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## H.B. 600: Ohio's Bill of Rights for Nursing Home Patients

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## H.B. 600: OHIO'S BILL OF RIGHTS FOR NURSING HOME PATIENTS

### I. INTRODUCTION

Nursing home residents<sup>1</sup> are among the most helpless individuals in our society; their dependence on institutions for food, shelter, and personal care has cost them control over their own lives.<sup>2</sup> "Because of the vulnerability of the aged population of the nursing home and the fact that most of them will reside in these homes for the rest of their lives, society bears a special obligation to ensure that the quality of their care is satisfactory and their treatment humane."<sup>3</sup> Ohio has responded to this obligation by enacting H.B. 600,<sup>4</sup> which is directed at improving the care of Ohio nursing home residents. Acclaimed as model legislation,<sup>5</sup> H.B. 600 "[e]numerates thirty rights of nursing home patients concerning safety, treatment, privacy, civil rights, restraints, smoking and drinking, information, financial affairs, transfer and discharge, [and] grievances . . . ."<sup>6</sup>

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1. In this note, the term "nursing home" refers to either a nursing home, a rest home, or a home for the aging. OHIO REV. CODE ANN. § 3721.01(A),(F)-(H) (Page Supp. 1979). "Resident" means a resident or a patient of a home." *Id.* at § 3721.10(B).

2. OHIO NURSING HOME COMMISSION, FINAL REPORT 113th General Assembly 6 (July 1979) [hereinafter cited as FINAL REPORT] (unpublished report available from the Ohio General Assembly, Columbus, Ohio). The report states:

It would be difficult to find a more vulnerable, more easily exploitable class of consumers . . . . The average patient is 82 years old, is female and a widow, has two or more chronic diseases, and resides in the home an average of 2.4 years. Some 85 percent of persons who enter nursing homes die there. Fifty percent either have no living relatives or have no direct relationship with even a distant relative . . . . Too sick oftentimes to even be aware of their circumstances, they are at the mercy of their keepers.

*Id.* at 6-7.

3. Regan, *When Nursing Home Patients Complain: The Ombudsman or the Patient Advocate*, 65 GEO. L.J. 691, 698 (1977) (citing Anderson, *Developing the Ombudsman's Role in Health Care Services*, 15 PUB. AFF. REP. 1, 3 (1974)).

4. Am. Sub. H.B. 600, 112th Gen. Assembly, (1978) (codified in OHIO REV. CODE ANN. §§ 173.02, 173.06, 3701.07, 3721.01, 3721.021, 3721.10-.18, 3721.99)(Page Supp. 1978). (This bill is popularly known as the Patients' Bill of Rights and will be hereinafter cited as such.) Section 3721.01 has been subsequently amended. Am. Sub. H.B. 1084, 112th Gen. Assembly (1978). This act does not substantively affect H.B. 600 for the purpose of this note.

5. FINAL REPORT, *supra* note 3, at 10.

6. Analysis of statute by Ohio Legislative Service Commission (copy on file with the Ohio Legislative Service Commission Library, Columbus, Ohio). In addition, [this legislation] gives the Department of Health rulemaking power to more specifically define what would constitute a violation of the rights; [H.B. 600 also] requires each home to implement the rights through staff training, and by allow-

H.B. 600 was necessary because federal<sup>7</sup> and state<sup>8</sup> regulations have heretofore largely failed to ensure humane treatment<sup>9</sup> of all nursing

ing access to certain groups; places responsibility on nursing home administrators to set written policies and establish grievance procedures regarding residents' rights, furnish certain materials to residents, and post copies of the enumerated rights, applicable laws, rules and policies, and names of residents' rights advocates; sets a procedure for hearing grievances in the home and referring them to the Ohio Commission on Aging for investigation and to the Department of Health for an adjudicative hearing; and sets a schedule of fines to be assessed for violations if the problem is not rectified.

*Id.*

7. 20 C.F.R. § 405.1121 (1976); 45 C.F.R. § 249.12 (1975). These regulations have been ineffective because "[t]hey contain no penalty short of terminating the non-complying facility from the program, and termination is an extreme remedy. It has never been employed in Ohio in response to violations of patients' rights." OHIO NURSING HOME COMMISSION, A PROGRAM IN CRISIS, AN INTERIM REPORT, 112th General Assembly, § III at 16 (June 1978) (unpublished report available from the Ohio General Assembly, Columbus, Ohio) [hereinafter cited as INTERIM REPORT].

8. See OHIO REV. CODE ANN. §§ 3721.01-.99 (Page 1971) for the original version of the law. This statutory scheme failed primarily because it lacked realistic, enforceable remedies for violations of its provisions. "Violations by the homes could be corrected only [by] . . . decertification (and hence termination of the home from the Medicaid program) or revocation of the home's license." FINAL REPORT, *supra* note 2, at 11.

But these traditional sanctions collide[d] with the countervailing need to provide an adequate number of beds. Moreover, these [were] the only remedies used for all violations, regardless of the nature of the violation from serious to trivial. As a result they [were] rarely invoked due to the severity of the sanction and the resulting loss of beds, especially for Medicaid recipients.

INTERIM REPORT, *supra* note 7, at 25. Medicaid recipients suffer discrimination in locating alternative care facilities because many homes "[e]ither refuse Medicaid patients altogether or . . . set quotas on the number of Medicaid recipients they will accept." *Id.* at 9. In addition, relocation of residents is undesirable due to the risk of transfer trauma, "[t]he increase in sickness and death attributed to the relocation of patients from one nursing home to another and the trauma and sense of dislocation which results from such transfers." *Id.* at Glossary. Thus sections 3721.01-.99 were not enforced because enforcement would hurt those it was trying to protect.

9. For example,

[t]estimony from hospital personnel indicates that some nursing home patients have not received proper amounts of food and water over long periods of time and have been left to lie in their own bodily wastes for hours, even days. One woman remained untreated in a nursing home with a fractured leg for three days before a doctor was summoned. When another nursing home was suddenly closed by the owner, a private patient was simply left in a hospital emergency ward without any identification or medical records and without any notification to his family of his whereabouts. Still other patients have had their personal funds stolen by nursing home operators who spend them on such things as golf and ski equipment, and trips to Hawaii and Las Vegas. Most administrators of nursing homes contend that few nursing homes engage in these abuses, but state and federal investigations have disclosed the pervasiveness of such problems.

