacy Program.

"§ 122C-10. MH/DD/SA Consumer Advocacy Program.

The General Assembly finds that many consumers of mental health, developmental disabilities, and substance abuse services are uncertain about their rights and responsibilities and how to access the public service system to obtain appropriate care and treatment. The General Assembly recognizes the importance of ensuring that consumers have information about the availability of services and access to resources to obtain timely quality care. There is established the MH/DD/SA Consumer Advocacy Program. The purpose of this Program is to provide consumers, their families, and providers with the information and advocacy needed to locate appropriate services, resolve complaints, or address common concerns and promote community involvement. It is further the intent of the General Assembly that the Department, within available resources and pursuant to its duties under this Chapter, ensure that the performance of the mental health care system in this State is closely monitored, reviews are conducted, findings and recommendations and reports are made, and that local and systemic problems are identified and corrected when necessary to promote the rights and interests of all consumers of mental health, developmental disabilities, and substance abuse services.

"§ 122C-11. MH/DD/SA Consumer Advocacy Program/definitions.

Unless the context clearly requires otherwise, as used in this Article:

(1) 'MH/DD/SA' means mental health, developmental disabilities, and substance abuse.

(2) 'State Consumer Advocate' means the individual charged with the duties and functions of the State MH/DD/SA Consumer Advocacy Program established under this Article.

(3) 'State Consumer Advocacy Program' means the State MH/DD/SA Consumer Advocacy Program.

(4) 'Local Consumer Advocate' means an individual employed and certified by the State Consumer Advocate to perform the duties and functions of the MH/DD/SA Local Consumer Advocacy Program in accordance with this Article.

(5) 'Local Consumer Advocacy Program' means a local MH/DD/SA Local Consumer Advocacy Program.

(6) 'Consumer' means an individual who is a client or a potential client of public services from a State or area facility.

"§ 122C-12. State MH/DD/SA Consumer Advocacy Program.

The Secretary shall establish a State MH/DD/SA Consumer Advocacy Program office in the Office of the Secretary of Health and Human Services. The Secretary shall appoint a State Consumer Advocate. In selecting the State Consumer Advocate, the Secretary shall consider candidates recommended by citizens' organizations representing the interest of individuals with needs for mental health, developmental disabilities, and substance abuse services. The State Consumer Advocate may hire individuals to assist in executing the State Consumer Advocacy Program and to act on the State Consumer Advocate's behalf. The State Consumer Advocate shall have expertise and experience in MH/DD/SA, including expertise and experience in advocacy. The Attorney General shall provide legal staff and advice to the State Consumer Advocate.

"§ 122C-13. State Consumer Advocate duties.

The State Consumer Advocate shall:

(1) Establish Local Quality Care Consumer Advocacy Programs described in G.S. 122C-14 and appoint the Local Consumer Advocates.

(2) Establish certification criteria and minimum training requirements for Local Consumer Advocates.

(3) Certify Local Consumer Advocates. The certification requirements shall include completion of the minimum training requirements established by the State Consumer Advocate.

(4) Provide training and technical Advocacy to Local Consumer Advocates.

(5) Establish procedures for processing and resolving complaints both at the State and local levels.

(6) Establish procedures for coordinating complaints with local human rights committees and the State protection and advocacy agency.

(7) Establish procedures for appropriate access by the State and Local Consumer Advocates to State, area authority, and county program facilities and records to ensure MH/DD/SA. The procedures shall include, but not be limited to, interviews of owners, consumers, and employees of State, area authority, and county program facilities, and on-site monitoring of conditions and services. The procedures shall ensure the confidentiality of these records and that the identity of any complainant or consumer will not be disclosed except as otherwise provided by law.

(8) Provide information to the public about available MH/DD/SA services, complaint procedures, and dispute resolution processes.

(9) Analyze and monitor the development and implementation of federal, State, and local laws, regulations, and policies relating to consumers and recommend changes as considered necessary to the Secretary.

(10) Analyze and monitor data relating to complaints or concerns about access and issues to identify significant local or systemic problems, as well as opportunities for improvement, and advise and assist the Secretary in developing policies, plans, and programs for ensuring that the quality of services provided to consumers is of a uniformly high standard.

(11) Submit a report annually to the Secretary, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Joint Legislative Health Care Oversight Committee containing data and findings regarding the types of problems experienced and complaints reported by or on behalf of providers, consumers, and employees of providers, as well as recommendations to resolve identified issues and to improve the administration of MH/DD/SA facilities and the delivery of MH/DD/SA services throughout the State.

"§ 122C-14. Local Consumer Advocate; duties.

(a) The State Consumer Advocate shall establish a Local MH/DD/SA Consumer Advocacy Program in locations in the State to be designated by the Secretary. In determining where to locate the Local Consumer Advocacy Programs, the Secretary shall ensure reasonable consumer accessibility to the Local Consumer Advocates. Local Consumer Advocates shall administer the Local Consumer Advocacy Programs. The State Consumer Advocate shall appoint a Local Consumer Advocate for each of the Local Consumer Advocacy Programs. The State Consumer Advocate shall supervise the Local Consumer Advocates.

