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OPINION	:	No. 84-904
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THE HONORABLE ALICE GONZALES, DIRECTOR, DEPARTMENT OF AGING, has requested an opinion on the following question:

May the State Long-Term Care Ombudsman disclose the identity of the victim of elder abuse who is a resident of a long-term care facility to a law enforcement agency under provisions of the Elder Abuse Reporting Law without the victim's consent or court order?

CONCLUSION

The State Long-Term Care Ombudsman may not disclose the identity of the victim of elder abuse who is a resident of a long-term care facility to a law enforcement agency under provisions of the Elder Abuse Reporting Law unless the victim has given consent or a court order permits such disclosure.

ANALYSIS

1. THE LONG-TERM CARE OMBUDSMAN PROGRAM.

Under various programs administered by the federal Department of Health and Human Services through the Commissioner of the Administration on Aging and under the authority of the Older Americans Act (42 U.S.C. §§ 3001-3058d) states may obtain grants to assist their older citizens, including grants for supportive services. (42 U.S.C. §§ 3021-3030bb.) Grants are available to provide such services for such persons in "long-term care facilities" which are defined to include skilled nursing facilities, intermediate care facilities, nursing homes and other similar adult care homes. (42 U.S.C. § 3022(3).) A state participating in such grant programs must submit to the Commissioner a plan which, under 42 U.S.C. section 3027(a), includes an ombudsman program:

"(12) provide assurances that the State agency will—

"(A) establish and operate, either directly or by contract or other arrangement with any public agency or other appropriate nonprofit organization, other than an agency or organization which is responsible for licensing or certifying long-term care services in the State or which is an association (or an affiliate of such an association) of long-term care facilities (including any other residential facility for older individuals), a long term care ombudsman program which will, on a full time basis—

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

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

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

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

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

In addition, under this section (42 U.S.C. § 3027(a)(12)), the state ombudsman program must provide for the confidentiality of the identities of complainants and residents:

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

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

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

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

Federal regulations issued to implement these provisions include the requirement that the complainant's or resident's written consent to disclose his or her identity must specify to whom the identity is to be disclosed. (45 C.F.R. 1321.43(e)(2) (i).)

The California Department of Aging, pursuant to a grant received from the federal government under the Older Americans Act and in compliance with 42 U.S.C. section 3027(a)(12) and 45 C.F.R. 1321.43, established in 1979 a Long-Term Care Ombudsman Program. (Welf. & Inst. Code, § 9700-9741.)¹ The program includes the office of State Long-Term Care Ombudsman, generally known and referred to hereafter as the state ombudsman. (§§ 9710-9731.) This office is charged with the responsibility to investigate and to seek to resolve "complaints and concerns communicated by or on behalf of patients, residents, or clients of any long-term care facility." (§ 9720.) The office may refer a complaint to any appropriate state or local government agency and certain agencies must "give priority" to such referrals. (§ 9721, subd.(a).) The office operates with designated "substate ombudsmen" consisting of approved persons and organizations and

¹ All further state statutory references will be to provisions of the Welfare and Institutions Code unless otherwise indicated.

with the cooperation of representatives of patients' rights and advocacy programs of the Department of Mental Health and the Department of Health Services. (See §§ 5500-5550, 9701 subd. (b) and (h), 9719, 9722, subd.(b), 9750-9756; Health and Saf. Code, §§ 429.60-429.64.) Any reference to the state ombudsman in this opinion will include the substate ombudsmen.

Representatives of the state ombudsman have the right to enter long-term care facilities for the purposes of hearing, investigating and resolving complaints and of rendering advice to patients or residents. (§ 9722, subd.(a).) Moreover, the state ombudsman has access to any record of a state or local government agency necessary to carry out the office's responsibilities and has access to medical or personal records of the patient or resident under certain conditions. (§§ 9723 and 9724.) Section 9725, consistent with 42 U.S.C. section 3027(a)(12)(B) and (D), makes confidential records and files of the office of state ombudsman and the identities of complainants, witnesses, patients and residents.²

"All records and files of the office relating to any complaint or investigation made pursuant to this chapter and the identities of complainants, witnesses, patients or residents shall remain confidential unless disclosure is authorized by the patient or resident or his or her conservator of the person or legal representative. No disclosures shall be made outside the office without the consent of any named witnesses, resident, patient, client, or complainant unless the disclosure is made without the identity of any of these individuals being disclosed."