INTERIM REPORT, *supra* note 7, at 17 (footnotes omitted). See also FINAL REPORT, *supra* note 2.

home residents, whose special needs and rights have often been sacrificed to administrative convenience, efficiency, and economy.<sup>10</sup> Consequently, residents have suffered abuses, neglect, and crass commercialism,<sup>11</sup> which have been widely publicized and documented.<sup>12</sup>

The Patients' Bill of Rights was enacted after considerable debate and revision.<sup>13</sup> Upon ratification,<sup>14</sup> this legislation enumerated thirty

10. Often what is best for the facility is worst for the patient. This results in an inherent conflict between the nursing home and the patients. The nursing home staff has to balance the patient's needs and rights with administrative convenience and efficiency. In the absence of any real enforcement provision to the contrary, administrative convenience and desire to minimize costs often win out. It is easier to bathe patients without taking the time to use privacy curtains. It is administratively more convenient to restrain a patient chemically than to listen and respond to his complaints.

INTERIM REPORT, *supra* note 7, at 16.

11. The abuse and neglect suffered by many nursing home residents stem from society's negative, condescending attitude toward the elderly and society's failure to treat the elderly with dignity and respect. FINAL REPORT, *supra* note 2, at 10.

While other societies appreciate the wisdom of the elderly, and tolerate and assist them with their physical frailties, ours often seems to assume that bodily deterioration and a degree of confusion makes the elderly a proper subject for pity and condescension. In institutions, they are frequently treated as small children, "babies with wrinkled faces." In many cases, this leaves them open to both physical and mental abuse.

*Id.*

12. See, e.g., SUBCOMM. ON LONG-TERM CARE OF THE SENATE SPECIAL COMM. ON AGING, 93RD CONG., 2D SESS., NURSING HOME CARE IN THE UNITED STATES: FAILURE IN PUBLIC POLICY 205 (Comm. Print 1974) (Supporting Paper No. 1, The Litany of Nursing Home Abuses and an Examination of the Roots of Controversy); FINAL REPORT, *supra* note 2; INTERIM REPORT, *supra* note 7; Dayton Daily News, Dec. 21-24, 1975, at 1.

13. When the bill was originally proposed, it was only 5 pages long; as signed, the statute is 21 pages long. Some provisions were re-written as many as 12 times. Interview with Ohio State Representative David Hartley, primary sponsor of H.B. 600, in Columbus, Ohio (Nov. 19, 1979) [hereinafter cited as Hartley Interview]. See also OHIO NURSING HOME COMMISSION, PATIENTS' BILL OF RIGHTS COMM. RECOMMENDATIONS 3, 112th General Assembly (1978) [hereinafter cited as COMMITTEE RECOMMENDATIONS]. Numerous resources were consulted while drafting the statute, such as the National Senior Citizens Law Center, the National Council on Aging, the Benjamin Rose Institute, American Civil Liberties Union, Ohio Department of Health, the Ohio State Auditor's Office, the Council of Churches, and representatives of philanthropic, proprietary, and county homes. *Id.* Promulgation of the bill involved both the amendment of sections of the Ohio Revised Code, OHIO REV. CODE ANN. §§ 173.02, .06, 3701.07, 3721.01, .99 (Page Supp. 1979), and the drafting of new sections, *id.* §§ 3721.021, .10-18.

14. The Ohio Nursing Home Commission provided the real impetus for the bill's ratification. Hartley Interview, *supra* note 13.

The Ohio Nursing Home Commission was created by the 112th Ohio General Assembly in June of 1977 as an eight member bipartisan, joint-legislative Commission. Under the provisions of Am. Sub. H.B. 276, the Commission was given two years in which to study and evaluate Ohio's nursing home program and to recommend legislative and administrative changes, as needed.

Letter from Ohio State Representative Dennis Wojtanowski, first-year chairman of the

specific rights<sup>15</sup> guaranteed to Ohio nursing home residents as well as concrete implementation<sup>16</sup> and enforcement provisions.<sup>17</sup>

## II. ANALYSIS

The rights<sup>18</sup> secured by H.B. 600 cover five basic concerns: civil rights, right to participate in treatment, right to information, rights to privacy, and personal rights.<sup>19</sup> The rights themselves are not novel;<sup>20</sup> they were "largely developed from existing federal rights already guaranteed to Medicaid and Medicare patients . . ."<sup>21</sup> Prior to enactment of the Patients' Bill of Rights, abuses of every right subsequently included in the bill were observed in unannounced visits made by the Nursing Home Commission to various homes throughout the state.<sup>22</sup> These observations therefore justified proscribing further abuses by creating the Patients' Bill of Rights, even though critics argued that the rights are "merely a statement of the obvious"<sup>23</sup> and that they "already exist in the U.S. Constitution."<sup>24</sup> Because these rights were not adequately enforced, H.B. 600 was conceived "not to give *special* treatment to residents of nursing homes [but] to restore those human

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Ohio Nursing Home Commission, to the Governor and the Ohio General Assembly (July 1, 1978) (letter accompanying INTERIM REPORT, *supra* note 7). "Over the two-year life of the Commission, [it] held more than 100 hearings, . . . [and] heard from more than 500 witnesses. . . ." FINAL REPORT, *supra* note 2, at 5. During that period, it visited 77 nursing homes. *Id.* at 1.

15. Residents' rights are not limited to the 30 rights articulated in the statute, OHIO REV. CODE ANN. § 3721.13(A) (Page Supp. 1979). Sections 3721.15-.16 extend protection to residents with respect to financial affairs, transfers, and discharges. Furthermore, nursing home administrators may establish additional rights beyond those conferred by the bill. *Id.* § 3721.12(D).

16. *Id.* §§ 3721.11-.12, .14.

17. *Id.* § 3721.17.

18. An in-depth analysis of each right included in the Patients' Bill of Rights is beyond the scope of this note. The Report of the Ohio Nursing Home Commission thoroughly documents and analyzes problems within nursing homes and measures needed to resolve them, including adoption of the Patients' Bill of Rights. See FINAL REPORT, *supra* note 2.

19. *Id.* at 10-11.

20. *Id.* at 11.

21. FINAL REPORT, *supra* note 2, at 10-11 (footnote omitted). For an enumeration of the existing federal rights, see 20 C.F.R. § 405.1121 (1976); 45 C.F.R. § 249.12 (1975).

22. Interview with Ohio State Representative Dennis Wojtanowski, co-sponsor of H.B. 600 and first-year chairman of the Ohio Nursing Home Commission, in Columbus, Ohio (Nov. 19, 1979) [hereinafter cited as Wojtanowski Interview].

