

Testimony Submitted to the Committee on Health Services

**By Gerald M. Kasunic, D.C. Long-Term Care Ombudsman
For the District of Columbia**

**Health Regulations Administration
Budget Hearing**

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Good Day, Councilmember Catania and Members of the Committee on Health Services. I am Jerry Kasunic, the D.C. Long-Term Care Ombudsman, and I represent the approximately 5121 residents of licensed nursing facilities and community residence facilities in the District. I thank you on their behalf, and on the behalf of their families and friends, for permitting me to come before you today to present their concerns and those of my staff in the D.C. Long-Term Care Ombudsman Program.

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 D.C. Long-Term Care Ombudsman Program (Ombudsman Program) continues to appreciate your concentrated focus and hard work to ensure the health care system improves and is held accountable to deliver quality of care.

In addition, the Ombudsman Program wishes to recognize Dr. Woldu, Senior Deputy Director of the Department of Health, and his staff, Dr. Cosby and his staff, and Dr. Pane, Director of the Department of Health, for their efforts during the nursing home closing procedures and realigning staffs' efforts to seek resources for residents and families with health care and placement needs.

Assisted Living Licensure Updates:

It has been refreshing to work with Dr. Feseha Woldu, Deputy Director, Health Professional Licensing and Regulation Administration (HPLA), Department of Health, who appears to be focused on creating assisted living regulatory protocols. In addition, the Ombudsman Program is seeking Dr. Woldu's leadership and managerial skills to assist in the development of nursing home alternative programs, since he is very knowledgeable about how to measure quality of care within the regulatory field. We hope to strengthen our collaborative efforts with his office.

However, due to the current notice of the largest nursing home closure, and possibly the second largest D.C. nursing home closure, the District is scrambling to seek long-term care placements and community services for residents, the Health Professional Licensing Administration is proposing to create a provisional licensing program in order to expand community based licensed vacancy rates. The Ombudsman Program, a member of the Assisted Living Advisory Committee, is in support of this idea, as long as the HPLA and the DOH do not lose sight of the original goal that the residents' choice, treatment plan, and expectations of assisted living services remains the focus of how quality of care is measured and delivered. In addition, if a provisional license program is put in place, this would give MAA the opportunity to exercise their Medicaid assisted living waiver for residents who can afford the board and care fees of an assisted living facility, thus giving a few nursing home residents the option of choosing a community based provider.

The Ombudsman Program continues to request of the DOH to appropriate funds to expand the HPLA and HRA's regulatory budget in order to hire the proper survey staff once the licensure protocols and program structure are finalized. The Ombudsman Program has been told that \$500,000.00 devoted to the expansion of the assisted living licensure program is not available during this budget cycle, and we are seeking clarification from this Committee if this is indeed true.

In the meantime, the Assisted Living Advisory Committee and HPLA will continue to strive for a successful and long-term licensing program, but as of today, no assisted living provider in D.C. is properly licensed.

HRA Update:

Through open communication with the HPLA and HRA offices during the past several weeks, the Ombudsman Program has learned that the HPLA has submitted a financial budget to increase the survey team's need to hire more surveyors to monitor long-term care facilities throughout the city. We strongly support this action and hope that this Committee does they same. In addition, the Ombudsman Program will continue to work with the HPLA to set up training sessions for the new surveyors, and veterans of HRA, to orientate the staff to the mission, vision, and mandates of the Ombudsman Program in order to build a stronger collaborative relationship to protect residents' rights.

The Committee, or Mayor's Office, may be hearing from the Ombudsman Program or HPLA in the future to discuss additional budget support to expand HRA and HPLA's needs to survey the nursing home closures this year, because currently, the HRA will not be able to progressively handle the additional responsibility with the current number of staff within their office. The Ombudsman Program urges this Committee to discuss DOH's financial and resource needs with either Dr. Gregg Pane or Dr. Feseha Woldu.