Moreover, communications by a representative of the office are deemed privileged which privilege serves as a defense to any action in libel or slander, and such representative is "exempt from being required to testify in court as to any confidential matters except as the court may deem necessary to enforce the provisions of the chapter." (§ 9715, subds. (c) and (d).)

The definition of long-term care facility under California law is also consistent with the federal definition and the term includes nursing homes, skilled nursing facilities, extended care facilities and intermediate care facilities. (§ 9701, subd.(a); Health and Saf. Code, §§ 1418, subd.(a), 1502, subds.(a)(1) and (a)(2), and 1570.7, subd.(b).)

² We view the words patient and resident to be interchangeable. However, the words complainant and witness may encompass a person who is a patient or resident or a person who is in the facility for another reason, such as an employee or a visitor. When we use the word resident in this opinion we intend to include a person who may at the same time be described as both a resident and a complainant, witness, patient or client.

2. THE ELDER ABUSE REPORTING LAW.

We now address the Elder Abuse Reporting Law (§§ 9380-9386) which was enacted in 1983, subsequently to the Long-Term Care Ombudsman Program. Under this law an elder is a person 65 years of age or older. (§ 9380, subd. (a).) Elder abuse consists of any one or more of enumerated acts which are inflicted by other than accidental means on an elder by another person. (§ 9380, subd. (b).) These acts are described as "physical abuse" (§ 9380, subd. (c)), "fiduciary abuse" (§ 9380, subd. (d)), "neglect" (§ 9380, subd. (e)) and "abandonment" (§ 9380, subd. (f).).

Elder care custodians, medical practitioners, nonmedical practitioners and employees of elder protective agencies who have "actual knowledge" that an elder whom they observe in their professional capacities or within the scopes of their employments has been the victim of physical abuse are mandated to report the "suspected instance" of physical abuse to an elder protective agency "immediately or as soon as possible by telephone" and to "send a written report thereof within 36 hours." (9381, subd.(a).) The persons who are so required to make telephone and written reports are described in section 9380 as follows:

"(g) 'Elder care custodian' means an administrator of a community care facility licensed to care for the elderly, a public assistance worker, a probation officer, a social worker, a licensed home aide, or an employee of an elder care institution, including personnel of residential care facilities, skilled nursing facilities, and intermediate care facilities.

"(h) 'Medical practitioner' means a physician and surgeon, psychiatrist, psychologist, dentist, osteopath, podiatrist, chiropractor, resident, intern, nurse, pharmacist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

"(i) 'Nonmedical practitioner' means a state or county public health employee who treats an elder for any condition, a paramedic, a coroner, a geriatric or family counselor, or a lawyer.

"(j) 'Elder protective agency' means the State Department of Social Services, a county probation department, a county welfare department, a police or sheriff's department, or *a nursing home ombudsman.*" (Emphasis added.)

A person coming within these employment categories who knowingly fails to report physical abuse as required by section 9381, subdivision (a), is guilty of a misdemeanor. (9386.)

In addition to the mandatory requirement to report suspected instances of physical abuse, persons within the above categories "may" make reports on the other types of elder abuse and when they have knowledge of or reasonably suspect that "mental suffering has been inflicted on an elder," or that an elder's "emotional well-being is endangered in any other way." (§ 9381, subd.(c).) Furthermore, any person (not just those in the employment categories) who has knowledge of or observes an elder whom he or she reasonably suspects has been a victim of elder abuse "may" report the suspected abuse to an elder protective agency. (§ 9381, subd.(b).) "Reasonable suspicion," as used in these statutes, means that it is "objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience" to suspect elder abuse. (§ 9381, subd.(b).)

The Elder Abuse Reporting Law contains confidentiality provisions. Under subdivision (c) of section 9382 the identity of persons who report "shall be confidential and disclosed only by court order or between elder protective agencies" and persons who report, other than those mandated to make reports, are not required to include their names.

3. THE DUTY OF THE LONG-TERM CARE OMBUDSMAN TO REPORT ELDER ABUSE UNDER STATE LAW.

As we have seen, an elder protective agency includes a "nursing home ombudsman," a term which is not otherwise defined in the reporting law. An ombudsman is defined in Black's Law Dictionary, fifth ed., West Publishing Co., 1979, as:

"An official or semi official office to which people come with grievances connected with the government. The ombudsman stands between, and represents, the citizen before the government."