23. COMMITTEE RECOMMENDATIONS, *supra* note 13, at 2.

24. *Id.* at 1. The constitutionality of H.B. 600 has been challenged and upheld in a preliminary injunction hearing. *Willows Nursing Home v. Ohio Dep't of Pub. Welfare*, No. A7903560 (C.P., Hamilton County, Ohio, July 13, 1979).

rights which have been eroded by misunderstanding, administrative convenience, or neglect."<sup>25</sup>

The Patients' Bill of Rights has been criticized as being vague and ambiguous.<sup>26</sup> Proponents have responded, however, that the statutory language is deliberately broad in order to maximize residents' rights.<sup>27</sup> The bill has also been criticized because it does not address the issue of one resident's rights vis-a-vis the rights of another resident.<sup>28</sup> This issue may arise in cases of interpatient disputes or abuses. Conceptually, however, interpatient conflicts cannot be distinguished in terms of remedies from other complaints arising under the statute. Thus the issue of whose rights have priority is capable of resolution through the enforcement mechanism provided in H.B. 600.<sup>29</sup> Despite these criticisms, H.B. 600 should improve the care and treatment of nursing home residents if the bill is properly implemented and enforced.

### A. Implementation

H.B. 600 delineates procedures that effectively implement the statute and infuse it with force and vitality. The bill charges nursing homes and their administrators with the affirmative duties of informing residents of their rights and effectively protecting them. Sections 3721.12 and 3721.14 of H.B. 600 specify the measures necessary to fulfill these duties.<sup>30</sup>

Nursing home administrators must establish and annually review written policies regarding the applicability and implementation of residents' rights, the responsibilities of residents regarding the rights, and the home's grievance procedure.<sup>31</sup> A grievance committee must be established to review complaints by residents.<sup>32</sup> Administrators must

25. FINAL REPORT, *supra* note 2, at 10 (emphasis in original).

26. Telephone conversation with Mary Adelaide Mendelson, Executive Director, Nursing Home Advisory & Research Council, Inc., Cleveland Heights, Ohio (Jan. 17, 1980) [hereinafter cited as Mendelson Telephone Conversation].

27. Hartley Interview, *supra* note 13.

28. Interview with Peter C. Howard, IV, Governmental Relations Coordinator for Ohio Health Care Association, in Columbus, Ohio (Nov. 19, 1979) [hereinafter cited as Howard Interview].

29. See generally notes 43-112 and accompanying text *infra*.

30. OHIO REV. CODE ANN. §§ 3721.12, .14 (Page Supp. 1979).

31. *Id.* § 3721.12(A)(1). In addition to establishing written policies, "administrators [are] responsible for develop[ing] and adher[ing] to procedures implementing [these] policies." *Id.*

32. *Id.* § 3721.12(A)(2).

The route of the preliminary efforts taken to resolve a complaint, the method of choosing committee members, the mechanism of the grievance committee and time limits for each stage should be established as policies and procedures for the home to be explained to all residents, staff and sponsors. These policies and procedures are discretionary decisions to be made by the home, paying close attention

furnish each resident, sponsor, and staff member with a copy of residents' rights; the home's policies, rules, and procedures developed pursuant to enforcing residents' rights; and addresses and telephone numbers of various governmental entities associated with enforcing residents' rights.<sup>33</sup> Administrators must secure written acknowledgment of receipt of the aforementioned materials and include this verification in each resident's record and employee's personnel

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to the requirements of H.B. 600 and the specific needs of the residents.

NURSING HOME OMBUDSMAN, OHIO COMMISSION ON AGING MEMORANDUM (Jan. 23, 1980) (memorandum from Helen Hitchings, Nursing Home Ombudsman, to all nursing home administrators; copy on file with the State Nursing Home Ombudsman, Columbus, Ohio). (Attached to the memorandum is a copy of the rules issued by the Ohio Commission on Aging.) [hereinafter cited as OHIO COA RULES].

With respect to choosing the members of the grievance committee, the Nursing Home Ombudsman recommends that

it is advisable to form a relatively small committee. A smaller committee would prevent the intimidation of anyone wishing to make a complaint. It would also provide a more workable format with a greater chance to reach consensus (agreement) among its members. In addition, a smaller committee makes it more feasible for other residents or outsiders to attend without hindering the effectiveness of the committee. A recommendation is to have three (3) or six (6) members, with the 2 to 1 ratio always maintained.

The committee member(s) representing the home should be someone who is: 1) knowledgeable of the nursing home's [*sic*] policies and intent; 2) familiar with the nursing home's staff and responsibilities; 3) familiar with the residents' personalities, needs and plans of care, and whom the residents are comfortable with. This staff member on the committee should be in a supervisory or managerial position. Possible examples are the director of nursing, social worker, administrator or activities director. Obviously the selection of the staff member(s) will depend upon the size of the home, staff relationships with residents and the responsibilities of different staff members in the home.

There are several alternatives for grievance committee members not affiliated with the home: 1) one or two residents (depending upon the size of the home and committee), possibly one resident from each wing; these residents should be mentally alert and well-acquainted with other residents and the home's policies.

In those cases where it is not possible to have residents on the grievance committee, the following are other possible members. It is advisable to have one of the following on the committee: 1) a family member(s) who is a frequent visitor of the home and who has a good relationship with staff and other residents; 2) a community member, possibly a minister who is a frequent visitor of the home; 3) the local or volunteer ombudsman who makes regular visits to the home. Any of these members should be trustworthy and independent of the home in the eyes of the residents to maintain credibility.

The members of the committee should be permanent but alternates should be selected to maintain a regular on-going process. Other residents, family members and staff may attend certain committee meetings depending on the nature of specific complaints, who is making the complaint and any staff relevant to resolving the complaint.

*Id.* at Grievance Committee 2-3.

33. OHIO REV. CODE ANN. § 3721.12(A)(3) (Page Supp. 1979).

record.<sup>34</sup> Finally, administrators must post prominently within the home:

- (1) [a] copy of the rights of residents [as listed in § 3721.13];
- (2) [a] copy of the home's rules and its policies and procedures regarding the rights and responsibilities of residents;
- (3) [a] notice that a copy of [state and federal legislation and regulations promulgated pursuant to enforcing residents' rights] is available for inspection in the home at reasonable hours;
- (4) [a] list of residents' rights advocates.<sup>35</sup>

In addition to the preceding obligations imposed specifically upon administrators, nursing homes themselves are charged with the responsibilities of executing their affirmative duties of apprising residents of their rights and adequately protecting them. Nursing homes must provide staff training to implement each resident's rights, arrangements for a resident's needed ancillary services, areas outside the home for residents to enjoy outdoor activity, access for various individuals to enter the home, and a written description of the home's grievance procedures.<sup>36</sup>

Nursing homes vigorously objected to the implementation provisions. The increased financial burden placed upon nursing homes of publishing, posting, and distributing information to residents, sponsors, and staff created a major complaint.<sup>37</sup> Implementation might, however, reduce long-term costs because it requires homes to function properly.<sup>38</sup> Nursing homes also charged that availing residents of information that facilitates ready access to organizations involved with enforcing residents' rights would "open the door to further harassment of nursing home operators and would provide a license for vindictiveness and paranoia."<sup>39</sup> The homes further suggested that some

34. *Id.* § 3721.12(B).

