

OFFICE OF THE DISTRICT OF COLUMBIA  
LONG TERM CARE OMBUDSMAN  
ANNUAL REPORT  
Fiscal Year 2006  
(October 1, 2005 to September 30, 2006)

Submitted by:  
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**I. HISTORY**

The District of Columbia Office on Aging in 1975 established the Office of the District of Columbia Long Term Care Ombudsman with grant funds from the Administration on Aging. The 1978 amendments to the federal Older Americans Act required each state and the District of Columbia to establish a state level Long Term Care Ombudsman Program responsible for:

- investigating and resolving complaints about nursing homes,
- encouraging citizens' involvement in nursing homes, and
- monitoring the development and implementation of regulations, laws and policies affecting nursing home residents.

A 1981 amendment to the Older Americans Act extended the ombudsman program's jurisdiction to board and care homes, called community residence facilities (CRFs) in the District of Columbia. A 1987 amendment to the Older Americans Act elevated the ombudsman from a program to an office, required that adequate legal counsel be available and granted immunity to ombudsmen for good faith performance of their duties. A 1992 amendment ensured against conflicts of interest and emphasized the role of ombudsman as advocate for change to improve the quality of care and quality of life for residents of long term care facilities.

The D.C. Office on Aging operated the ombudsman program until 1985, at which time a grant was awarded by DCOA to Legal Counsel for the Elderly, part of the American Association of Retired Persons (AARP), to operate the program. The ombudsman program has benefited from placement at Legal Counsel for the Elderly because of the available legal support and because of the access it has to the vast AARP network for the recruitment of volunteer resident advocates.

Passage of the Long Term Care Ombudsman Program Act of 1988, D.C. Law 7-218, D.C. Code Ann. § 7-701.01 *et seq.*, strengthened the program by providing the ombudsman with the tools necessary to carry out the responsibilities mandated by the federal Older Americans Act. The District law also reinforced the Ombudsman's emphasis on advocating for and protecting the rights of residents of nursing facilities, assisted living residences, and CRFs.

## **II. STAFFING**

The Office of the D.C. Long Term Care Ombudsman is operated by the D.C. Long Term Care Ombudsman, who is appointed to the position by the Executive Director of the D.C. Office on Aging. The Office also employs a full-time ombudsman who focuses on complaint resolution and advocacy in assisted living residences and CRFs.

In addition, Legal Counsel for the Elderly contracts with two community-based organizations, United Planning Organization and Emmaus Services for the Aging, to provide regional/local ombudsman services for residents in nursing facilities. Each local program has a full-time ombudsman to advocate for the rights of residents and investigate complaints on behalf of residents in nursing homes. Emmaus Services for the Aging monitors the quality of care of residents in Northwest and Southwest Washington. United Planning Organization (UPO) monitors quality of care in Southeast and Northeast Washington. Both programs have a cadre of trained volunteer advocates to maintain a continuous community presence in the nursing facilities in their service areas.

## **III. LEGAL AUTHORITY**

The Office of the D.C. Long Term Care Ombudsman is charged by D.C. statute with the following responsibilities:

- Advocate for the rights of older persons and other persons who are residents of nursing facilities, assisted living residences, and community residence facilities,
- Investigate and resolve complaints made by or on behalf of an older person or other person who is a resident of a nursing facility, assisted living facilities, or a community residence facility,
- Monitor the quality of care, services provided, and quality of life experienced by older persons and residents in long-term care facilities to ensure that the care and services are in accordance with applicable District and federal laws,
- Establish and conduct a training program for program staff and volunteers, and
- Establish and maintain procedures to protect the confidentiality of information regarding residents.

These responsibilities parallel those in the federal Older Americans Act, which also governs operation of Ombudsman activities.

#### IV. SCOPE

There are approximately 5121 residents in licensed nursing facilities and community residence facilities in the District of Columbia. The 20 nursing facilities that are licensed by the District of Columbia have a total capacity of about 2900 beds. There are also two nursing facilities with a combined total of 420 beds that are operated by the federal government and are not licensed by the District of Columbia. St. Elizabeth's Hospital operates a 120-bed Medicaid-certified nursing home unit that is not locally licensed, thus does not fall under the Ombudsman Program's jurisdiction. There are approximately 163 licensed community residence facilities with an estimated total capacity of over 1,493 beds, and 13 assisted living residences with roughly 728 units (not licensed by the District of Columbia—see section 7.3). In addition, there are an unknown number of unlicensed CRFs operating in the District of Columbia with an unknown number of beds.