(b) Pursuant to policies and procedures established by the State Consumer Advocate, the Local Consumer Advocate shall:

(1) Assist consumers and their families with information, referral, and advocacy in obtaining appropriate services.

(2) Assist consumers and their families in understanding their rights and remedies available to them from the public service system.
(3) Serve as a liaison between consumers and their families and facility personnel and administration.
(4) Promote the development of consumer and citizen involvement in addressing issues relating to MH/DD/SA.
(5) Visit the State, area authority, or county program facilities to review and evaluate the quality of care provided to consumers and submit findings to the State Consumer Advocate.
(6) Work with providers and consumers and their families or advocates to resolve issues of common concern.
(7) Participate in regular Local Consumer Advocate training established by the State Consumer Advocate.
(8) Report regularly to area authorities and county programs, county and area authority boards, and boards of county commissioners about the Local Consumer Advocate's activities, including the findings made pursuant to subdivision (5) of this subsection.
(9) Provide training and technical assistance to counties, area authority boards, and providers concerning responding to consumers, evaluating quality of care, and determining availability of services and access to resources.
(10) Coordinate activities with local human rights committees based on procedures developed by the State Consumer Advocate.
(11) Provide information to the public on MH/DD/SA issues.
(12) Perform any other related duties as directed by the State Consumer Advocate.
"§ 122C-15. State/Local Consumer Advocate; authority to enter; communication with residents, clients, patients; review of records.
(a) For purposes of this section, G.S.
122C-16 and G.S. 122C-17, 'Consumer Advocate' means either the State Consumer Advocate or any Local Consumer Advocate.
(b) In performing the Consumer Advocate's duties, a Consumer Advocate shall have access at all times to any State or area facility and shall have reasonable access to any consumer or to an employee of a State or area facility. Entry and access to any consumer or to an employee shall be conducted in a manner that will not significantly disrupt the provision of services. If a facility requires visitor registration, then the Consumer Advocate shall register.
(c) In performing the Consumer Advocate's duties, a Consumer Advocate may communicate privately and confidentially with a consumer. A consumer shall not be compelled to communicate with a Consumer Advocate. When initiating communication, a Consumer Advocate shall inform the consumer of the Consumer Advocate's purpose and that a consumer may refuse to communicate with the Consumer Advocate. A Consumer Advocate also may communicate privately and confidentially with State and area facility employees in performing the Consumer Advocate's duties.
(d) Notwithstanding G.S. 8-53, G.S. 8-53.3, or any other law relating to confidentiality of communications involving a consumer, in the course of performing the Consumer Advocate's duties, the Consumer Advocate may access any information, whether recorded or not, concerning the admission, discharge, medication, treatment, medical condition, or history of any consumer to the extent permitted by federal law and regulations. Notwithstanding any State law pertaining to the privacy of personnel records, in the course of the Consumer Advocate's duties, the Consumer Advocate shall have access to personnel records of employees of State, area authority, or county program facilities.
"§ 122C-16. State/Local Consumer Advocate; resolution of complaints.
(a) Following receipt of a complaint, a Consumer Advocate shall attempt to resolve the complaint using, whenever possible, informal mediation, conciliation, and persuasion.
(b) If a complaint concerns a particular consumer, the consumer may participate in determining what course of action the Consumer Advocate should take on the consumer's behalf. If the consumer has an opinion concerning a course of action, the Consumer Advocate shall consider the consumer's opinion.
(c) Following receipt of a complaint, a Consumer Advocate shall contact the service provider to allow the service provider the opportunity to respond, provide additional information, or initiate action to resolve the complaint.
(d) Complaints or conditions adversely affecting consumers that cannot be resolved in the manner described in subsection (a) of this section shall be referred by the Consumer Advocate to the appropriate licensing agency under Article 2 of this Chapter.

"§ 122C-17. State/Local Consumer Advocate; confidentiality.

(a) Except as required by law, a Consumer Advocate shall not disclose the following:

(1) Any confidential or privileged information obtained pursuant to G.S. 122C-15 unless the affected individual authorizes disclosure in writing; or

(2) The name of anyone who has furnished information to a Consumer Advocate unless the individual authorizes disclosure in writing.

(b) Violation of this section is a Class 3 misdemeanor, punishable only by a fine not to exceed five hundred dollars ($500.00).

(c) All confidential or privileged information obtained under this section and the names of persons providing information to a Consumer Advocate are exempt from disclosure pursuant to Chapter 132 of the General Statutes. Access to substance abuse records and redisclosure of protected information shall be in compliance with federal confidentiality laws protecting medical records.

"§ 122C-18. State/Local Consumer Advocate; retaliation prohibited.

No one shall discriminate or retaliate against any person, provider, or facility because the person, provider, or facility in good faith complained or provided information to a Consumer Advocate.

"§ 122C-19. State/Local Consumer Advocate; immunity from liability.

(a) The State and Local Consumer Advocate shall be immune from liability for the good faith performance of official Consumer Advocate duties.

(b) A State or area facility, its employees, and any other individual interviewed by a Consumer Advocate are immune from liability for damages resulting from disclosure of any information or documents to a Consumer Advocate pursuant to this Article.

"§ 122C-20. State/Local Consumer Advocate; penalty for willful interference.