35. *Id.* § 3721.12(C).

36. OHIO REV. CODE ANN. § 3721.14 (Page Supp. 1979). Access is a significant feature of H.B. 600. "Access . . . to enter the home during reasonable hours, except where such access would interfere with resident care or the privacy of residents" must be granted to various governmental officials, such as the Nursing Home Commission, and private individuals, including residents' rights advocates. *Id.* § 3721.14(D). This provision was crucial because of nursing homes' frequent refusal to admit persons desiring to investigate and monitor nursing homes. Hartley Interview, *supra* note 13.

37. Howard Interview, *supra* note 28. "The statewide costs to nursing homes for [implementation] is indeterminate. No estimate is currently available of what portion of these costs would be absorbed directly through the Medicaid program." OHIO LEGISLATIVE BUDGET OFFICE, FISCAL NOTE ON AM. SUB. H.B. 600, 112TH GENERAL ASSEMBLY (April 27, 1978) (copy on file with the Ohio Legislative Service Commission Library).

38. Hartley Interview, *supra* note 13.

39. *Testimony on Am. Sub. H.B. 600*, 112th General Assembly (1978) (testimony



residents and sponsors do not want to be bothered with the paperwork generated by disseminating information, and that for other residents, notably those who are senile, incompetent, or incapacitated, the information would be meaningless.<sup>40</sup> Complaints from nursing homes regarding implementation therefore emanate from the financial and administrative burdens that it places on homes and their administrators.

Despite these complaints, effective implementation procedures are essential to the success of the Patients' Bill of Rights; otherwise, the rights are empty precepts. Open access to information must be afforded residents and their sponsors because they may be reluctant to inquire about information under the administrator's control. Residents may fear retaliation if they question procedures within their homes and, consequently, may not ask to see anything.<sup>41</sup>

Implementation with respect to homes formulating policies will benefit administrators because homes need written policies. Previously, many problems occurred because homes composed rules as they were needed—rules that were often arbitrary.<sup>42</sup> Establishing written policies will lend certainty to matters of concern to both residents and nursing homes and preclude unnecessary disputes between them.

### B. Enforcement

Realistic enforcement procedures were incorporated into H.B. 600 because the absence of viable, effective sanctions emasculated both Ohio's former nursing home law<sup>43</sup> and the federal Medicaid and Medicare provisions.<sup>44</sup> The enforceability of H.B. 600 significantly differentiates it from comparable state<sup>45</sup> and federal<sup>46</sup> legislation.

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of the Association of Ohio Philanthropic Homes for the Aging) (Representative Hartley's files) [hereinafter cited as *Testimony by AOPHA*].

40. Howard Interview, *supra* note 28.

41. COMMITTEE RECOMMENDATIONS, *supra* note 13, at 7.

42. Hartley Interview, *supra* note 13.

43. See note 8 *supra*.

44. See note 7 *supra*.

45. See, e.g., MD. ANN. CODE art. 43, § 565C (Supp. 1979); N.Y. PUB. HEALTH LAW § 2803-c (McKinney 1977 & Supp. 1979). For example, New York sanctions private actions in which compensatory and punitive damages, in addition to injunctive and declaratory relief, can be awarded to aggrieved patients of residential health care facilities. *Id.* The dearth of cases both in New York and Ohio indicates that residents are not availing themselves of this remedy and that it is ineffective as a mechanism to enforce residents' rights. Private actions are an ineffective deterrent because of the financial and emotional burdens that they place upon residents. Additionally, both New York and Maryland provide a general administrative procedure for handling grievances. But remedial action is discretionary on the part of these states' health officials, thereby frustrating much of the potential effectiveness of these statutes. *Id.*

46. See note 7 *supra*.

H.B. 600 provides an aggrieved nursing home resident with three remedies: the grievance committee, a separate administrative procedure, or a civil suit.<sup>47</sup> These are alternative remedies available to aggrieved residents rather than successive stages of an enforcement process.

### 1. Grievance Committee

Each nursing home is required to establish a grievance committee<sup>48</sup> with which residents may file complaints.<sup>49</sup>

When the grievance committee determines a violation of [H.B. 600] has occurred, it shall notify the administrator of the home. If the violation cannot be corrected within ten days, or if ten days have elapsed without correction of the violation, the grievance committee shall refer the matter to the Ohio [C]ommission on [A]ging.<sup>50</sup>

Registering complaints with the grievance committee is optional. "However, in those homes that have had residents' councils prior to the statute, both residents and administration have been pleased with this method of informal complaint solving. Many feel that this review of complaints by patients' peers discourages frivolous complaints . . . ."<sup>51</sup>

A fair grievance committee should resolve most residents' complaints.<sup>52</sup> "This committee gives the residents and families the opportunity to propose recommendations to the nursing home staff and administration for the resolution of complaints and suggestions for changes in the nursing home's policies."<sup>53</sup>

Despite the committee's utility, nursing homes have charged that "[t]he composition of the Grievance Committee of one staff member for every two residents would have the effect of taking the administration of the home out of the hands of the administrators . . . [thereby] discourag[ing] good administrators from staying in the field."<sup>54</sup> Realistically, however, good administrators will give their residents little reason to develop complaints serious enough to reach a grievance committee. Thus if fewer complaints reach the committee, the grievance committee will have less control over the administrator. Furthermore,

47. OHIO REV. CODE ANN. § 3721.17 (Page Supp. 1979).

48. *Id.* § 3721.12(A)(2). See note 32 *supra*.

49. *Id.* § 3721.17(A).

50. *Id.* The Commission on Aging is the governmental body charged with the responsibility to "[p]lan, initiate, coordinate, and evaluate statewide programs, services, and activities for elderly people. . . ." *Id.* § 173.06.

51. FINAL REPORT, *supra* note 2, at 11.

52. Hartley Interview, *supra* note 13.

53. OHIO COA RULES, *supra* note 32, at Grievance Committee 2.

54. Testimony by AOPHA, *supra* note 39. See also note 58 *infra*.

because "[t]he Grievance Committee process is designed to work within the home to resolve complaints and alleged violations informally, . . . this process can work effectively to preserve good relationships between the residents, families, staff and administration . . ."<sup>55</sup> rather than create an adversary relationship between the committee and the home's staff and administration.