#### V. FY 2006 ACTIVITIES

A.	<u>Complaint Resolution and Information Services</u>	<u>YTD</u>
	Number of requests for information	1455
	Number of requests fulfilled	1455
	Number of individuals who filed complaints	628
	Number of cases closed	624
	Number of cases still pending	4
	Number of complaints filed <sup>1</sup>	2078
	Number of complaints investigated	2067
	Number of complaints for which government policy or regulatory change or legislative action was required to resolve	18
	Number of complaints that were withdrawn by the resident or complainant	2

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1. A complaint is defined as any problem or issue on which an ombudsman takes action on behalf of a nursing home or CRF resident. The number of complaints is larger than the number of individuals who file complaints because one individual often has several different complaints.

Number of complaints which were referred to other agencies for resolution	148
Number of complaints where no action was needed or appropriate	73
Number of complaints that were partially resolved but some problem remained	1538
Number of complaints that were resolved <sup>2</sup> to the satisfaction of resident or complainant	265
Number of complaints not resolved to satisfaction of resident or complainant	23

B. Hearings to Challenge Involuntary Moves of Residents

Total number of 6-108 Discharge and Transfer Notices received	3571
Notices of involuntary moves received	33
Hearing requests made to challenge an involuntary move	33
Number of hearings held (These include status conferences and mediation that led to resolutions favorable to the residents)	36 <sup>3</sup>
Cases won (Including status conferences and mediation)	27
Number of requests withdrawn (negotiated a satisfactory solution)	6

C. Complaint Analysis

- Of the 2067 complaints investigated, the following are the percentages that relate to:

Resident Care:	603 (30%)
Residents Rights:	579 (29%)

<sup>2</sup> **Resolved:** The complaint/problem was addressed to the satisfaction of the resident(s) or complainant.

<sup>3</sup> **Reason for discrepancies:** More than one hearing needed to be held in order to resolve the legal complaint.

Quality of Life  
(included are dietary & environment): 324 (16%)

Administration: 481 (24%)  
Problem with Outside Agencies: 31 (1%)

2. Of the 2067 complaints investigated, the following are percentages that concern:

Nursing Facilities: 1787 (86%)  
Community Residence Facilities: 277 (13%)  
(includes assisted living complaints)  
Outside Agencies: 3 (1%)

3. Number of grievances received concerning ombudsman breach of confidentiality 0

D. Maintaining A Presence In Nursing Facilities and CRFs

Nursing Facilities

1. Total number of hours spent by ombudsman staff and volunteers in nursing facilities
- |                               |             |
|-------------------------------|-------------|
| Emmaus Services for the Aging | 1505        |
| United Planning Organization  | 2054        |
| <b>TOTAL</b>                  | <b>3559</b> |

Total number of volunteer ombudsmen 20

2. Community Residence Facilities (CRFs)

Approximate number of CRFs 163

Approx. number of Assisted Living Facilities 13 (728 units)

Licensed CRFs visited 156

Suspected unlicensed CRFs visited 5

Assisted Living Facilities visited 13

E. Training and Outreach

1. 43 training sessions on residents' rights were provided to over 500 staff, paraprofessionals, and directors of MHCRFs and CRFs.
2. Monthly training was provided to the ombudsman volunteers and ombudsman staff to enhance their advocacy skills and support activities in nursing homes and CRFs. Local ombudsman recruited and trained new volunteers throughout the year.
3. The DC Long-Term Care Ombudsman Program hosted 4 city-wide trainings for CRF providers and long-term care social workers: Residents' Rights, Discharge and Transfer Procedures for Residents and Providers, low-income housing admission protocols, and Social Security Income, Personal Needs Allowance Increases. The speakers were from Department of Health, Department of Mental Health, D.C. Housing Authority, Center Referral Bureau, Howard University and the Ombudsman Program. More joint training sessions between D.C. government agencies and the Ombudsman Program will continue in FY 2007.
4. The Ombudsman Program conducted 2 trainings with the Senior Medicare and Medicaid Error Patrol Project: one training seminar to a nursing home resident and family council meeting, and one training seminar to the general public. The topics were fraud, waste, abuse and errors toward Medicaid beneficiaries, and the new Medicare Part D plan. More joint seminars will continue in FY 2007.
5. 64 presentations about the Ombudsman Program and residents' rights were made to family councils, resident councils, hospitals, MHCRF, CRF day programs, health care paraprofessionals, and civil advocacy groups.