Willful interference by an individual other than the consumer or the consumer's representative with the State or a Local Consumer Advocate in the performance of the Consumer Advocate's official duties is a Class 1 misdemeanor."

APPENDIX 2

STUDY OF CONSUMER ADVOCACY AND OMBUDSMAN PROGRAMS
IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

NCGS 143B-181.15 – .25
OFFICE OF STATE LONG-TERM CARE OMBUDSMAN PROGRAM

Part 14D. Long-Term Care Ombudsman Program.
§ 143B-181.15. Long-Term Care Ombudsman Program/Office; policy.

The General Assembly finds that a significant number of older citizens of this State reside in long-term care facilities and are dependent on others to provide their care. It is the intent of the General Assembly to protect and improve the quality of care and life for residents through the establishment of a program to assist residents and providers in the resolution of complaints or common concerns, to promote community involvement and volunteerism in long-term care facilities, and to educate the public about the long-term care system. It is the further intent of the General Assembly that the Department of Health and Human Services, within available resources and pursuant to its duties under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., ensure that the quality of care and life for these residents is maintained, that necessary reports are made, and that, when necessary, corrective action is taken at the Department level. (1989, c. 403, s. 1; 1995, c. 254, s. 1; 1997-
443, s. 11A.118(a).)

§ 143B-181.16. Long-Term Care Ombudsman Program/Office; definition.

Unless the content clearly requires otherwise, as used in this Article:

(1) "Long-term care facility" means any skilled nursing facility and intermediate care facility as defined in G.S. 131A-3(4) or any adult care home as defined in G.S. 131D-20(2).
(2) "Resident" means any person who is receiving treatment or care in any long-term care facility.
(3) "State Ombudsman" means the State Ombudsman as defined by the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., who carries out the duties and functions established by this Article.
(4) "Regional Ombudsman" means a person employed by an Area Agency on Aging to carry out the functions of the Regional Ombudsman Office established by this Article. (1989, c. 403, s. 1; 1995, c. 254, s. 2; c. 535, s. 35.)

§ 143B-181.17. Office of State Long-Term Care Ombudsman Program/Office; establishment.
The Secretary of Department of Health and Human Services shall establish and maintain the Office of State Long-Term Ombudsman in the Division of Aging. The Office shall carry out the functions and duties required by the Older Americans Act of 1965, as

amended. This Office shall be headed by a State Ombudsman who is a person qualified by training and with experience in geriatrics and long-term care. The Attorney General shall provide legal staff and advice to this Office. (1989, c. 403, s. 1; 1997-443, s. 11A.118(a).)

§ 143B-181.18. Office of State Long-Term Care Ombudsman Program/State Ombudsman duties.
The State Ombudsman shall:

(1) Promote community involvement with long-term care providers and residents of long-term care facilities and serve as liaison between residents, residents' families, facility personnel, and facility administration;

(2) Supervise the Long-Term Care Program pursuant to rules adopted by the Secretary of the Department of Health and Human Services pursuant to G.S. 143B-10;

(3) Certify regional ombudsmen. Certification requirements shall include an internship, training in the aging process, complaint resolution, long-term care issues, mediation techniques, recruitment and training of volunteers, and relevant federal, State, and local laws, policies, and standards;

(4) Attempt to resolve complaints made by or on behalf of individuals who are residents of long-term care facilities, which complaints relate to administrative action that may adversely affect the health, safety, or welfare of residents;

(5) Provide training and technical assistance to regional ombudsmen;

(6) Establish procedures for appropriate access by regional ombudsmen to long-term care facilities and residents' records including procedures to protect the confidentiality of these records and to ensure that the identity of any complainant or resident will not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.;

(7) Analyze data relating to complaints and conditions in long-term care facilities to identify significant problems and recommend solutions;

(8) Prepare an annual report containing data and findings regarding the types of problems experienced and complaints reported by residents as well as recommendations for resolutions of identified long-term care issues;

(9) Prepare findings regarding public education and community involvement efforts and innovative programs being provided in long-term care facilities; and

(10) Provide information to public agencies, and through the State Ombudsman, to legislators, and others regarding problems encountered by residents or providers as well as recommendations for resolution. (1989, c. 403, s. 1; 1995, c. 254, s. 3; 1997-443, s. 11A.118(a).)

§ 143B-181.19. Office of Regional Long-Term Care Ombudsman; Regional Ombudsman; duties.

(a)An Office of Regional Ombudsman Program shall be established in each of the Area Agencies on Aging, and shall be headed by a Regional Ombudsman who shall carry out the functions and duties of the Office. The Area Agency on Aging administration shall provide administrative supervision to each Regional Ombudsman.

(b) Pursuant to policies and procedures established by the State Office of Long-Term Care Ombudsman, the Regional Ombudsman

shall:

(1) Promote community involvement with long-term care facilities and residents of long-term care facilities and serve as a liaison between residents, residents' families, facility personnel, and facility administration;

(2) Receive and attempt to resolve complaints made by or on behalf of residents in long-term care facilities;

(3) Collect data about the number and types of complaints handled;

(4) Work with long-term care providers to resolve issues of common concern;

(5) Work with long-term care providers to promote increased community involvement;

(6) Offer assistance to long-term care providers in staff training regarding residents' rights;

(7) Report regularly to the office of State Ombudsman about the data collected and about the activities of the Regional Ombudsman;

(8) Provide training and technical assistance to the community advisory committees; and

(9) Provide information to the general public on long-term care issues. (1989, c. 403.)