Nursing Home Closure Procedure Suggestions for HPLA and HRA:

HRA and HPLA should gather and advertise both federal and local enforcement activities being conducted at other nursing homes in and outside of D.C. to inform residents and the Ombudsman Program which nursing homes are under any sanctions, or in complete compliance with the minimum standards. The Ombudsman Program suggests that this list identify both the Skilled and Non-skilled vacancies each home currently has to inform families and residents, and discharge planners, where to seek services and placements. The Ombudsman Program's goal is to inform family members, discharge planners, and others with the best information possible, and ensure that residents do not move into a worse environment or to a home that might be under enforcement scrutiny forcing it to close shortly after a resident has been admitted. This procedure should be made into a standard practice for the Health Regulations Administration during a volunteer closure or forced closure.

Lastly, the Ombudsman Program is strongly communicating to the DOH, and to the nursing home, that each resident being moved should experience a safe and order transfer, as well as treat one's belongings with the dignity and respect as we would treat our own belongings during a move. The Ombudsman Program strongly urges HPLA and HRA to monitor and fine the home if personal belongings are going to be moved in trash bags, as if a landfill is the next stop and not their new home. Plastic, see through, containers, or moving boxes, should be well labels with locking lids in order to conduct a quick inventory when the final move takes place.

Nursing Home Closures:

As reported to this Committee just two days ago, two major nursing home closures may be taking place during this Spring and Summer and it appears that financial reasons are behind the nursing home corporations' decisions to close these nursing homes. The financial arguments that were lodged by the DC Health Care Association to the D.C. Department of Health, City Administrators Office, and other government officials during last week meetings encompassed rebasing the Medicaid rates, including the case mix reimbursement system, and the redistribution of "bed tax." Again, the Ombudsman Program reported to this Committee the corporations who are closing the nursing homes made millions during the years of operation in D.C., and continues to do so. However, it appears to the Ombudsman Program that the remaining nursing home corporations are taking advantage of the situation of the largest nursing home closure to "negotiate" with the Medicaid office for such a rebasing and the redistribution of the bed tax.¹ These negotiations, mostly threats to close other nursing homes, elevate the emotional stress upon the D.C. government and residents and family members.

Furthermore, residents and family members that are experiencing the closures of the two nursing homes are beside themselves trying to find both in-District and out-of-state nursing home and community placements prior to a discharge plan of any closing nursing home being approved! These business practices violate both federal and local residents' rights of notification, discharge planning, and discharge appeal regulations.

If the Health Professional Licensing Administration and the Health Regulations Administration finds these business practices fraudulent, they will need to be supported by this Committee and the Mayor's Office to take enforcement action, such as: temporary receivership or eminent domain actions to save the homes of hundreds of D.C. nursing home citizens. The Ombudsman Program will strongly support the city's actions if the nursing home industry's actions are truly fraudulent.

¹ Note: During the creation of the bed tax in 2004, the nursing home industry did not include key people when creating the Nursing Facility Quality of Care Fund (bed tax) legislation, such as: MAA's CFO, the Ombudsman Program, HRA officials, or Tax and Revenue officials. Thus, the reimbursement barriers that have been created are self imposed.

HOWEVER, when studying this situation, if HPLA and the city learns that the Medicaid office is indeed in need of rebasing the Medicaid reimbursement structure in order to improve the workforce, delivery of services, and maintain the upkeep of the living environments, then HPLA and HRA should report such a need to their MAA counterparts and this Committee. And again, the Ombudsman Program will strongly support the implementation and amendments to the current laws to ensure that residents will be safe and services will not be terminated.

At this time, The Ombudsman Program is requesting a nursing home audit by MAA with support from HPLA and HRA of nursing home revenues in order to determine the true cost of services being delivered and to truly assess the financial situation of nursing homes in the District of Columbia. In addition, the Ombudsman Program believes that all parties need to be brought together to understand fully the current financial situation of nursing homes in DC and what steps, such as the audit, are being taken to rectify the situation.

Conclusion:

I thank you for letting me come before you today and giving testimony of the Ombudsman Program's concerns, and look forward to answering any questions this Committee may have regarding this testimony.