**IV. Significant Achievements**

The D.C. Long-Term Care Ombudsman Program has achieved the following in FY 06:

- Applied and received a Disaster Relief Support grant offered by the AARP Foundation to assist families and long-term care residents who were displaced by the three hurricanes during the summer months of 2005. The Ombudsman Program hired two staff members who assisted 300 persons, who were transported to the Armed

Forces Retirement Home from Gulf Port, Mississippi; and an additional 141 individuals, to acclimate to the area. The staffers successfully advocated for 77 individuals to obtain D.C. Medicaid applications, new housing assignments, and rental subsidies. The original grant time line was only six months, however, the Ombudsman Program and Disaster Relief staffers continued to locate persons needing assistance, and because the funding for the project was used responsibly, the Disaster Relief Project lasted another two and half months through non-funding grant extension.

- The Ombudsman Program was invited by David Catania, City Councilmember and Chair of the Health Services Committee, to participate in a long-term care task force whose work led to the creation of the Long-Term Care Reform Act of 2006. The Ombudsman Program proposed an amendment of Title 22, Chapter 32, Section 3216 entitled Restraints Section, of the D.C. Municipal Regulations to bring the code into alignment with the federal regulations. In addition, the Ombudsman Program and other members of the Quality Subcommittee, created legislative language to increase psychological support services and reimbursement structures to long-term care residents, increase oversight of long-term care facilities, create a civil monetary penalty fund, funded expansion of the Ombudsman Program into home health advocacy and expansion of low-income housing units to accommodate D.C. residents. The Act has not yet passed the city council as whole, but is one of the most progressive Acts written to date.
- The Ombudsman Program was successful in challenging a notice of discharge given to a D.C. resident, by a recently purchased nursing home, Thomas House, by Sunrise Senior Assisted Living facility, who was discharged to a homeless shelter. The resident had lived in the facility for over five years and found herself without the proper medical or advanced daily living supports that were promised her when the facility made arrangements to move her. After she had moved, the Ombudsman Program found that the resident had filed for an appeal and named the Ombudsman Program her representative. After hearing the case, the Administrative Law Judge ruled that the order of discharge was invalid and that the resident was to be re-admitted immediately to the facility.
- In April of 2006, the Ombudsman Program published and released the second white paper entitled: Broken Promises II: An Interim Assessment of the District of Columbia's Initiatives to Improve Quality of Care in the District's Nursing Homes 2003 - 2005. Broken Promises II is a follow up report of Broken Promises: An Interim Assessment of the District of Columbia's Initiatives to Improve Quality of Care in Nursing Homes 2002 - 2003; and the goals of the "Broken Promises" were to motivate the District to strengthen its enforcement process, recommend design changes to improve quality of care, and to stimulate action by the Department of Health's promised initiatives by providing a candid assessment of the District's performance in implementing steps to improve long-term care quality and life programs. "Broken Promises II" was an amazing success in getting the attention of the city councilmembers, citizen's advocacy groups, and the long-term care industry

to focus on quality of care and how the services are delivered. In addition, the Ombudsman Program did receive an abundance of media attention and requests from national organizations to speak on how this office created such a comprehensive report.

- The Ombudsman Program was invited by the National Association of State Long-Term Care Ombudsman Programs (NASOP) to create and present written and oral testimony to the Special Senate Subcommittee on Retirement Security and Aging and Health Education Labor and Pensions Committee focused on the Re-Authorization of the Older Americans Act. The D.C. Ombudsman Program, according to the Subcommittee members, was extremely prepared to present national statistics, examples of alternative programs and good advocacy strategies to support long-term care residents that the Subcommittee members made the Ombudsman Program a guest member of the Subcommittee while the Older Americans Act was being amended.
- Ilethia Moore, Emmaus Services for the Aging, Local Long-Term Care Ombudsman Program; responded to a nursing home resident being offensively touched by a staffer. Because of her zealous advocacy and investigative work, Ms. Moore was able to protect the resident by getting the D.C. Office of the Inspector General, Medicaid Fraud Control Unit, to investigate and prosecute a sexual assault and physical harassment case. After jointly working with the D.C. OIG, MFCU, Ms. Moore and the inspectors found the staff was involved in two allegations of sexual abuse and two allegations of assault. This case was taken to the D.C. Superior Courts where the judge did find Mr. Nkop, staffer, guilty of such crimes and was sentenced to 13 months of imprisonment.
- Throughout FY 2006, the Ombudsman Program and the Grant Park Care Center's Resident Council have focused on quality of care and life issues that have endangered the well being and safety of the residents. Some examples of gross mismanagement and safety issues have been: the lack of working elevators for over 12 months, the lack of an operational wheelchair lift on the Center's van for over two years, management cutting nursing staff ratios during the second and third shifts, medication errors, etc. With repeated complaints lodged by the Ombudsman Program to the Department of Health, Health Regulatory Administration, going unheeded, the Ombudsman Program was successful in obtaining two pro-bono law firms to support the resident council's legal needs, a special visit by the city councilmember's Catania's staff and by Congressional Member Ms. Holmes-Norton staff to place pressure on the home in order to repair most of the Life Safety code infractions. The Ombudsman Program and Resident Council continue to meet monthly in order to ensure that the current progress made in the home will not deteriorate into the poor conditions that once existed.
- Represented and advocated for residents who were issued 6-108 discharge notices for nonpayment based on their failure to pay their Medicaid patient pay amounts. In addition to stopping the discharges, the Ombudsman Program continues to work with