The term nursing home is defined in Business and Professions Code section 3902 as "any institution, facility, place, building or agency, or portion thereof, defined and licensed as a skilled nursing facility or intermediate care facility, except an intermediate care facility/developmentally disabled habilitative, in Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code." A nursing home ombudsman as identified in section 9380, subdivision (j), would be a person serving in the capacity of an ombudsman at any one or more of the above facilities. As we have seen, under federal and

state law these facilities would also be long-term care facilities. (42 U.S.C. § 3022(3); § 9701, subd. (a).)

In our view, a nursing home ombudsman is a person who entertains grievances from those confined in nursing homes and presents those grievances to appropriate governmental agencies. A nursing home ombudsman is an elder protective agency under sections 9380, subdivision (j), and 9383, subdivision (a), for the purpose of receiving elder abuse reports and, under section 9381, subdivision (a), a nursing home ombudsman is among those mandated to report incidents of suspected physical abuse of elders and permitted to report other forms of elder abuse. The State Long-Term Care Ombudsman, a nursing home ombudsman, is an elder protective agency. More significantly, the stated purpose of the state ombudsman program is contact and involvement with elderly patients and residents of nursing facilities, i.e., persons who are the protected subjects of the Elder Abuse Reporting Law. (§ 9700.) However, no statute makes the state ombudsman's office a law enforcement agency.

Again looking at the Elder Abuse Reporting Law we see that any elder care custodian, medical practitioner, nonmedical practitioner or employee of an elder protective agency "shall report the suspected instance of physical abuse to an elder protective agency immediately or as soon as possible by telephone" (§ 9381, subd.(a).) Accordingly, the state ombudsman as an elder protective agency must make and accept such telephone reports of physical abuse. The law, in section 9383, then describes what must be done with these telephone reports:

"(a) If a telephone report made pursuant to subdivision (a) of section 9381 is received by an elder protective agency other than the appropriate law enforcement agency, the *receiving agency shall relay the information to the law enforcement agency* by telephone as soon as possible.

"(b) An elder abuse victim may refuse or withdraw consent at any time to an investigation or the provision of protective services by an elder protective agency. *The agency shall act only with the consent of the victim unless a violation of the Penal Code has been alleged.*

"(c) If the elder abuse victim is so incapacitated that he or she cannot legally give or deny consent to protective services, a petition for temporary conservatorship or guardianship may be initiated in accordance with section 2250 of the Probate Code." (Emphasis added.)

Under section 9383 the state ombudsman receiving a telephone report of physical abuse of an elder must relay such report to the appropriate law enforcement agency. However, the

victim may refuse or withdraw consent to any investigation or protective service which follows unless a violation of the Penal Code is alleged in the report. Consequently, a law enforcement agency receiving a report of elder abuse relayed by the state ombudsman may pursue an investigation when a Penal Code violation is involved regardless of the consent of the victim.

4. REPORTING ELDER ABUSE UNDER FEDERAL LAW.

The Older Americans Act addresses the subject of protective services for elders. As set forth in 42 U.S.C. § 3027(a)(16) respecting additional provisions to be included in state plans for grant eligibility, the Act provides:

"(A) the plan contains assurances that any area agency on aging carrying out such services will conduct a program consistent with relevant State law and coordinated with existing State adult protective service activities for—

"(i) public education to identify and prevent abuse of older individuals;

"(ii) receipt of reports of abuse of older individuals;

"(iii) active participation of older individuals participating in programs under this chapter through outreach, conferences, and referral of such individuals to other social services agencies or sources of assistance where appropriate and consented to by the parties to be referred; and

"(iv) referral of complaints to law enforcement or public protective service agencies where appropriate.

"(B) the State will not permit voluntary or coerced participation in the program of services described in this clause by alleged victims, abusers, or their households; and

"(C) all information gathered in the course of receiving reports and making referrals shall remain confidential unless all parties to the complaint consent in writing to the release of such information, except that such information may be released to a law enforcement or public protective service agency."

These provisions in subdivision (16), on their face, would authorize the release of an elder abuse report to a law enforcement agency or to a public protective service agency.³ However, as we will discuss later, these provisions do not specifically consider the state ombudsman's duty to protect the confidentiality of certain identities under subdivision (12) of the same statute.

