

**Testimony Submitted to the Committee on Health Services
By Gerald M. Kasunic, D.C. Long-Term Care Ombudsman
For the District of Columbia
Department of Mental Health, Oversight Hearing
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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) 434-2120 office
(202) 434-6595 fax

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 5,121 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 (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.

Throughout fiscal year 2006, the Ombudsman Program monitored the Department of Mental Health in several key areas, such as: regulatory and contractual enforcement, community placement and case management services, and St. Elizabeth Hospital residents' transitioning into nursing homes. The Ombudsman Program will be addressing these key areas as well as producing recommendations in an effort to achieve resident and systemic improvements.

Regulatory Enforcement and Mental Health Community Residences Facilities:

During Fiscal Year 2006, and part of FY 07, the DMH, Division of Licensure (DOL) faced an abundance of activity within its MHCRF responsibilities. DOL monitored 128 facilities servicing 891 people at the beginning of the year, and assisted and monitored with the 15 closures affecting 90 residents, while simultaneously re-licensing 100% of the remaining 113 MHCRFs¹, of which 49 are DMH contracted

¹ 4 MHCRFs are currently operating on provisional licenses at this time.

facilities and 64 residences are independent homes² (otherwise known as “mom and pop shops”).

While the Division of Licensure is the front line of regulatory enforcement and strives to ensure resident safety, and rights violations are monitored and subjected to regulatory scrutiny, DMH’s Department of Accountability (DOA) is the administrative authority that ensures that Core Service Agency (CSA)/provider contractual agreements are adhered to and legally presents such violations to the Office of Adjudications and Hearings. During DMH’s leadership change, the Ombudsman Office has had little contact with the Department of Accountability in the past fiscal year, thus it was refreshing to meet with Ann Weiss, Acting Director, two weeks ago to discuss collaborative efforts between our offices to increase the quality of care and life for residents by jointly conducting:

- Complaint investigations,
- City wide trainings for case managers and MHCRF providers; and,
- Discharge and relocation regulation seminars.

The Office of the D.C. Long-Term Care Ombudsman Program is planning on meeting with DMH’s Department of Accountability to solidify training dates, times, and materials within the next few weeks. In addition to conducting joint trainings, the Ombudsman Program and DMH officials will be seeking to improve technical assistance and computer based training. DMH is lacking in this area to provide updated training approaches and would improve in this area.

Lastly, the Ombudsman Program will be discussing how to improve and enhance MHCRF regulations and community outcomes that can be measured and produced to this Committee.

Community Placement and Services:

The Ombudsman Program found that ensuring the highest possible quality of care for residents of long-term care facilities is vital to improve safety, choice, and the quality

² During FY 06: DOL issued \$33,000.00 worth of notice of infractions, however, only collected \$1,650.00 so far. During FY 07: DOL have issued \$13,000 worth of fines but have not collected any funds to date. According to DOL, letters to the providers informing them of outstanding debts are being mailed.

of life for residents. On that note, the most difficult duty of DMH, city officials, and advocates alike, is the insurance that D.C. residents suffering from mental illness are able to receive community services within a low-income housing program; however as noted above, DMH's MHCRF system is not a stable housing environment or program. The lack of stable MHCRFs can have a devastating impact on people with psychiatric issues, as well as cause transfer trauma to people who need stable housing and counselors' support, which does cause some residents to constantly use St. Elizabeth's Hospital services.

The mental health community resident facility programs have not had any incentive to improve services for residents seeking community living for the past several years, if not for the past decade. Most of these homes operate with the same institutionalization philosophy of treatment as does the psychiatric units of hospitals or long-term clinics, for example: *residents have no choice when or what to eat, structured times to take medications, meals, and outings, receive and hand over benefit checks; they have little or no privacy, and do not necessarily have a choice of where they live or with whom they share a room.* (emphasis added) The Ombudsman Program has not interviewed a resident that stated he/she had their own keys to a house, can come and go when they liked—and are not locked during midday staffing cycles—had a proper rental agreement or the responsibility of maintaining a lease. Without teaching and coaching residents how to become independent, they will not be.³

As the Ombudsman Program has advocated for the nursing home managerial and cultural change, we will advocate for the same improvements in quality of care for mental health residents residing in MHCRFs. The Ombudsman Program has had no success with cases that need **intensive case management community based services** (emphasis added) to ensure a resident will be counseled and supported in the community. Residents that need intensive services usually end up in hospital psychiatric units or are

³ The Ombudsman Program recommends to the Committee and DMH to review the work of Michael Allen's, an attorney with the Bazelon Center for Mental Health Law, white paper entitled: Transforming Housing for People with Psychiatric Disabilities Report. Mr. Allen wrote the paper for the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Administration, Centers for Medicare and Medicaid Services. As reported above, the Ombudsman Program's investigative findings surrounding the failures of the MHCRF housing program are almost identical to the findings of Mr. Allen research, additionally; the Ombudsman Program does support most the modernization suggestions with this white paper that should be analyzed further for implementation in D.C.

recycled through St. Elizabeth's Hospital's (S.E.H.) to become stabilized in order to return to the community. The Board and Care Ombudsman has complained over the past fiscal year to DMH officials that case management services must support individuals needing intensive psychiatric services on a daily basis, not on a monthly basis, in order to teach institutionalized residents how to function within an independent community. This is not being done, nor appears to be supported by the Office of Certification that oversees the Core Service Agency (DMH contracted case management programs).