Income Maintenance Administration (IMA) and respective facilities to provide adequate notice and information to residents about their rights and financial responsibilities as Medicaid beneficiaries in long term care facilities. The Ombudsman Program met with the Director of Operations of IMA regarding this problem and to set up a city-wide training for long term care facilities admission, business and social work staff to increase awareness and understanding of the patient payability system and notice requirements. Despite the Ombudsman Program's progress in this area, there remain residents unsure of their financial obligation as residents and Medicaid beneficiaries in long-term care facilities. Thus, the Ombudsman Program has committed to continue working with IMA and long-term care facilities to assist residents with this process and to reduce any discharges based on a failure to understand the Medicaid payability system.

- On the behalf of long-term care residents, the Ombudsman Program filed 63 administrative court and agency filings in Medicaid decertification cases, discharge and transfer cases and discrimination complaints. The Ombudsman Program estimates that there were approximately four administrative court filings per case with submissions dealing with Hearing Requests, Motions to Quash, Motions for Summary Judgment, Motions to Dismiss, Motions for Continuance, Status Reports, Consent Agreements and Response to Orders. In FY 2005, the Ombudsman Program filed 49 administrative court and agency filings, however the numbers of court appeals and filings continue to increase due to the lack of safe and orderly discharges that D.C. resident face when being discharged from nursing homes and community residential facilities. Thus, the Program's attorney has needed to file more motions, status reports, and consent agreements in order to ensure that each resident's case was advocated in a timely fashion as well as giving the resident the opportunity to assert more legal control over his or her case.
- The Ombudsman Program was invited to participate in an international long-term care advocacy discussion with Mr. Tom Owen, researcher for the government and University of Great Britain. The discussion encompassed the federal and legal mandates that guide the Ombudsman Program, how the Ombudsman Program introduced legislation to both our local and federal governments, collaborative relationships with the long-term care industry, and program accountability. Mr. Owen stated that he would take his research and data collected from the Ombudsman Program back to Great Britain in order to introduce an advocacy oversight, such as the Ombudsman Program structure, to Parliament and the Prime Minister.
- Beining Xu, general secretary of the Legal Aid Center at the East China University of Politics and Law, visited Legal Counsel for the Elderly and the Office of the D.C. Long-Term Care Ombudsman Program to expand his understanding of legal and advocacy services, management techniques, and to review the advocacy efforts of each office. Mr. Xu visitation was sponsored and supported by the State Department's International Visitor Program.

## **VII. RECOMMENDATIONS FOR LEGISLATIVE SYSTEMS AND REGULATORY CHANGES**

### **1. Implementation of the Medical Necessity Definition by MAA**

*Partially Resolved:* Because the Department of Health, Medical Assistance Administration (MAA) has not produced new amending legislative language pertaining to the Medical Necessity and Level of Care Determination for potential and current Medicaid beneficiaries, the Ombudsman Program has defined this problem as temporarily resolved. The Ombudsman Program will monitor the Medical Necessity definition in FY 07, and if need be, act upon the behalf of long-term care residents if MAA introduces new level of care determination criteria.

### **2. Inadequate Staffing**

*Problem:* Staffing shortages continued to be a major issue in D.C. nursing facilities due in part to poor benefits and wages of certified nursing assistants (CNAs). The high maintenance needs of residents and low retention rate for nursing staff is the most serious area of concern for nursing home administrators. Another area of concern is the lack of modern training that would affect the culture and supervision of staff, which becomes a systemic issue affecting staffing ratios. As the Centers for Medicare and Medicaid Services (CMS) studies have pointed out, there is a direct relationship between quality of care and nursing staff. These topics were addressed in Council Member Catania's Long-Term Care Task Force, whose Workforce subcommittee began researching training and staffing ratio issues. The Long-Term Care Ombudsman Program will continue to work with all task force members and to advocate for legislation and regulation changes using the recommendations within the Long-Term Care Task Force's report.