§ 143B-181.20. State/Regional Long-Term Care Ombudsman; authority to enter; cooperation of government agencies; communication with residents.

(a)The State and Regional Ombudsman may enter any long-term care facility and may have reasonable access to any resident in the reasonable pursuit of his function. The Ombudsman may communicate privately and confidentially with residents of the facility individually or in groups. The Ombudsman shall have access to the patient records as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., and under procedures established by the State Ombudsman pursuant to G.S. 143B-181.18(6). Entry shall be conducted in a manner that will not significantly disrupt the provision of nursing or other care to residents and if the long-term care facility requires registration of all visitors entering the facility, then the State or Regional Ombudsman must also register. Any State or Regional Ombudsman who discloses any information obtained from the patient's records except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., is guilty of a Class 1 misdemeanor.

(b) The State or Regional Ombudsman shall identify himself as such to the resident, and the resident has the right to refuse to communicate with the Ombudsman.

(c) The resident has the right to participate in planning any course of action to be taken on his behalf by the State or Regional Ombudsman, and the resident has the right to approve or disapprove any proposed action to be taken on his behalf by the Ombudsman.

(d) The State or Regional Ombudsman shall meet with the facility administrator or person in charge before any action is taken to allow the facility the opportunity to respond, provide additional information, or take appropriate action to resolve the concern.

(e) The State and Regional Ombudsman may obtain from any government agency, and this agency shall provide, that cooperation, assistance, services, data, and access to files

and records that will enable the Ombudsman to properly perform his duties and exercise his powers, provided this information is not privileged by law.

(f) If the subject of the complaint involves suspected abuse, neglect, or exploitation, the State or Regional Ombudsman shall notify the county department of social services' Adult Protection Services section of the county department of social services, pursuant to Article 6 of Chapter 108A of the General Statutes. (1989, c. 403, s. 1; 1993, c. 539, s. 1038; 1994, Ex. Sess., c.24, s. 14(c); 1995, c. 254, s. 4.)

§ 143B-181.21. State/Regional Long-Term Care Ombudsman; resolution of complaints.

(a)Following receipt of a complaint, the State or Regional Ombudsman shall attempt to resolve the complaint using, whenever possible, informal technique of mediation, conciliation, and persuasion.

(b) Complaints or conditions adversely affecting residents of long-term care facilities that cannot be resolved in the manner described in subsection (a) of this section shall be referred by the State or Regional Ombudsman to the appropriate licensure agency pursuant to G.S. 131E-100 through 110 and G.S.131D-2. (1989, c. 403.)

§ 143B-181.22. State/Regional Long-Term Care Ombudsman; confidentiality.

The identity of any complainant, resident on whose behalf a complaint is made, or any individual providing information on behalf of the resident or complainant relevant to the attempted resolution of the complaint along with the information produced by the process of complaint resolution is confidential and shall be disclosed only as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq. (1989, c. 403, s. 1; 1995, c. 254, s. 5.)

§ 143B-181.23. State/Regional Long-Term Care Ombudsman; prohibition of retaliation.

No person shall discriminate or retaliate in any manner against any resident or relative or guardian of a resident, any employee of a long-term care facility, or any other person because of the making of a complaint or providing of information in good faith to the State Ombudsman or Regional Ombudsman. (1989, c. 403.)

§ 143B-181.24. Office of State/Regional Long-Term Care Ombudsman; immunity from liability.

No representative of the Office shall be liable for good faith performance of official duties. (1989, c. 403.)

§ 143B-181.25. Office of State/Regional Long-Term Care Ombudsman; penalty for willful interference.

Willful or unnecessary obstruction with the State or Regional Long-Term Care Ombudsman in the performance of his official duties is a Class 1 misdemeanor. (1989, c. 403; 1993, c. 539, s. 1039; 1994, Ex. Sess., c. 24, s. 14(c).)