Although section 3721.12(A)(2) of H.B. 600 charges nursing homes with the affirmative duty of establishing grievance committees, many homes do not have them.<sup>56</sup> Unless every home complies with the statute and organizes a grievance committee, the grievance procedure will be thwarted, thereby placing a greater burden of resolving complaints upon the Nursing Home Ombudsman.<sup>57</sup> Even if all homes establish grievance committees, unscrupulous administrators may manipulate the composition of the committees<sup>58</sup> to circumvent their potential effectiveness. These are potential violations of the grievance procedure that may not be penalized. The Nursing Home Ombudsman and the Department of Health will address these problems only as they are reported; otherwise, the existence and composition of grievance committees will not be policed because of inadequate funds to hire additional personnel to investigate compliance in this area.<sup>59</sup> Therefore, unless additional funds are allocated to the appropriate agencies for expanding their enforcement mechanisms, only the good-faith efforts of nursing home administrators to form grievance committees and conscientiously staff them will ensure the availability of this enforcement remedy to nursing home residents. Realistically, voluntary compliance is unworkable considering nursing homes' past abuses of residents' rights.<sup>60</sup> Thus the grievance procedure will not realize its full potential as long as compliance with H.B. 600 in this area is not strictly enforced.

H.B. 600's lack of time constraints upon the grievance committee

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55. OHIO COA RULES, *supra* note 32, at Grievance Committee 4.

56. Telephone conversation with Vic Rosenthal, Assistant Ohio State Nursing Home Ombudsman, Columbus, Ohio (Jan. 18, 1980) [hereinafter cited as Jan. 18 Rosenthal Telephone Conversation].

57. See notes 69-72 and accompanying text *infra*.

58. Hartley Interview, *supra* note 13. Because the committee must be composed of two residents or their sponsors or outside representatives for each staff person of the nursing home, OHIO REV. CODE ANN. § 3721.12(A)(2) (Page Supp. 1979), the committee could be stacked by appointing senile persons incapable of competently evaluating the complaints. Mendelson Telephone Conversation, *supra* note 26.

59. Telephone conversation with Vic Rosenthal, Assistant Ohio State Nursing Home Ombudsman, Columbus, Ohio (Feb. 22, 1980) [hereinafter cited as Feb. 22 Rosenthal Telephone Conversation].

60. See generally FINAL REPORT, *supra* note 2.

to investigate complaints is puzzling.<sup>61</sup> Presumably, a group acting in its own self interest will resolve problems as quickly as possible. Furthermore, the varied nature of complaints themselves, ranging from trivial to serious, does not justify encumbering the statute with a uniform time constraint; some complaints may be handled summarily although others may require protracted investigation which could not be adequately pursued under an established time limit.<sup>62</sup> If, however, a grievance committee unreasonably delayed or prolonged investigating a complaint, no violation of the bill occurs. The aggrieved resident's only recourse would then be the administrative remedy.<sup>63</sup>

## 2. Administrative Procedure

The administrative remedy is a second alternative for aggrieved nursing home residents.<sup>64</sup> "[I]f a resident does not feel that his complaint will get a fair hearing, if he fears retaliation, or if he merely chooses not to, he may report the violation directly to the Commission on Aging, bypassing the Grievance Committee."<sup>65</sup> The most significant aspect of this provision is that complaints are not restricted to residents themselves; any concerned person who believes a resident's rights have been violated can file a complaint with the Commission on Aging.<sup>66</sup> This is particularly important because the average nursing home resident<sup>67</sup> may be incapable of or reticent about complaining, or may not even be cognizant of a violation of his or her rights.

The Commission on Aging<sup>68</sup> will utilize the office of the Nursing

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61. See OHIO REV. CODE ANN. § 3721.17(A) (Page Supp. 1979).

62. Feb. 22 Rosenthal Telephone Conversation, *supra* note 59.

63. See notes 64-83 and accompanying text *infra*.

64. OHIO REV. CODE ANN. § 3721.17(B) (Page Supp. 1979).

65. FINAL REPORT, *supra* note 2, at 11. Section 3721.17(G) provides a fine of up to \$1,000 for any nursing home or employee thereof who retaliates against a person exercising any right provided by H.B. 600. *Id.* § 3721.17(G). Even so, many residents may forego complaining because of the difficulty of proving retaliation if it occurs; reprisals for patients are often subtle and sophisticated. Wojtanowski Interview, *supra* note 22. Furthermore the fine of \$1,000 may not substantially deter retaliation.

66. FINAL REPORT, *supra* note 2, at 11.

67. See note 2 *supra*.

68. The Commission on Aging has formulated specific procedures pursuant to executing its role in the administrative remedy. These procedures, which were promulgated under H.B. 600, OHIO REV. CODE ANN. § 173.02(L) (Page Supp. 1979), are detailed in the rules of the Ohio Commission on Aging. These rules specify the type of preliminary information required prior to investigating a complaint, the complaint procedure, procedures relating to identification of investigators, the investigations proper, time constraints, filing charges with the Department of Health, and responsibility at the Department of Health hearing. OHIO COA RULES, *supra* note 32.

Home Ombudsman<sup>69</sup> to receive complaints from both individuals<sup>70</sup> and grievance committees<sup>71</sup> and to conduct a timely investigation<sup>72</sup> of complaints or refer them to the attorney general<sup>73</sup> or the grievance committee at the home where the violation occurred<sup>74</sup> for timely

69. The Office of the Nursing Home Ombudsman was established in the [Commission on Aging] with funds from the federal government through the Older Americans Act. The Ombudsman has played an integral role in developing a network of local ombudsmen who attempt to monitor the care provided in nursing homes and investigate complaints made by patients or their families.

Under the Amendments to the Older Americans Act, the state Nursing Home Ombudsmen are charged with a broad range of responsibilities and activities. These include investigating complaints made by or on behalf of residents of long-term care facilities, resolving complaints, monitoring the development and implementation of federal, state, and local laws, regulations, and policies which affect long-term care facilities, promoting area ombudsman programs and training volunteers to participate in such programs, and establishing procedures so that the Ombudsman Office has appropriate access to state records and documents relative to long-term care facilities. The Office is also responsible for developing and implementing a statewide system to collect and analyze data relating to resident complaints and conditions in long-term care facilities and to ensure the confidentiality of individuals making complaints.