*Barriers to resolution:* 1) Fiscal: the City Executive Branch and the City Council will need to infuse funding in D.C.'s 2008 fiscal budget to ensure training standards are met, 2) the D.C. Board of Nursing, not currently involved in the curriculum development, will need to collaborate with the Ombudsman Program and the Task Force members to create a training curriculum, and 3) DC Health Care Association (DCHCA) will need to be a participant, along with other LTC stakeholders, to create, implement, and maintain training standards to improve delivery of services.

*Recommendation(s) for system-wide change:* 1) The Ombudsman Program will need to attend each LTC public hearing pertaining to improving quality of care and life in LTC facilities, especially those hearings targeting nursing homes, 2) Openly discuss training curriculum with the President of the DCHCA, and 3) the Ombudsman Program will need to be active in the collaborative efforts in creating and maintaining training standards.

### **3. Amendments to and Implementation of the D.C. Assisted Living Residence Regulations Act of 2000**

*Problem:* D.C. assisted living residence legislation was passed in January 2000, however the Department of Health has yet to create and published Assisted Living Licensure Regulations.

*Barriers to resolution:* The Department of Health (DOH) has not yet enforced the Assisted Living Resident Regulatory Act of 2000 by issuing implementing regulations, issuing assisted living licenses, developing an enforcement process, and a training division that would focus on quality of care delivery services, resident and staff satisfaction survey process, and regulatory compliance. Government resources have yet to be established to create a strong enforcement division, licensing protocols, and sections of the regulations must be revisited and revised so as not to conflict with alternative DC Municipal Regulations, Title 22, Chapter 34 regulations governing residents' rights, money management counseling, and regulatory enforcement.

*Recommendation(s) for system-wide change:* 1) advocate for the development of adequate training, implementation and enforcement 2) advocate for expansion of enforcement and complaint investigation staff/division; 3) advocate for strong residents' rights' regulations that will reflect quality assurances, expectation surveys, and satisfaction survey within the regulatory protocols, including monetary sanctions and adequate assisted living licensing protocol standards; 4) collaborate with stakeholders to create a research group to analyze and research best practices and strategies in order to introduce cultural and managerial change in assisted living residences, and; 5) seek legal remedies if the District of Columbia is not focused on creating regulations, policies, or protective enforcement units that will oversee the assisted living industry.

### **4. Insufficient Oversight and Weak Enforcement of Board and Care Homes (Community Residence Facilities-CRFs), (Mental Health Community Residence Facilities-MHCRFs) (Supported Independent Living-SILs)**

*Problem:* Residents in CRFs, MHCRFs, and Supported Independent Living under 22 DCMR Chapter 38 continues to endure unhealthy and unsafe physical environments that provide inferior quality care and services that go unmonitored. In addition, a few providers and agencies fail to respect residents' rights, to prevent financial, mental and physical abuse, and neglect of residents.

*Barriers to resolution:* 1) Due to the longevity of practicing limited enforcement measures against providers who are poorly delivering services or operating below

minimum standards, the DOH, HR's enforcement survey teams do not take decisive enforcement actions, 2) Unmonitored providers are not sanctioned or held to any licensing standard since enforcement teams (DOH, HRA) are not upholding and enforcing Chapter 34 of the DCMR, 3) DMH residents are being funneled to supported independent living without monitored wrap-around services ensuring quality and consistency, and 4) DMH Supported Independent Living (SILs) providers are not sanctioned or held to the licensing standards due to the definition of their contracted services, even though providers continue to deliver the same mental health community services to residents.

*Recommendation(s) for system-wide change:* 1) advocate for both the Department of Health and the Department of Mental Health to impose higher monetary penalties for civil infractions by unlicensed and licensed CRF providers; 2) advocate for DCRA to assist with inspections of suspected unlicensed, unsafe housing programs; 3) register the severity of the issues with policy makers and legislators; 4) continue to work with advocates, legislators, regulators and the community to generate a supply of quality CRFs and assisted living residences; 5) continue to work closely with the DMH to ensure that workable policies and procedures are created, implemented, and enforced and that DOH develops administrative policies and procedures for its CRF regulatory system; and 6) continue to work closely with DMH and DOH ensuring that the MOA agreements are upheld by each agency, including: sharing information regarding complaints, unusual incidents, annual reports, and quarterly meetings, and 7) Work closely with the DOH and DMH enforcement offices to advocate for managerial cultural change that will incorporate a new strategy to improve enforcement standards.