APPENDIX 3

STUDY OF CONSUMER ADVOCACY AND OMBUDSMAN PROGRAMS
IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

SESSION LAW 2001-446, SECTION 1.6
MANAGED CARE PATIENT ASSISTANCE PROGRAM

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

SESSION LAW 2001-446
SENATE BILL 199

AN ACT TO IMPROVE PATIENT ACCESS TO HEALTH CARE ADVICE, INFORMATION, AND SERVICES TO COVERED PERSONS UNDER HEALTH BENEFIT PLANS BY PROVIDING FOR: CONTINUITY OF CARE IN HMOS, EXTENDED OR STANDING REFERRAL TO A SPECIALIST, SELECTION OF SPECIALIST AS PRIMARY CARE PROVIDER, DIRECT ACCESS TO PEDIATRICIANS, ACCESS TO NONFORMULARY AND RESTRICTED ACCESS PRESCRIPTION DRUGS, ESTABLISHMENT OF THE MANAGED CARE PATIENT ASSISTANCE PROGRAM, PATIENT'S RIGHT TO CHOOSE THE PROVIDER OF SERVICES UNDER A HEALTH BENEFIT PLAN AND PROHIBITION OF DISCRIMINATION AGAINST PROVIDERS AS PARTICIPATING PROVIDERS BASED ON THE PROVIDER'S LICENSE OR CERTIFICATION, PROHIBITION ON CERTAIN MANAGED CARE PROVIDER INCENTIVES, MANAGED CARE REPORTING AND DISCLOSURE REQUIREMENTS, PROVIDER DIRECTORY INFORMATION, DISCLOSURE OF PAYMENT OBLIGATIONS, MANDATED COVERAGE FOR CLINICAL TRIALS AND NEWBORN HEARING SCREENING, AND STANDARDS FOR INDEPENDENT REVIEW OF NONCERTIFICATIONS BY AN INSURER OR MANAGED CARE PLAN; AND TO HOLD MANAGED CARE ENTITIES LIABLE FOR HARM CAUSED TO INSUREDS OR ENROLLEES BY THE FAILURE TO EXERCISE ORDINARY CARE IN MAKING HEALTH CARE DECISIONS.

Subpart F. Managed Care Patient Assistance Program

SECTION 1.6. Chapter 143 of the General Statutes is amended by adding the following new Article to read:

"Article 77.

"Managed Care Patient Assistance Program.

"§ 143-730. Managed Care Patient Assistance Program.

(a) The Office of Managed Care Patient Assistance Program is established in an existing State agency or department designated by the Governor. The Director of the Office of Managed Care Patient Assistance Program shall be appointed by the Governor.

(b) The Managed Care Patient Assistance Program shall provide information and assistance to individuals enrolled in managed care plans. The Managed Care Patient Assistance Program shall have expertise and experience in both health care

and advocacy and will assume the specific duties and responsibilities set forth in subsection (c) of this section.

(c) The duties and responsibilities of the Managed Care Patient Assistance Program are as follows:

(1) Develop and distribute educational and informational materials for consumers, explaining their rights and responsibilities as managed care plan enrollees.

(2) Answer inquiries posed by consumers and refer inquiries of a regulatory nature to staff within the Department of Insurance.

(3) Advise managed care plan enrollees about the utilization review process.

(4) Assist enrollees with the grievance, appeal, and external review procedures established by Article 50 of Chapter 58 of the General Statutes.

(5) Publicize the Office of the Managed Care Patient Assistance Program.

(6) Compile data on the activities of the Office and evaluate such data to make recommendations as to the needed activities of the Office.

(d) The Director of the Managed Care Patient Assistance Program shall annually report the activities of the Managed Care Patient Assistance Program, including the types of appeals, grievances, and complaints received and the outcome of these cases. The report shall be submitted to the General Assembly, upon its convening or reconvening, and shall make recommendations as to efforts that could be implemented to assist managed care consumers."

SECTION 8. Section 1.6 of this act becomes effective January 1, 2002. Sections 4.1 through 5(a) of this act become effective July 1, 2002. Sections 7 and 8 of this act are effective when this act becomes law. The remainder of this act becomes effective March 1, 2002. This act applies to health benefit plans that are in effect, delivered, issued for delivery, or renewed on or after the date this act becomes law. Nothing in this act obligates the General Assembly to appropriate funds to implement this act.

In the General Assembly read three times and ratified this the 17th day of October, 2001.

APPENDIX 4

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES

STUDY OF CONSUMER ADVOCACY AND OMBUDSMAN PROGRAMS IN DHHS

AS MANDATED BY SESSION LAW 2001-437, SECTION 3. (C)

SURVEY #1

(***PLEASE COMPLETE A SEPARATE SURVEY FORM FOR EACH CONSUMER ADVOCACY AND OMBUDSMAN PROGRAM OPERATED BY YOUR DIVISION/OFFICE. RETURN COMPLETED SURVEY (S) TO MICHAEL BYRNE AT*** michael.byrne@ncmail.net ***BY MARCH 20, 2002***)

1. DHHS DIVISION/OFFICE NAME:

2. NAME AND EMAIL ADDRESS OF PERSON COMPLETING SURVEY:

3. PROGRAM NAME:

4. THE PROGRAM IS PRIMARILY (CHECK ONE):
   (A) _____A CONSUMER ADVOCACY PROGRAM
   (B) _____AN OMBUDSMAN PROGRAM

5. WHAT SIGNIFICANT DIFFERENCES, IF ANY, ARE THERE BETWEEN A CONSUMER ADVOCACY AND AN OMBUDSMAN FUNCTION AND/OR PROGRAM?

AUTHORITY FOR PROGRAM

6. CITE THE NC STATUTORY AUTHORITY FOR PROGRAM:

   ATTACH A COPY OF THE PERTINENT NC STATUTE (S)

7. IF AUTHORITY IS OTHER THAN NC LAW, CITE THE AUTHORITY UNDER WHICH THE PROGRAM WAS ESTABLISHED AND CURRENTLY OPERATES AND ATTACH SUPPORTING DOCUMENTATION:

8. DATE (YEAR) PROGRAM WAS STARTED IN YOUR DIVISION/OFFICE:

PROGRAM DESCRIPTION

9. PRIMARY PROGRAM MISSION AND BRIEF PROGRAM DESCRIPTION (ATTACH ADDITIONAL DESCRIPTIVE MATERIALS AT YOUR OPTION):

10. PRINCIPAL EXPECTED PROGRAM OUTCOME(S):

11. CUSTOMER/CONSUMER POPULATIONS SERVED:

12. DOES YOUR PROGRAM SERVE INDIVIDUALS WITH NEEDS FOR (CHECK ALL APPLICABLE; INDICATE % OF YOUR SERVICE CLIENTELE IF KNOWN):

(A) _____MENTAL HEALTH SUPPORTS AND/OR SERVICES_____%

(B) _____DEVELOMENTAL DISABILTIES SUPPORTS AND/OR SERVICES_____%

(C) _____SUBSTANCE ABUSE SUPPORTS AND/OR SERVICES_____%

13. GEOGRAPHICAL AREA(S) SERVED (CHECK ONE):

(A) _____STATEWIDE

(B) _____OTHER – SPECIFY

14. WHAT OTHER CONSUMER ADVOCACY AND/OR OMBUDSMAN PROGRAMS DOES YOUR PROGRAM INTERACT OR COOPERATE WITH ON A REGULAR BASIS?

(A) _____WITHIN DHHS (LIST EACH PROGRAM NAME AND GIVE A BRIEF DESCRIPTION OF THE RELATIONSHIP)

(B) _____OUTSIDE DHHS (LIST EACH PROGRAM NAME AND GIVE A BRIEF DESCRIPTION OF THE RELATIONSHIP)

ORGANIZATIONAL STRUCTURE

15. NAME, WORKING TITLE AND EMAIL ADDRESS OF PROGRAM DIRECTOR/MANAGER:

16. NAME AND WORKING TITLE OF PROGRAM DIRECTOR/MANAGER'S SUPERVISOR:

17. ATTACH A CURRENT PROGRAM ORGANIZATION CHART SHOWING POSITIONS AND REPORTING LINES WITHIN THE PROGRAM AND THE DIVISION/OFFICE

RESOURCES ASSIGNED TO PROGRAM

PAID STAFF

18. POSITION CLASSIFICATION AND SALARY RANGE OF EACH PAID POSITION ASSIGNED TO PROGRAM; INDICATE IF POSITION IS FULL TIME (FT) OR PART TIME (PT) ON PROGRAM ACTIVITIES; IF PART TIME LIST % OF TIME ASSIGNED TO PROGRAM (ATTACH LIST AS NECESSARY; STAFF NAMES NOT REQUIRED):

POSITION CLASSIFICATION	SALARY RANGE	FT OR PT STATUS	% TIME IF PT
TOTAL # FT POSITIONS			
TOTAL # PT POSITIONS			
FTE OF PT POSITONS			
TOTAL # ALL POSITONS			

19. TOTAL STAFF COSTS BUDGETED FOR PROGRAM FOR:

STATE FISCAL YEAR	SALARY	BENEFITS	OTHER
1999-2000			
2000-2001			
2001-2002			

20. ARE PAID STAFF ASSIGNED TO HEADQUARTERS OTHER THAN RALEIGH?
_____YES _____NO

21. IF YES, LIST LOCATIONS AND NUMBER OF FULL TIME AND PART TIME STAFF AT EACH LOCATION:

VOLUNTEERS

22. DOES THE PROGRAM USE VOLUNTEERS? _____YES _____NO

23. IF YES, NUMBER OF VOLUNTEERS USED IN:

STATE FISCAL YEAR	NUMBER OF VOLUNTEER HOURS	ESTIMATED VALUE (IN NON-EXPENDED STAFF COSTS)
1999-2000		
2000-2001		
2001-2002 (IST HALF)		

OTHER RESOURCES

24. DOES PROGRAM USE A TOLL-FREE TELEPHONE OR SIMILAR SYSTEM?
_____YES _____NO

25. IF YES, WHAT ARE TOTAL BUDGETED LINE AND EQUIPMENT COSTS FOR:

STATE FISCAL YEAR	LINES &EQUIPMENT	OTHER (SPECIFY)
1999-2000		
2000-2001		
2001-2002		

26. OTHER BUDGETED RESOURCES ASSIGNED TO PROGRAM: KIND AND BUDGETED AMOUNTS FOR:

STATE FISCAL YEAR	DESCRIPTION	COST
1999-2000		
2000-2001		
2001-2002		

27. PROGRAM FUNDING SOURCE(S):

STATE FISCAL YEAR	STATE %	FEDERAL %	OTHER (SPECIFY) %
1999-2000			
2000-2001			
2001-2002			

APPENDIX 5

STUDY OF CONSUMER ADVOCACY AND OMBUDSMAN PROGRAMS
IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

CONSUMER ADVOCACY AND OMBUDSMAN PROGRAM DESCRIPTIONS PROVIDED BY DHHS DIVISIONS AND OFFICES

DHHS DIVISION/OFFICE: **DIVISION OF AGING**
PROGRAM NAME: **STATE LONG TERM CARE OMBUDSMAN PROGRAM**

PRIMARY PROGRAM MISSION AND BRIEF PROGRAM DESCRIPTION:

The mission of the State Long Term Care Ombudsman Program is to protect and improve the quality of care and life for residents in long term care facilities by providing access and advocacy services that will assist residents in protecting their health, safety, welfare, and rights.