5. THE CONFIDENTIALITY OF THE ELDER ABUSE VICTIM'S IDENTITY.

With the above background we can begin to focus on the issues raised by the question directed to us for resolution. Our examination of the law leads us to the preliminary and general conclusion that elder abuse reports by the state ombudsman to law enforcement agencies are authorized under both state and federal law. The Elder Abuse Reporting Law specifically requires such reporting. Section 9725 of the State Long-Term Care Ombudsman Program permits disclosure of records and files provided the identities of witnesses, residents, patients, clients and complainants are withheld. And under federal law, 42 U.S.C. section 3027(a)(16), elder abuse reports may be made to law enforcement and public protective service agencies where appropriate. However, the concern of the requester is directed at a report which identifies a victim of elder abuse who is a resident of a long-term care facility and who has not given consent to the release of his or her name and no court order allows such disclosure. Federal law is explicit that the state ombudsman either receive written consent from such victim or obtain a court order. (42 U.S.C. § 3027(a)(12)(B) and (D).)

The concern of the requester is justified because one provision of the Elder Abuse Reporting Law requires disclosure of the name of the elderly victim. Section 9382 states:

"(a) Except as provided in subdivision (c), a telephone report of suspected elder abuse shall include the name of the person making the report, the name, address, and age of the elder, the nature and extent of the elderly person's condition, and any other information, including information that led the person to suspect elder abuse, requested by the elder protective agency.

"(b) Information relevant to the incident of elder abuse may also be given to an investigator from an elder protective agency who is investigating the suspected case of elder abuse.

³ A public protective service agency would include an elder protective agency.

"(c) The identity of all persons who report under this chapter shall be confidential and disclosed only by court order or between elder protective agencies. Persons who may report pursuant to subdivision (b) of Section 9381 are not required to include their names.

According to this statute, then, a telephone report⁴ made under subdivision (a) of section 9383, to the state ombudsman and relayed by that office to a law enforcement agency must identify the victim by name, address and age. (§ 9382, subd. (a).) However, the confidentiality of the name of the person reporting, who may be a person other than the victim, is to be maintained. (§ 9382, subd. (c).)

The State Long-Term Care Ombudsman Program makes confidential "the identities of complainants, witnesses, patients or residents" unless there is appropriate consent and allows "[n]o disclosures . . . outside the office without the consent of any named witnesses, resident, patient, client, or complainant unless disclosure is made without the identity of any of these individuals being disclosed." (§ 9725.) The federal requirement is that the identity of any complainant or resident will not be disclosed without the written consent of such complainant or resident, or without court order. (42 U.S.C. § 3027(a)(12)(B) and (D).) The Elder Abuse Reporting Law would seemingly conflict with these provisions by requiring the state ombudsman and his or her representatives to disclose to a law enforcement agency the name of the nursing home resident who is a victim of physical abuse regardless of such person's consent or court order.

First we must resolve any conflict between section 9383 and section 9725. The office of state ombudsman was established specifically "to comply with the Older Americans Act, as amended" (§ 9700.) The federal confidentiality strictures were made part of that state statutory scheme. (§ 9725.) The Elder Abuse Reporting Law was added later. Did the Legislature intend the reporting law/to take precedence over the restrictions placed on the state ombudsman's information under the other state law, namely, section 9725? The deliberate inclusion of nursing home ombudsman as an elder protective agency suggests that it did. A nursing home ombudsman is a likely person to know of or to observe elder abuse and a person to whom residents and others would turn to for assistance. In *People v. Stitzinger* (1983) 34 Cal.3d 505, 512, the California Supreme Court observed that a subsequent legislative enactment may constitute an exemption to an earlier statute:

⁴ The state ombudsman maintains a toll-free telephone hotline to receive telephone calls concerning any crises discovered by any person in a community care facility or long-term care facility. (§ 9726.)

"Together these provisions [of the Child Abuse Reporting Law] impose on psychotherapists the affirmative duty to report to a child protective agency all known and suspected instances of child abuse. Lest there be any doubt that the Legislature intended the child abuse reporting obligation to take precedence over the physician-patient or psychotherapist-patient privilege, section 11171, subdivision (b), explicitly provides an exception to these very privileges: 'Neither the physician-patient privilege nor the psychotherapist-patient privilege applies to information reported pursuant to this article in any court proceeding or administrative hearing.' The Legislature obviously intended to provide specific exception to the general privileges set out in the Evidence Code (Evid. Code, §§ 994, 1014) so that incidents of child abuse might be promptly investigated and prosecuted."