FINAL REPORT, *supra* note 2, at 76.

70. OHIO REV. CODE ANN. § 3721.17(B) (Page Supp. 1979).

71. *Id.* § 3721.17(A).

72. Although H.B. 600 provides for the Ombudsman to fulfill only an investigative function, *id.* § 3721.17(C), the Office of the Ombudsman perceives its role as an arbitrator working to resolve problems, thereby obviating further regulatory action. Jan. 18 Rosenthal Telephone Conversation, *supra* note 56.

The Office of the Nursing Home Ombudsman provides a means of resolving conflicts which are potentially less threatening to the provider than licensure revocation, Medicaid decertification, or even actions taken under the Patients' Bill of Rights. The ombudsman is in a position to act as an arbitrator between the patient or the patient's family and the nursing homes to resolve conflicts without resorting to official and potentially punitive actions which may not be appropriate or desirable.

FINAL REPORT, *supra* note 2, at 77. Thus the Ombudsman is expected to resolve most complaints so that an adjudication hearing by the Department of Health will be unnecessary. Jan. 18 Rosenthal Telephone Conversation, *supra* note 56. The role of the Ombudsman must be distinguished, however, from that of the investigator of complaints. "The role of the investigator under the statute will be much more limited. The investigator, unlike the Ombudsman, has no authority to mediate." FINAL REPORT, *supra* note 2, at 12.

73. OHIO REV. CODE ANN. § 3721.17(C)(1)(2) (Page Supp. 1979). "If a complaint involves the death of a resident alleged to have been caused by substantially less than adequate care or treatment or substantially unsafe conditions, it shall be referred to the attorney general . . ." OHIO COA RULES, *supra* note 32, at § 173:1-1-03(B) (1979) (capitalization in the original omitted).

74. OHIO REV. CODE ANN. § 3721.17(C)(2) (Page Supp. 1979). Although the Ombudsman investigates all complaints it receives, the investigation may reveal that the complaint can be more appropriately resolved by the grievance committee rather than the Ombudsman. Jan. 18 Rosenthal Telephone Conversation, *supra* note 56.

disposition.<sup>75</sup> If the investigation reveals that probable cause exists for finding a violation,<sup>76</sup> the complaint will be referred to the Ohio Department of Health,<sup>77</sup> which must hold an adjudicative hearing<sup>78</sup> within thirty days.<sup>79</sup> If the hearing reveals a violation of a patient's rights,<sup>80</sup> "the Department shall make an order for compliance, set a reasonable time for compliance, and assess a fine . . . [payable] only if compliance with the order is not shown to have been made within the

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75. The complaint must be investigated within 30 days by either the state or local Ombudsman or referred within 7 days of receipt to the attorney general if he or she agrees to investigate it within 30 days. OHIO REV. CODE ANN. § 3721.17(C) (Page Supp. 1979). H.B. 600 does not require a specific time frame within which a grievance committee must investigate a complaint.

76. If the investigation reveals evidence of criminal activity, that evidence "shall be given to the prosecuting attorney in the county in which the home is located for investigation." *Id.* § 3721.17(H) (Page Supp. 1979).

77. The Department of Health has formulated specific procedures pursuant to executing its role in the administrative remedy. These procedures, which were developed under the authority of H.B. 600, *id.* § 3721.11, are detailed in DIRECTOR OF HEALTH, RULES OF THE OHIO DEPT. OF HEALTH, ch. 3701-61 (1979) [hereinafter cited as Health Rules].

78. The Director shall select an impartial referee to conduct the hearing. The referee shall have been admitted to the practice of law in Ohio.

At the hearing, the alleged violation or violations stated in the charges must be proven by reliable, probative, and substantial evidence.

After the conclusion of the hearing, the referee shall submit to the director a written report setting forth his findings of fact, conclusions of law, and recommendations as to the action to be taken by the agency. If the referee determines that a violation . . . has occurred, he shall recommend to the director an order for compliance, a reasonable time for compliance, and the assessment of fines pursuant to division (F) of section 3721.17 of the Revised Code.

A Copy of the referee's report shall . . . be served upon the affected parties and their representatives of record . . . . Any affected party may . . . file with the director any written objections to the report and recommendations, which shall be considered by the director before affirming, modifying, or disapproving the recommendation.

The director may affirm, modify, or disapprove the referee's recommendation. No such recommendation shall be final until approved and confirmed by the director as indicated by the order entered on his record of proceedings, and if the director modifies or disapproves the recommendations of the referee, he shall include in the record of his proceedings the reasons for such modification or disapproval.

HEALTH RULES, §§ 3701-61-06(F), (H), -07 (A), (B), -08 (A), *supra* note 77.

79. OHIO REV. CODE ANN. § 3721.17(D) (Page Supp. 1979). "The actual date of the hearing shall be within thirty days after receipt of the charges from the commission but no sooner than twenty days after receipt of such charges." HEALTH RULES, § 3701-61-06(C), *supra* note 77.

80. "Findings at the hearings conducted under this section may be appealed pursuant to Chapter 119 of the Revised Code, except that an appeal may be made to the court of common pleas of the county in which the home is located." OHIO REV. CODE ANN. § 3721.17(E) (Page Supp. 1979).

reasonable time set in the order."<sup>81</sup> If the violator does not pay the fine within thirty days after a final appeal, the Department of Health can initiate court proceedings to collect the fine.<sup>82</sup> In addition, "[t]he department may issue an order prohibiting the continuation of any violation . . . ."<sup>83</sup>

The administrative remedy is not without problems. The role of the investigator conducting investigations of complaints presents an immediate obstacle.

The investigator, unlike the Ombudsman, has no authority to mediate.

. . . .

The authority and powers of the investigators will probably be an issue before the courts . . . . Specifically, there will be issues as to the investigators' rights of access to the home, the extent to which patient records will be available, and the extent to which the homes [*sic*] records will be available.<sup>84</sup>

The availability of residents' and nursing homes' records is another problem inherent in the investigative process. Investigators cannot peruse any records without written permission<sup>85</sup> from residents<sup>86</sup> and nursing homes. Although aggrieved residents will presumably always consent to investigation of their records, a home may occasionally deny access to a resident's records. In that case, the Nursing Home Ombudsman will have to subpoena the records.<sup>87</sup> Thus the investigation process may be complicated and delayed by a recalcitrant nursing home.

