

**Testimony Submitted to the Committee on Health**

**By D.C. Long-Term Care Ombudsman  
For the District of Columbia**

**Public Hearing**

**B18-481: Health Facilities Improvement Act of 2009**

**December 3, 2009**

Gerald Kasunic, D.C. Long-Term Care Ombudsman  
Office of the D.C. Long-Term Care Ombudsman Program  
601 E Street, N.W. Fourth Floor  
Washington, D.C. 20049  
(202) 434-2190 office  
(202) 434-6595 fax

Good Day, Chairman Catania and Members of the Committee on Health. I am Jerry Kasunic, the D.C. Long-Term Care Ombudsman, who represents the approximately 4,600 residents of licensed nursing facilities, assisted living residences and community residence facilities in the District. As you are aware, the Long-Term Care Ombudsman Program is part of the D.C. Office on Aging Senior Service Network and is charged by Federal and D.C. Law with representing the interests of some of the District's most vulnerable citizens--residents of long-term care facilities--whose physical and mental disabilities make it impossible for them to advocate effectively for themselves.

The Ombudsman Program and I commend you, your staff, and the distinguished members of the Committee on Health for focusing on improving nursing home quality of care and life services for DC residents. The Bill 18-481 Health Facilities Improvement Act of 2009 attempts to address the basic legislative requirements guiding nursing home administrators and corporations to create policies and procedures concerning medical services, enhance staffing ratios to ensure medical care is delivered, and introduce legislative cultural change. The collaboration between Mr. Catania's staff and the Ombudsman Program will continue to ensure the legislation is resident-centered and sets a national precedent for others to emulate.

However, I must stress before commenting on the Bill that the Department of Health (DOH) must increase its enforcement and oversight of all long-term care regulations to improve residents' life and care experiences. Without consistent, uniformed, enforcement by the Department of Health, Health Regulations and Licensing Administration (HRLA) this Bill will not accomplish this Committee's objectives.

#### The Health Facility Improvement Act of 2009

The Health Facility Improvement Act of 2009 intends to set standards and policies for nursing home administrators to provide in-house medical services and supports in order to ensure that residents are receiving the proper prescribed treatment to maintain or improve residents' health care and quality of life needs. However, the

Ombudsman Program believes the Bill needs additional editing to ensure the intent is truly understood by providers and enforceable by DOH surveyors. In order to provide quality of care, the Ombudsman Program suggests the following comments to edit the Bill:

- Create a definition section to clarify vague statements or define generic health care terminology,<sup>1</sup>
- Create a residents' rights section that defines these rights for providers, regulators, and general public,<sup>2</sup>
- Set staffing standards at, or no less than, 4.1 hands on care per resident, per day,<sup>3</sup>
- Create a physical restraint free state,<sup>4</sup>
- Maintain and infuse federal admission and assessment standards set forth in 42 CFR, §483.20 Resident Assessment and §483.20(b) Comprehensive Assessment,
- Introduce resident centered care training along with culture change for all staff and administrators;
- Expand and/or follow the federal regulations when legislating requirements for "on-site medical services"; and,
- Ensure emergency medical care, EMS or ER services, are made available while enhancing staffing ratios, increase the number of training seminars, and staffing nursing home with "on-site" introducing physician and nurse practitioners

---

<sup>1</sup> Clarify language throughout the Bill, such as but not limited to: "full time on-site staff," "quality of care," "quality of life," "physical and chemical restraints," "gender identity," "immediate medical services," "organized group or councils," "consistent assignment," and evidence based best practices."

<sup>2</sup> Residents' rights amendments were submitted to the Committee on Health with an extensive analysis and comments prior to this hearing. To request a copy of the Office of the DC Long-Term Care Ombudsman Program's comments, please feel free to call our main number: 202-434-2190.

<sup>3</sup> APPROPRIATENESS OF MINIMUM NURSE STAFFING RATIOS IN NURSING HOMES EXECUTIVE SUMMARY: PHASE 1 REPORT: Author: Marvin Feuerberg, Health Care Financing Administration (HCFA). Editorial assistance provided by Julie Moyers, HCFA

<sup>4</sup> Introduce language that would strike and replace DCMR Title 22, Chapter 32, §3216.4 (a – e) to ensure a physical restraint free state.

Most importantly, the Office of the DC Long-Term Care Ombudsman Program has serious concerns relating to the sections 3 (A) and (B) which require prior authorization by a medical director, attending physician, or full time physician or nurse practitioner prior to calling 911 for emergency assistance, or all telephone orders requesting 911 services be countersigned by the acting physician or nurse practitioner within 10 days, or by the attending physician within 48 hours. Even though the DC Long-Term Care Ombudsman Program understands the intent is to ensure medical services are being delivered in the nursing home and to avoid the over-use of 911 emergency services, we cannot support this Bill because it appears that emergency services may be denied to residents in need of such services. Because the Ombudsman Program does not know the true cause of hundreds of people being transferred to the ER every year, we are strongly suggesting to the Chair and the Committee on Health to study the problem prior to creating legislation. The Long-Term Care Ombudsman Program will be happy to assist if a “pilot program” is created. For example, the District should conduct a study much like the state of Massachusetts to determine the cause of re-hospitalizations of nursing home residents. Their study can be found on line at The Common Wealth Fund, [www.commonwealthfund.org](http://www.commonwealthfund.org) web site.

Furthermore, the Bill states that “nursing home managers” and “direct care staff” be trained in the following areas: Consistent assignment<sup>5</sup> and culture change; Daily living activities; Wound care; Pain management; Prevention and treatment of depression; Prevention of pressure ulcers; and Urinary incontinence management. The Long-Term Care Ombudsman Program suggests additional training topics. Ombudsman Program has experienced an increase in discharge and transfer planning meetings, negotiations, and court hearings throughout FY 2009.<sup>6</sup> Even though each nursing home administrators has been trained over the past ten years by the Office of the DC Long-Term Care Ombudsman Program several times in this area, social workers, business officers, and

---

<sup>5</sup> Consistent Assignment: Consistent assignment refers to the same caregivers (RNs, LPNs, CNAs) consistently caring for the same residents almost (85% of their shifts) during their duty. Definition obtain from the Advancing Excellence Campaign, [www.NCCNHR.org](http://www.NCCNHR.org) web page.

<sup>6</sup> FY 2008 the Office of the DC Long-Term Care Ombudsman Program experienced 50 court hearings, negotiations, mediations, and discharge & transfer meetings with providers; in FY 2009, the Ombudsman Program experience an increase of 73%, or 68 court hearings, negotiations, mediations, or discharge & transfer meetings.

other front line staff continue to make critical errors<sup>7</sup> when discharging or transferring residents from a nursing home to a hospital; or when returning a resident to their home. These discharge and transfer cases lead the ombudsman staff and volunteers to reveal quality of care and quality of life complaints. We, therefore, would recommend to the Chair and this Committee that additional training be added to Page 6, section (c) (ii) include: (viii) Discharge Planning and Community Transitioning, (ix): Fall prevention, (x): Geriatric Social Services and Individuality Competency, (xi) ADA Orientation, (xii) Olmstead Orientation, (xiii) Community Social Service Orientation.

I thank you for letting the D.C. Long-Term Care Ombudsman Program submit written testimony today. I look forward to answering any questions this Committee may have.

---

<sup>7</sup> Violating residents' rights and causing hospital "dumping" scenarios that clearly violate both local and federal laws.