

1979 WL 43459 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 11, 1979

**\*1 RE: Section 43-37-10, Code of Laws of South Carolina (1976), 1978 Cum. Supp.**

Ms. Dorothy Manigault, Esquire  
Executive Assistant for Legal Affairs  
Office of the Governor  
Post Office Box 11450  
Columbia, South Carolina 29211

Dear Ms. Manigault:

Your letter of recent date has been received and you request an opinion as to the authority of the nursing home ombudsman to continue an investigation on a complaint if the nursing home patient is subsequently transferred to another health facility, such as a general hospital or mental health facility.

Section 1 of Act No. 127 of the 1977 Acts and Joint Resolutions, now codified as Section 43-37-10, Code of Laws of South Carolina (1976), 1978 Cum. Supp. provides as follows:

‘The nursing home ombudsman of the Office of the Governor is hereby authorized to investigate any problem or complaint of an interested party or of a resident of a residential care facility or nursing home in the State. In carrying out any such investigation, he may request and receive written statements, documents, exhibits and other items pertinent to the investigation. Following any such investigation he may issue such report and recommendations as in his opinion will assist in improving residential care facility and nursing home safety, care and service.’ (emphasis added).

As can be readily seen the nursing home ombudsman is limited in his initial investigation to a complaint which arises from an interested party or a resident of a residential care facility or a nursing home. There is no authority granted to the ombudsman to make an investigation into the complaint of a resident of a general hospital or mental health facility.

Once a complaint has been received by the nursing home ombudsman, and subsequent to the filing of the complaint, the resident of the residential care facility or nursing home moves or is transferred to another health facility, such as a general hospital or mental health facility, this move or transfer would not necessarily end the ombudsman's right to question the patient who filed the complaint although now a patient in a general hospital or mental health facility. The right of the ombudsman to fully investigate the complaint as initially received would not mean that he acquires any additional or implied authority although the patient moves to a hospital or mental health facility. He is merely pursuing the completion of the initial investigation and to this extent, in the opinion of this office, he would have continuous authority to question the patient who has been transferred subsequent to the filing of the complaint.

You also raise a question as to whether or not the ombudsman may inspect the records of the patient at the facility to where the patient is transferred after the filing of the initial complaint. In the opinion of this office there is nothing in the authority of the ombudsman granting him access to the records of the facility to which the patient is subsequently transferred, if not a residential care facility or a nursing home. The statute is clear and unambiguous and the ombudsman is strictly limited by the terms thereof to investigations arising out of a complaint relating to a residential care facility or a nursing home, and while he may request and receive written statements, documents, and exhibits and other items

pertinent to the investigation from a residential care facility or nursing home, the statute grants no authority to investigate the records of any other type of health facility.

\*2 With kind personal regards,  
Very truly yours,

Raymond G. Halford  
Deputy Attorney General

**ATTACHMENT**

JULY 11, 1979

Members of the Senate and the House of Representatives.

SUBJECT: State agencies, Development Board, members appointment rotation at discretion of the governor; Governor, appointment power, State Development Board, County rotation of members;

SYLLABUS: Rotation of appointments to State Development Board among counties rests in the discretion of the Governor. Section 13-3-40.

Daniel R. McLeod, Attorney General  
Attorney General

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