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81. OHIO REV. CODE ANN. § 3721.17(E) (Page Supp. 1979). Fines range from \$100 to \$500 for a first offense and \$200 to \$1,000 for each subsequent offense. "A violation . . . is a separate offense for each day of the violation and for each resident who claims the violation." *Id.* § 3721.17(F). Nursing homes have criticized this provision as unreasonable because the fines can be onerous. Letter from Peter C. Howard, IV, Governmental Relations Coordinator for Ohio Health Care Association, to Ohio State Representative Harry Lehman, Chairman of the Ohio House of Representatives Judiciary Committee (April 18, 1978) (Representative Hartley's files) [hereinafter cited as Howard Letter]. For example, "a 'Class' claim . . . in a 100 bed nursing home could result in a \$1,000 fine for each resident for each day of the offense—\$100,000 per day." *Id.* Nevertheless, fines were intentionally made substantial so that they would coerce compliance with H.B. 600 or have a definite punitive effect if compliance is not achieved.

82. OHIO REV. CODE ANN. § 3721.17(E) (Page Supp. 1979).

83. *Id.*

84. FINAL REPORT, *supra* note 2, at 12.

85. The Rules of the Ohio Commission on Aging require written consent. OHIO COA RULES, *supra* note 32, at § 173:1-1-04 (1979).

86. One of the specifically articulated rights is "[t]he right to confidential treatment of personal and medical records, and the right to approve or refuse the release of these records to any individual outside the home . . . ." OHIO REV. CODE ANN. § 3721.13(A)(10) (Page Supp. 1979).

87. INSIGHT, Dec. 1979/Jan. 1980, at 1.

The critical position of the Department of Health in the enforcement process may pose an additional problem. Because the Department of Health controls the adjudicative and enforcement functions,<sup>88</sup> it bears primary responsibility for enforcing the statute.<sup>89</sup> This responsibility may be undermined by the Department's failure to respond to nursing home problems in the past.<sup>90</sup> To mitigate this fear, the Department of Health has stated that although "it did *not* . . . support [H.B. 600] as it was enacted, . . . we intend to implement and enforce it to the best of our ability."<sup>91</sup> Only time will determine whether the Department of Health conscientiously and effectively executes its responsibilities, thereby allaying skepticism respecting its role in the implementation process.<sup>92</sup>

Timely disposition of complaints may be another problem with the administrative remedy. Residents' rights advocates have expressed concern that thirty days<sup>93</sup> is too long to respond to serious problems that may critically affect a resident's health.<sup>94</sup> Although the concern with timely investigation is genuine, the time constraints in H.B. 600 fairly balance the necessity of prompt investigation with the Ombudsman's need to properly prepare and arrange for an investigation.

A particularly troublesome aspect of H.B. 600 is its lack of time constraints upon final disposition of complaints.<sup>95</sup> Although the bill

88. OHIO REV. CODE ANN. § 3721.17(D), (E) (Page Supp. 1979).

89. FINAL REPORT, *supra* note 2, at 13.

90. See *generally id.* at 46-74. The Department of Health has been described by numerous sources as "the single most important problem in Ohio's nursing homes." INSIGHT, July/Aug. 1979, at 1; Hartley Interview, *supra* note 13; Wojtanowski Interview, *supra* note 22. Representative Wojtanowski stated that "the intentional effort on the part of the Department of Health to not implement the Patients' Bill of Rights is a serious problem." *Id.*

91. FINAL REPORT, *supra* note 2, at 13 (emphasis in original). That the Department of Health did "adopt rules . . . to govern procedures for the implementation of [H.B. 600] . . .," OHIO REV. CODE ANN. § 3721.11 (Page Supp. 1979), which became effective in October 1979, suggests a preliminary good faith effort to effectuate the statute. See HEALTH RULES, *supra* note 77.

92. To date no adjudication hearings have been held. Feb. 22 Rosenthal Telephone Conversation, *supra* note 59. Because the rules adopted by the Commission on Aging, see note 68 *supra*, and by the Department of Health, see note 77 *supra*, did not become operative until October 1979, and because investigators were not used by the Nursing Home Ombudsman until November 1979, Jan. 18 Rosenthal Telephone Conversation, *supra* note 56, the Department of Health has had little opportunity to enforce H.B. 600.

93. OHIO REV. CODE ANN. § 3721.17(C) (Page Supp. 1979).

94. Mendelson Telephone Conversation, *supra* note 26. Mrs. Mendelson opined that even the 10-day limit on corrective action required by grievance committees, OHIO REV. CODE ANN. § 3721.17(A) (Page Supp. 1979), could be detrimental in some cases.

95. See OHIO REV. CODE ANN. § 3721.17 (E), (F) (Page Supp. 1979); see also text accompanying note 61 *supra*.



and the rules adopted by the Commission on Aging and the Department of Health require investigations and adjudications to be commenced within thirty days after receiving complaints or reports of alleged violations, neither the bill nor the rules require a time frame for either investigating or adjudicating complaints or for finalizing complaints or alleged violations once they have been investigated or adjudicated.<sup>96</sup> Thus the Ombudsman or Department of Health can comply with the time limits in the statute respecting their particular functions but delay final disposition of complaints or alleged violations. The Office of the Ombudsman has committed itself to resolving complaints as quickly as possible, however, and has asserted that given the varied nature of complaints and alleged violations requiring differing degrees of investigation, time constraints are unrealistic because they would unduly burden the administrative remedy and interfere with thorough disposition of problems.<sup>97</sup> As long as the Ombudsman and the Department of Health execute their responsibilities as quickly as possible, the lack of time constraints should not pose a significant problem. Nevertheless, because no sanctions exist in the statute if the Ombudsman and the Department of Health fail to resolve complaints in a timely fashion, some alleged violations probably will not be resolved as expeditiously as possible. Thus the lack of time constraints upon these agencies could frustrate the effectiveness of the statute.

Residents' rights advocates have expressed concern that, because H.B. 600 requires investigation of a complaint only if it "alleges that the home provided substantially less than adequate care or treatment, or substantially unsafe conditions,"<sup>98</sup> many complaints may not be investigated.<sup>99</sup> Nevertheless, the bill permits any complaint arising under the Patients' Bill of Rights to be investigated,<sup>100</sup> and the Ombudsman actually investigates all complaints in order to maintain the credibility of the Nursing Home Ombudsman and to establish the viability of the administrative remedy.<sup>101</sup> This regulation is not codified in the Rules of the Commission on Aging, however, so only experience will reveal whether all complaints continue to be investigated.

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96. Letter from Mary Adelaide Mendelson, Executive Director for the Nursing Home Advisory and Research Council, Inc., to Nancy Phillips (Jan. 21, 1980).