At the state level, it is the role of the State Ombudsman at the Division of Aging to provide administrative oversight to assure that the statewide program operates according to the provisions of the Older Americans Act. Title III-B and Title VII federal funds are distributed to the state's17 Area Agencies on Aging (AAAs) to operate the Regional LTC Ombudsmen programs across the state. In addition, state funds appropriated by the General Assembly in 1992 are allocated to the 17 Area Agencies on Aging based on a formula.

The State LTC Ombudsman monitors regional programs for compliance with established program policies and procedures which are based on federal and state law. Specifically the State Long Term Care Ombudsman Program is mandated to identify, investigate, and resolve complaints made by or on behalf of residents of long term care facilities. The program must inform the residents about services and ensure that residents have regular access to services provided through the State Ombudsman Program.

The program must further ensure those residents receive timely responses from representatives of the State Office. The State LTC Ombudsman Program must represent the interests of the LTC residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

The LTC Ombudsman Program also must train and certify Regional Ombudsmen housed in Area Agencies on Aging across the state as representatives of the program and provide on-going training and technical assistance to regional ombudsmen. Federal law further mandates that the State LTC Ombudsman Program analyze, comment on and monitor the development and implementation of Federal, State, and local laws, regulations and other governmental policies and actions, that pertain to the health safety, welfare, and rights of residents. The State Ombudsman Program also must promote community involvement with long term care providers and residents of long term care facilities, and serve as a liaison between residents, residents' families, facility personnel, and facility administration. All Ombudsman Program functions are to be

supervised by the State Long Term Care Ombudsman at the Division of Aging through program administration.

DHHS DIVISION/OFFICE: **OFFICE OF CITIZEN SERVICES**
PROGRAM NAME: **DHHS OMBUDSMAN PROGRAM**

PRIMARY PROGRAM MISSION AND BRIEF PROGRAM DESCRIPTION:

The Department of Health and Human Services' (DHHS) Office of Citizen Services serves as a valuable resource to all North Carolina citizens including children, youth, older adults, families, persons with disabilities, mental illness and substance abuse problems as well as the sick and the poor. OCS staff help people who are seeking a specific service and need guidance and also help individuals who are having specific difficulties accessing services. OCS oversees the DHHS Ombudsman Program and the department's statewide Information and Referral Service, the CARE-LINE.

The purpose of the Ombudsman Program is to settle disputes and handle complaints people may have with services that the department oversees or administers. The OCS Director acts as the department Ombudsman and is the central contract for the public as well as constituents of and professionals who work in the Governor's Office of Citizens Affairs, DHHS Secretary Office, legislators, and North Carolina's congressional delegation. Through the Ombudsman service, customers' complaints are addressed quickly and efficiently, utilizing all necessary resources and contacting key individuals who assist in reaching a positive resolution. Serving as a central contact, the Ombudsman acts as neutral party and as a liaison between the public and appropriate department personnel. A Hispanic Ombudsman is also on the staff to assist Spanish-speaking customers who need to obtain Ombudsman services. The Hispanic Ombudsman also plays a key part by ensuring that DHHS divisions/offices are aware of the needs of the Hispanic/Latino population in North Carolina. The Hispanic Ombudsman also conducts outreach with Hispanic/Latino community based organizations.

The CARE-LINE is the department's statewide information toll-free information and referral telephone service. Information and Referral is provided on human services in government and non-profit agencies. The CARE-LINE database contains over 10,000 state, local and non-profit agencies statewide. A Bilingual Information and Referral Specialist is available to answer Spanish-speaking callers' questions.

In addition OCS customers' who are hearing impaired may reach OCS through the TTY phone number.

Approximately, 79 percent of the inquiries that OCS receives are related to DHHS programs/services. Staff receive extensive training regarding DHHS programs and services. The goal is to answer the question regarding DHHS without having to send the caller to another point of contact.

In addition, through the Ombudsman Program and the Information and Referral Service/CARE-LINE, all inquiries are entered and tracked in the office database. Statistical reports are created each month that detail the types of inquiries.

This proves to be very valuable information because the data is broken down into specific keywords that relate to divisions with the department.

Customers may reach OCS through mail, e-mail, phone inquiries and TTY.

DHHS DIVISION/OFFICE: **OFFICE OF EDUCATION SERVICES**
PROGRAM NAME: **OMBUDSMAN**

PRIMARY PROGRAM MISSION AND BRIEF PROGRAM DESCRIPTION:

The primary purpose of this position is to act as an impartial source of assistance in the resolution of both the Office of Education Services internal problems and those of its people.

The position provides advocacy services to the two schools for the deaf, the one school for the blind, the two North Carolina Early Intervention Programs for Children Who are Deaf or Hard of Hearing and the Preschool for Visually Impaired Children. This position serves as a consultant to the schools for advocacy issues while providing a confidential, neutral, independent and informal process, which facilitates fair and equitable resolutions of referral, ensuring that program services are provided by state and local government, or private agencies in keeping with the laws and individuals' rights to service. The position develops, implements and provides training to employees covering directives and policies.

