

Ohio House Aging & Long-Term Care Committee
Testimony of Beverley Laubert, State Long-Term Care Ombudsman
June 10, 2020

Chairman Ginter, Vice-Chairman Swearingen, Ranking Member Howse, and members of the Aging & Long-Term Care Committee, thank you for inviting me to be here today.

As the State Long-Term Care Ombudsman my role as provided by the Older Americans Act and Ohio law is to lead the statewide Office that includes state and regional staff and volunteer representatives. Certified representatives advocate for excellence in long-term services and supports wherever consumers live – in their own homes or in long-term care facilities. Our advocacy includes resolving concerns identified through regular visits and concerns brought to us by consumers, their families, staff, and others. Another mandated function that brings me to the Statehouse is to represent the interests of consumers before governmental bodies.

Regional Ombudsman representatives typically strive to visit long-term care facilities at least quarterly to educate residents about their rights, make observations, and provide technical assistance to providers to prevent problems. In lieu of visits, they have been contacting residents, families, and providers by phone and video. Since visitation restrictions began, we have spoken to over 6,000 individuals and have documented nearly 2,300 calls with providers.

In the next few minutes, I'll tell you the stories of how residents of long-term care facilities and their families are experiencing the COVID-19 pandemic. It was challenging to choose the stories because there are thousands. We know that the pandemic has had devastating impacts with about half of the COVID-19 deaths being in long-term care facilities. You have heard that if a long-term care facility has cases of COVID-19, it is not necessarily an indicator of quality problems.

However, residents and their loved ones tell us daily that there are impacts on quality of life and quality of care and we are working diligently to address those problems. Since the end of February when Governor DeWine directed us to visit nursing homes and talk to residents, families, and staff about infection prevention, my representatives have received 2230 complaints. That number is lower than the number received in a similar period last year and the nature of the complaints is a little different. Recently the urgency and fear in the voices has become louder.

Involuntary discharge is the most frequent complaint we handle year after year and regional staff have become quite expert in their advocacy, resolving discharges without hearings or successfully arguing against discharge during hearings. The hearings are intended to be in-person but COVID-19 has forced hearing officers to hold the hearings virtually, usually by phone. We requested that hearing officers use video technology, but it is not always possible. In a recent case, the reason given for the proposed eviction was nonpayment. The resident had previously made allegations of abuse by a family member. A medical condition took the resident's voice and he communicated using hand gestures or writing notes. A telephonic hearing was not going to work for him; the ombudsman pleaded for a video hearing, the resident was able to participate, and prevailed against the discharge to the family member's home.

Second to discharge are visitation concerns. The complaints are not just about not being able to visit, as you might expect. Most people understand the reason that visits are restricted and many facilities restricted visits even before the public health order and federal guidance were issued. Instead, families and residents have told us that the way the restrictions are being handled is problematic.

One son told me that he was in the middle of a visit with his mother on the day guidance was issued and was told to leave the facility immediately, which started his and his mother's experience with fear.

Recently, a resident's wife died, and he hasn't been able to help his daughter make arrangements for the memorial service or sort through his wife's belongings. Instead, he is forced to grieve alone in a facility where everyone wears masks – not the way any of us would want to grieve the loss of family.

In my 33 years of being an ombudsman, I never imagined that “window visit” would be in my everyday vocabulary. For families who just want to see their residents, those visits, accompanied by a phone conversation in many cases, are a lifeline. I heard from a daughter early on that her father's nursing home prohibited window visits; when I inquired, she said that the home was pretty new and the ground was unstable. Since Ombudsman protocol calls for investigation and the complaint happened to follow a wet day, I drove around the facility, observing concrete sidewalks outside most room windows and no visible problems that would have prevented families from talking with residents from a distance. That daughter was able to visit her father the next day.

Many of the visitation complaints have been about end of life, an exception provided in the public health order. We see homes turn families away unless the resident is actively dying. We used those examples to suggest modifications to the amended public health order so more families should be able to visit earlier; the revised order was effective on June 8th.