While we do not have such an explicit statement of legislative intent here, nevertheless we do have a situation similar to that addressed by the Washington Supreme Court in *State v. Fagalde* (Wash. 1975) 539 P.2d 86, 90:

"Thus, we cannot accept the appellant's theory that confidential communications between the perpetrator and a psychologist, or a doctor, or a mental health center employee, are protected from disclosure and privileged in a judicial proceeding, according to the terms of the applicable statutes. Such protection might well be deemed to be in the public interest. But it is evident that, in its recent enactments, the Legislature has attached greater importance to the reporting of incidents of child abuse and the prosecution of perpetrators than to counseling and treatment of persons whose mental or emotional problems cause them to inflict such abuse.

"It is the duty of the court to reconcile apparently conflicting statutes and to give effect to each of them if this can be achieved without distortion of the language used. *Publishers Forest Prods. Co. v. State*, 81 Wash.2d 814, 505 P.2d 453 (1973); 2A *Sutherland Statutory Construction* section 51.02 (4th Ed. C. Sands 1973). These statutes can be reconciled upon the following interpretation: The Legislature has expressed an intent to protect the confidentiality of communications made in the physician-patient and psychologist-patient relationship, except where they relate to child abuse; and in this area the interest in discovery of cases of such abuse and in protecting the child from future recurrences is found to be overriding. Prosecution of the offender is contemplated as properly incidental to at least the latter purpose. The interest in encouraging the child abuser to seek treatment is subordinated to this aim."

Moreover, we find section 9383 to be not only the more recent statute but also the more specific. By section 9382 the state ombudsman, as a nursing home ombudsman and an elder protective agency, must transmit a telephone report of suspected physical abuse of an elder to a law enforcement agency. Section 9725 does not speak to this particular subject at all. Rather, it deals in general terms with the confidentiality of state ombudsman's records and files. Where the statutes are inconsistent, as here, the specific provision will control over the general provision. (Code Civ. Proc. § 1859; *Rose v. State* (1942) 19 Cal.2d 713, 723-724.) Accordingly, we resolve the conflict between the two state statutes in favor of the reporting statute.

The matter before us also involves a possible conflict between the state reporting statute, on one hand, and the federal ombudsman statute, on the other hand. The supremacy clauses of the United States and California constitutions (U.S. Const., art. VI, cl. 2; Cal. Const., art. III, § 1), if applicable would compel the state ombudsman to follow the latter provision.⁵ In 67 Ops.Cal.Atty.Gen.225 (1984) we concluded that providers of services under federally funded state alcohol or drug abuse programs were prohibited by federal laws and regulations from reporting child abuse information pursuant to the California Child Abuse Reporting Law except on conditions and specifications expressly provided by the federal laws and regulations. (The Child Abuse Reporting Law is similar to the Elder Abuse Reporting law except the consent of the child is not involved.) We determined that to the extent the state law permitted or required greater access to information than allowed under the confidentiality provisions of federal laws and regulations, the state law was invalid. (67 Ops.Cal.Atty.Gen. at p. 230.) Here, the Elder Abuse Reporting Law would require the office of the state ombudsman to make or relay a report of physical abuse which included the name of the elderly victim. (§ 9382, subd. (a).) The elder abuse victim may refuse or withdraw consent "to an investigation or the provision of protective services . . ." but such consent to an investigation or protective services is not necessary when a violation of the Penal Code is alleged. (§ 9383, subd.(b).) The Elder Abuse Reporting Law, however, makes no provision requiring the victim's consent before disclosure of the victim's identity in the reporting process.

In determining whether there is a conflict we must look to the test articulated in *Hisquierdo v. Hisquierdo* (1979) 439 U.S. 572. The California Supreme Court, in that case, had ruled that pension benefits under the federal Railroad Retirement Act were community property under state law even though under that federal law the retiree had the right to designate a person other than his or her spouse as beneficiary. On review, the

⁵ Moreover, regulations promulgated by a federal agency have the force and effect of federal statutory law. (*Wyoming Hospital Assn. v. Harris* (D. Wyo. 1981) 527 F.Supp. 551, 557, aff'd (10th Cir. 1984) 727 F.2d 936.)