St. Elizabeth Hospital Transitioning of Long-Term Care Residents:

The Ombudsman Program has grave concerns regarding the transitioning of St. Elizabeth Hospital residents into long-term care facilities, especially nursing homes. Over the past several years, the Ombudsman Program has been reporting to this Committee that psychiatric services within D.C. nursing homes are in dire need of support by the Department of Mental Health in several key areas:

- Behavior Modification training for all long-term care staff,
- Substance Abuse, Geriatric and psychiatric training for all long-term care staff,
- De-escalation and crisis intervention training for all long-term care staff,
- Case management follow up when placed in long-term care settings from S.E.H.; and,
- Increase in mental health counseling sessions or day program activities with a psychiatric focus.

The Ombudsman Program believes that the Department of Mental Health is updating its contract with VMT LTC Management, Inc., the organization who manages J. B. Johnson Nursing Center, to accept residents from St. Elizabeth's Hospital. The Ombudsman Program is uncertain if DMH has placed language in its contract addressing transitional protocols⁴, however, we believe that DMH should visit the nursing home and review what other mental health, environmental, or professional personnel services J.B.

⁴ During a conversation this morning with DMH, officials stated that they are seeking a Memorandum of Understanding with VMT LTC Management, Inc. and analyzing the contract's protocol language to ensure mental health services are available and transitioning residents will experience a safe and orderly move. The Ombudsman Program will seek meetings with DMH to confirm such actions.

Johnson will need in order to ensure the home is properly equipped to offer additional mental health services prior to solidifying a contract. Our suggestions to DMH are listed below in the recommended section of this testimony.

Recommendations:

Regulatory Enforcement:

Since it appears that the Division of Licensure personnel has not been increased during FY 06, and discharge and transfer violations continue to be a major area of complaints leading to other mental health and environmental concerns, the Ombudsman Program would strongly recommend the following:

1. Hire, train and maintain 3 additional survey inspectors in order to monitor residents within the MHCRF system and when transitioning to and from the community, additionally, to monitor mental health services provided to residents in their own supported independent living apartments;
2. Enhance and enforce the DCMR Title 22, Chapter 38, and applicable federal mental health protection laws, including the collections of monetary penalties, when applicable;
3. Advertise, via the Washington Post or DMH's website, MHCRF notices of infractions, including the type of deficiency, plan of correction, date issued, monetary infraction cited, and date of monetary collection, as is done for restaurant violations;
4. Create and maintain a civil monetary penalty fund (CMP) to replace a resident's lost or stolen property, and to enhance educational training for residents, family members, and paraprofessionals, and;
5. Upgrading computer hardware and software for surveyors, including computer training on software upgrades.

Community Placement and Services:

The Ombudsman Program wishes to work with the DMH and stakeholders in order to expand community placements and fortify psychiatric services to residents in

MHCRFs, Independent Living Units, and nursing homes. In order to determine how to set future goals and the allocation of proper funds, the Ombudsman Program recommends that:

1. DMH, DOA should identify their cost savings of providing supportive independent living programs versus the licensed MHCRF structure. If DMH sees a more cost effective way to treat residents in supportive independent housing, and provide choices for residents who wish to live independently of the MHCRF system, DMH should restructure their budget to allocate more funding for that purpose;
2. Resident training, coaching, and case management services should be developed with the intention of giving residents choice of services and housing programs, following Olmstead Act and ADA requirements for creating integrated housing units; and,
3. DMH, DOA should clarify to the general public, including hospital and nursing home social workers, how best to access psychiatric services and housing when using the Access Helpline, and develop at least two city wide trainings to long-term care providers and staff; and,
4. DMH and APRA (Addiction Prevention and Recovery Administration) should continue working together in order to assist long-term care residents with addiction counseling, including assisting nursing homes residents.

Transitioning Long-Term Care Residents from S.E.H to the community:

The Ombudsman Program is dedicated to improving the care of residents and states above the transitional concerns of S.E.H.'s residents, we believe the following recommendations will improve

1. DMH should be collaborating with the Department of Human Services and City Councilmember Tommy Wells, Chair of the Human Services Committee, as well as with this Committee, to review the city's contractual responsibilities that are already in place to ensure that no conflicts of interest arises or that the two legal contracts do not interfere with services that are currently being delivered,

2. DMH should require within the contract conduct psycho-social trainings for the nursing home staff in order to meet individual mental health needs,
3. DMH should require within the contract all transfers to include a discharge plan detailing the needs of the resident and ensuring the nursing home can deliver such services on an individual basis,
4. DMH should require joint trainings and case management support for both the residents and staff during and after an individual is being transitioned into the home to ensure a safe and orderly transfer,
5. DMH should invite all of the 20 nursing home providers and their key staff, advocates, residents and family members to participate in such trainings to help expand the education of long-term care staff; and,
6. DMH should meet with the Ombudsman Program, the contractor, and other stakeholders to review the contract, services needed, and tour the facility in order to set measurable expectations that can be reported back to this Committee in order to report improvements.

Conclusion:

I thank you for the opportunity to testify before you today and to present to you the Ombudsman Program's concerns and advocacy ideas to improve quality of care and life, and I am willing to answer any questions that you, or the Committee members, may have.