97. Feb. 22 Rosenthal Telephone Conversation, *supra* note 59.

98. OHIO REV. CODE ANN. § 3721.17(C)(1) (Page Supp. 1979).

99. Mendelson Telephone Conversation, *supra* note 26.

100. OHIO REV. CODE ANN. § 3721.17(C)(2) (Page Supp. 1979).

101. Jan. 18 Rosenthal Telephone Conversation, *supra* note 56. This is a written internal procedure of the Ombudsman program that is required by the Older Americans Act establishing the Ombudsman program. Letter from Vic Rosenthal, Assistant Nursing Home Ombudsman, to Nancy Phillips (March 19, 1980).

### 3. Civil Suit

The third remedy available to an aggrieved nursing home resident is a civil suit for compensatory and punitive damages against any person or home violating H.B. 600.<sup>102</sup> Of paramount significance is the provision authorizing either the resident or his or her sponsor to commence the action.<sup>103</sup> This protects residents incapable of filing suits themselves by permitting a sponsor to litigate on behalf of a resident. Defining the term "sponsor" was one of the most controversial elements of H.B. 600.<sup>104</sup> As defined in the statute, "'[s]ponsor' means an adult relative, friend, or guardian of a resident who has an interest or responsibility in the resident's welfare."<sup>105</sup> The definition is broad so that almost any concerned party can assert a resident's rights in court, thereby ensuring that grievances will not go unlitigated because of the standing of the party asserting the resident's rights.<sup>106</sup>

Private action will be largely unnecessary if the grievance committee and administrative procedure are successful.<sup>107</sup> A civil suit will be initiated only if a nursing home refuses to comply with the mandates of a grievance committee or the Department of Health or if the administrative remedy fails to satisfy the resident.<sup>108</sup> Nevertheless, the paucity of cases on record indicates that future complainants would

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102. OHIO REV. CODE ANN. § 3721.17(I) (Page Supp. 1979). The statute also provides that "[t]he court may award to the prevailing party reasonable attorney's fees limited to the work reasonably performed." *Id.*

103. *Id.*

104. Hartley Interview, *supra* note 13.

105. OHIO REV. CODE ANN. § 3721.10(D) (Page Supp. 1979).

106. Hartley Interview, *supra* note 13. The term "sponsor" represented a compromise with critics because the original bill authorized an action to be brought by any interested party, thereby permitting anyone to assert a resident's rights in court. Because nursing homes protested such a vague provision, it was changed to "sponsor." *Id.* The unmodified term "sponsor" was nevertheless considered unsatisfactory by critics of the legislation, who wanted to qualify the relationship by requiring, for example, written acceptance of the responsibilities of a sponsor, Howard Letter, *supra* note 81, or "power of attorney" status, *Testimony by AOPHA, supra* note 39. The drafters of H.B. 600 refused to further accommodate critics, however, in order to maximize protection to nursing home residents. Hence, the term "sponsor" does not require any formalized relationship. Even so, a sponsor must be identifiable with the patient; some communication must have been exchanged between the resident and a person before that person can be considered capable of suing as a resident's sponsor. Therefore, the sponsor cannot be just a concerned citizen who does not know the resident. Hartley Interview, *supra* note 13.

107. H.B. 600 was designed so that most problems could be resolved by grievance committees or the administrative procedure, thus obviating private action. Hartley Interview, *supra* note 13.

108. The right to private action was included in the statute specifically because those who drafted the statute distrusted the Department of Health. *Id.* See note 90 *supra*.

rarely avail themselves of this remedy in spite of the additional protection offered by the statute.

A general problem expected to encumber all stages of the enforcement process is the necessity of evidence of violations and abuses.<sup>109</sup> Whenever possible, implementation procedures must be documented,<sup>110</sup> so that the absence of required documents would constitute noncompliance with the statute. When witnesses are required to substantiate a case, however, injuries may go unredressed because proof is unavailable. Central to this problem is the nature of the typical nursing home resident.<sup>111</sup> In a physical abuse case, the victim is often the sole witness; yet if the victim is senile or otherwise incompetent to attest to his or her injuries, no *prima facie* case can be developed.<sup>112</sup> Proof of resident abuses is, therefore, a formidable obstacle in the enforcement process.

### III. CONCLUSION

H.B. 600 is a legislative effort to rectify the appalling conditions existing in many Ohio nursing homes.<sup>113</sup> The Patients' Bill of Rights articulates thirty specific rights<sup>114</sup> that many residents of Ohio's nursing homes have heretofore been denied. H.B. 600 delineates specific, realistic implementation<sup>115</sup> and enforcement<sup>116</sup> provisions, which distinguish it from comparable state<sup>117</sup> and federal<sup>118</sup> legislation, render it capable of successful effectuation, and give it force and vitality. The Patients' Bill of Rights charges nursing homes and their administrators with the affirmative duties of informing residents of their rights and effectively protecting them.<sup>119</sup> When complaints arise, aggrieved residents are provided with three remedies: a grievance system, a separate administrative procedure, and a civil suit.<sup>120</sup> Notwithstand-

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109. Hartley Interview, *supra* note 13.

110. OHIO REV. CODE ANN. §§ 3721.12, .14 (Page Supp. 1979).

111. *See* note 2 *supra*.

112. Representative Hartley related such a case brought to his attention. A resident was allegedly beaten and raped by an employee. The resident remembered nothing, and the only other witness was an unreliable woman who saw the accused employee coming out of the injured resident's room naked, wiping himself off with a towel. Therefore, existing circumstances afforded no proof, and the patient, covered with bruises, recovered nothing. Hartley Interview, *supra* note 13.

113. *See* INSIGHT, July/Aug. 1979, at 1.

114. OHIO REV. CODE ANN. § 3721.13(A) (Page Supp. 1979).

115. *Id.* §§ 3721.12, .14.

116. *Id.* §§ 3721.17-.18.

117. *See* note 45 *supra*.

118. *See* note 7 *supra*.

119. OHIO REV. CODE ANN. §§ 3721.12, .14 (Page Supp. 1979).

120. *Id.* § 3721.17.

ing criticisms of the Patients' Bill of Rights, it should afford significant relief to residents of Ohio nursing homes if the implementation and enforcement mechanisms in the statute are properly given effect. Only experience with the new law will demonstrate the statute's viability.

*Nancy Mosmeier Phillips*

Code Sections Affected:	§§ 173.02, .06; 3701.07; 3721.01, .021, .10-.18, .99.
Effective Date:	January 9, 1979
Sponsors:	Hartley, <i>et al.</i> (H); Mahoney, <i>et al.</i> (S).
Committees:	Judiciary (H) Finance (H) Human Resources (H) Education and Health (S)