United States Supreme Court overruled the California court under the supremacy clause and set down the following test (439 U.S at p. 583):

"The pertinent questions are whether the right [state law] conflicts with the express terms of federal law and whether its consequences sufficiently injure the objectives of the federal program to require nonrecognition [of state law]."

With respect to the first part of the test, does an express conflict exist between the federal long-term care law and the state Elder Abuse Reporting Law? The federal law in its ombudsman provisions expressly prohibits the disclosure of a patient's or resident's identity without written consent or court order. On the other hand, the state law expressly requires the disclosure of that identity in circumstances where there is no consent or court order. Consequently, under this part of the test there is a conflict.⁶

With respect to the second part of the test, does the conflict sufficiently injure the objectives of the federal program? Before answering we note that at most the federal law conditions the reporting requirement of state ombudsman by requiring, if the elder does not consent, that a court order be obtained before the identification is reported. If a court order is obtained then nothing in federal law would preclude compliance with state law or generate a conflict. Indeed, as we have seen, the Older Americans Act is not an obstacle to the receipt and referral of complaints to law enforcement or public protective services agencies. (42 U.S.C. § 3027(a)(16).) When the state ombudsman makes a report of elder abuse he may exclude the name of the elder if the elder wishes his or her identity to be confidential. (42 U.S.C. § 3027(a)(12) (B)(D).)

One of the stated purposes of the Older Americans Act is to assist older people in finding "[f]reedom, independence, and the free exercise of individual initiative in planning and managing their own lives and full participation in the planning and operation of community-based services and programs provided for their benefit." (42 U.S.C. § 3001(10).) The older person is not deprived of choice. The choice of confidentiality would encourage contact with the ombudsman should the resident fear retaliation or wish to avoid direct involvement. The ombudsman office and the

⁶ We observe that section 11003 provides that if the Secretary of Health and Human Services issues a formal ruling that a section of the Welfare and Institutions Code relating to public assistance cannot be given effect without causing this state's plan to be out of conformity with federal requirements, then "the section shall become inoperative to the extent that it is not in conformity with federal requirements." We have found no such formal ruling applicable here. However, this provision suggests a legislative intent that conflicts such as those here be resolved in favor of the federal requirement.

confidentiality provisions thereof are integral parts of federal long-term care programs designed to assure the free and open disclosure of complaints. (See 1978 U.S. Code & Cong. News, p. 3442.) In our view, disclosure of an elder's identity by the state ombudsman without consent or court order would sufficiently injure the federal program so as to cause a conflict.

We do not believe that 42 U.S.C. § 3027(a)(16), which is set forth in Section 4, *supra*, qualifies the duty of the state ombudsman to keep an elder's identity confidential if that is the wish of the elder. That section authorizes the state ombudsman to make a report like any other person under the appropriate state law but does not tamper with the special relationship between the state ombudsman and the elder intended by 42 U.S.C. § 3027(a)(12) which allows the withholding of the elder's identity.

We have stated our view that the state ombudsman is a nursing home ombudsman under the Elder Abuse Reporting Law. Thus, reports of elder abuse may be made to the state ombudsman. The reporting law provides that if an elder abuse report is received by an elder protective agency other than the appropriate law enforcement agency, the receiving agency shall relay the information to the law enforcement agency by telephone as soon as possible. However, a federal statute governing the conduct of the state ombudsman expressly prohibits the disclosure of the identity of the complainant or resident without consent or court order. This confidentiality statute makes no exception which would allow the state ombudsman to relay the elder's identity to another public protective service agency such as a law enforcement agency. Since the federal confidentiality provisions control over the state reporting law, it is our opinion that the state ombudsman, when making a report of elder abuse, may not disclose the identity of the complainant or resident absent such person's consent or court order. Consequently, if the resident is the victim of elder abuse, appropriate consent must be obtained.

Accordingly, we conclude that the State Long-Term Care Ombudsman may not disclose the identity of the victim of elder abuse who is a resident of a long-term care facility to a law enforcement agency under provisions of the Elder Abuse Reporting Law unless the victim has given consent or a court order permits such disclosure.