This position is also responsible for identifying trends and recommending modifications to the Superintendent, using counseling skills, ascertaining facts through investigations, negotiations, mediation, diplomacy and problem resolution. This position is the direct liaison between the Office of Education Services and the Human Rights Committees at each of the Residential Schools. The position monitors all systems impacting Directive 61, Abuse, Neglect or Exploitation, including having quarterly meetings with the Nursing Staff, assuring intervention techniques are taught annually with 10% direct care attendance and assuring that all staff of OES are trained on the American With Disabilities Act.

DHHS DIVISION/OFFICE: **DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES**
PROGRAM NAME: **(1) ADVOCACY AND CLIENT RIGHTS BRANCH**
(2) MENTAL HEALTH FACILITY INTERNAL ADVOCACY DEPARTMENTS

PRIMARY PROGRAM MISSION AND BRIEF PROGRAM DESCRIPTION:

(1) ADVOCACY AND CLIENT RIGHTS BRANCH

This office is an advocacy resource to consumers of mental health, developmental disability and substance abuse services statewide. Our mission is to assist consumers in protecting their rights; help individuals who are having specific service related difficulties; and provide guidance and support to improve their quality of life.

We have a “help service” for consumers and family members to call the Branch to make complaints, seek rights advice, request assistance with mediation/negotiation or to get resource/referral information. Other interested individuals such as providers and guardians or friends of consumers may contact us for assistance with advocacy or technical advice. The Branch provides a database to track each caller’s issue and the actions taken towards resolution. We are not mandated to exist and are not as such an official ombudsman program. However, we use the client rights afforded to all community consumers as our guide.

The Branch is responsible for coordination of the Medicaid Appeal process. We educate consumers and providers about the Medicaid Appeals procedures and provide assistance if requested at the local and/or state levels.

As a part of advocacy, the Advocacy and Client Rights Branch Head serves as a liaison to the State Mental Health Internal Advocacy Departments for the Division. The primary purpose for this is to provide support and oversight to the Advocates, to coordinate regular peer meetings among the eight different Departments and to keep the Division informed of each facility’s consumer advocacy activities and aware of any issues. Administrative authority is not a part of this role.

(2) MENTAL HEALTH FACILITY INTERNAL ADVOCACY DEPARTMENTS

The mission is to protect the human rights of the consumers living in the facility and to improve the quality of life by ensuring a therapeutic, safe, consumer friendly environment.

The goal of Advocacy is not only to cause change when harm or a wrongdoing has occurred but also to affect change in a positive manner by their constant presence. The Advocates educate and train the facility employees regarding rights to help raise the level of knowledge and sensitivity.

These Departments are located within each of the eight State Mental Health Facilities. They are two years old and were set up by the Advocacy and Client Rights Branch, also new, based on the Internal Advocacy model at the State Mental Retardation Facilities. An advocate is available on call for the consumers (and staff) 24 hours a day. The Advocates are located during normal working hours within the facility where the consumers live and as near to the units as possible for consumer convenience. The Advocates follow up on any allegation of abuse, neglect or exploitation, conducting formal investigations when deemed appropriate. The Advocate makes recommendations to Management when any violation of rights is substantiated. Even in cases where allegations can not be proven, steps are taken to proactively prevent a potential rights violation in the future.

A Human Rights Committee reviews all allegation reports and is given the authority to question results for reconsideration including Appeal. The Advocates work closely with the Human Rights Committee to ensure the best treatment for the consumers. Committee members make unannounced visits to the facility at various times to observe conditions. The Advocates also make unannounced visits during nights and weekends. The Senior Advocates answer to the facility Directors. There are Advocates under the Senior Advocate’s supervision in the large facilities such as in the state hospitals.

Internal Advocacy Departments are in all four mental hospitals, the three state schools for children with mental health problems and the N.C. Special Care Center (State Nursing Home for elderly and others with medical and mental health needs.

DHHS DIVISION/OFFICE: **DIVISION OF VOCATIONAL REHABILITATION SERVICES AND DIVISION OF SERVICES FOR THE BLIND**

PROGRAM NAME: **CLIENT ASSISTANCE PROGRAM (CAP)**

PRIMARY PROGRAM MISSION AND BRIEF PROGRAM DESCRIPTION:

CAP is an advocacy program serving disabled citizens seeking the rehabilitation services that would be available through the rehabilitation programs in DVRS and DSB. Citizens can access CAP via standard mail, electronic mail, TTY, telephone, various websites, and a published statewide 800 service. CAP's existence is publicized in a variety of human services/disability support group offices and newsletters, and on rehabilitation program consumer forms. Citizens are frequently referred to CAP by the GACPD and the DHHS CARELINE.

Consumer services include identification of, information about, and referral to rehabilitation services appropriate to the individual's needs; advice and interpretation about rehabilitation program policies and procedures; advocacy/negotiation regarding any consumer or rehabilitation service delivery concerns; systems advocacy for internal rehabilitation program changes that will improve rehabilitation services to citizens; assist and advise consumers in the formal rehabilitation program appeal process; and assist consumers in legal remedies beyond the formal rehabilitation program appeal process