In one of those cases, the regional ombudsman was able to work with the nursing home, hospice and resident's daughter to arrange meal-time visits so the resident would continue to eat; her dementia had progressed significantly in recent weeks resulting in significant weight loss. Advocacy enabled the daughter to resume feeding her mother twice a day until hospice initiated daily care at the end of life. Those are moments the daughter will hold close to her heart always.

Medication complaints are also in the top five received. With COVID-19 units established in long-term care facilities and the need for frequent changes of personal protective equipment, it takes longer for nurses to administer medications. Generally, regulations allow for a grace period but there are some medications and some conditions that require precision. I have spoken with residents in severe pain because treatment was late. During the past weekend, a resident's spouse told me that repeated delays in administration of a Parkinson's medication resulted in hospitalization; now that medications have been regulated again, the resident's family is afraid about return to the nursing home and is looking for a different one. Moving to another home with different staff who are wearing masks is likely to be especially challenging for the resident whose dementia is worsened by changes in routine and environment. Our regional program director will work with the family and advocate for assurance of timely medications but if their decision is to find another home, then we will equip them with information about the quality of other homes and follow along to ensure better care. COVID-19 should not interfere with providing person-centered care that is individualized to meet the unique needs and preferences of each resident.

Complaints about being treated with dignity and respect are not new. However, the problem is exacerbated by the stress experienced by staff and the isolation of residents from their families. A resident who normally lives in assisted living with his wife moved temporarily to the affiliated nursing home for therapy. Like most other homes working to mitigate exposure to COVID-19, meals are delivered to residents in their rooms. When the resident told the staff that his food was cold, the

response was that he needed to eat it anyway. With the intervention of the ombudsman, there were efforts made for quicker meal delivery and a microwave oven was obtained for the unit in case residents ask for reheating of their meals.

Rounding out the five most frequent concerns are complaints about rights and preferences. After years of advocating for the right of residents to smoke, we are now in a position in some places where residents who smoke are free to go outside but those who do not smoke are told they may not. Another area of inconsistency in how long-term care facilities are applying policies is in receipt of items for residents. Without being able to visit, we encourage the community to send cards, write letters, be creative to let residents know they are remembered, and to provide social engagement. Some homes are turning away packages without question; some hold the package for 24-72 hours; and some sanitize the contents. We heard about a home that had a meal service deliver food to staff, a commendable practice to boost staff morale. Unfortunately, families were told that meal deliveries for residents were not permitted.

Those are just a few of the many experiences we hear every day at an individual level. My Office is also engaged in planning and response with the Emergency Operations Center and, whenever possible, in conversations about Health Care Isolation Centers, the statewide testing strategy, and changes in visitation restrictions. Our regional programs have become more engaged in emergency response efforts locally. I am also contributing Ohio's experience to national discussions among my counterparts in other states about preparing our representatives to make visits and other topics such as those I have described here.

The COVID-19 pandemic is bringing to our attention changes that can make lives better.

- Residential Care Facilities that are certified for the Assisted Living Medicaid Waiver care for residents with a nursing facility level of care but are not required to employ State-Tested Nursing Assistants as nursing homes are. We have seen some struggle to provide care for residents who became ill with COVID-19 and needed more assistance than usual but not enough to require hospitalization.
- Nursing homes have emergency plans and are to conduct tabletop exercises to be prepared; infectious disease planning should be standard.
- The development of healthcare zones and the leadership structure now in place to coordinate communication should continue beyond the urgency of the pandemic.
- The increased use of technology for communication with families and Ombudsman representatives should also continue. A few families we heard from who previously had used cameras to keep an eye on their residents were more comfortable with the separation. Others have escalated their calls for cameras. We need to make it possible for everyone who wants room cameras to have that opportunity, with appropriate privacy safeguards in place.
- Finally, it is now common to watch the news, open a newspaper, and scroll through social media and see long-term care at the top. Reporters are telling the stories about personal protective equipment needs, resources for testing, and, sadly some of the tragedies. However, we have also seen stories of staff sacrifices, communities engaging with residents, children writing letters and drawing pictures, troopers making window visits with their K-9 units, choirs singing residents' favorite songs, and drive-by parades. It is my hope that residents of long-term care facilities and their caregivers will always have a voice and that their stories will continue to be told.

Thank you for being the listeners all long-term care consumers deserve.