

Senate Finance Committee - Health & Medicaid Subcommittee

Testimony of Sam McCoy on Substitute House Bill 49

Regional Ombudsman Program Director, Akron Canton Region

Chairman Hackett, Ranking Member Tavares and members of the Subcommittee, I am Sam McCoy, a Certified Ombudsman Program Director serving consumers of long-term care services and their families in twenty Ohio counties.

The mission of the Office of the State Long-Term Care Ombudsman is to advocate for excellence in long-term services and supports wherever consumers live. Our roots are in the federal Older Americans Act and Ohio law passed by the 118<sup>th</sup> General Assembly. Substitute House Bill 49 includes the first substantive changes to that state law, which was required by a federal regulation that was effective July 1, 2016.

I am aware that prior testimony has prompted questions about the role of Ohio's Ombudsmen. Our mission is clear – to advocate for excellence of care, wherever assistance is provided. In 2016, about 85 paid regional ombudsman staff responded to nearly 11,000 complaints about care and services in both the institutional and community settings. Additionally, Ohio's State-Certified Ombudsmen typically invest over 30,000 hours of advocacy and information assistance annually. This activity includes visiting long-term care facilities regularly so residents recognize their independent advocate and ultimately develops rapport among Ombudsman staff and caregivers. Being visible to home care consumers is more challenging but we do our best to get the word out. We believe that excellent care is relationship-based care and that residents benefit from positive and productive relationships.

The achievements of the state and regional offices would not be possible without the help of your constituents who volunteer their time to assist us in our advocacy. Certified volunteers make most of those facility visits and help the program operate more efficiently. We need more committed citizens to take advantage of this opportunity for civic engagement; even doubling our corps of 215 volunteers wouldn't meet the growing need.

As advocates, our goal is to prevent problems and resolve issues that arise. Negotiating a resolution to problems by engaging the consumer and provider reduces the need for regulatory enforcement. For example, if a resident tells us that two showers per week aren't sufficient, The Ohio Department of Health (ODH) could investigate and might or might not cite the facility, depending on the complaint's scope, the facility's response, and other factors. Even if an ODH citation results, the consumer still might not receive the number of showers wanted. The Ombudsman's approach would be personal and individual. We would want to learn about her background, identify the root cause of why she isn't receiving as many showers as she wants, and with her consent negotiate a change. When residents are satisfied, the job of the staff is better and the home is more marketable, so there is mutual benefit. Further, if we can solve the root cause of a problem, a long-term, positive outcome is more sustainable for all residents.

Workforce support is another way that we are assisting the effort to improve quality. Ombudsman programs have begun working with about 100 of Ohio's nursing homes on a two-year person-centered

staff engagement project that was approved by the Centers for Medicare & Medicaid Services. The project is another opportunity for us to work with nursing homes in a positive way to reduce staff turnover by fully engaging direct-care staff, respecting and recognizing the essential knowledge they have about residents. Nursing homes are required to include caregivers in care planning for residents; an engaged and empowered nurse aide is critical to good care. Furthermore, an engaged, empowered and valued nurse aide enjoys the work and stays.

A second quality improvement project is pending approval; that project is aimed at reducing the use of antipsychotic medications for nursing home residents living with dementia. The House reduced the appropriation that would be used for this project by \$550,000 in each year; however, those funds can only be used for quality improvement in nursing homes and it is not clear how that appropriation would be repurposed.

Ombudsmen are not regulators but we are advocates for an effective regulatory system. When the Ohio Department of Health identifies violations and issues citations it is important that they have effective tools that lead to swift correction. We recommend that two proposals relating to licensed facility enforcement be restored.

One proposal would allow ODH to levy civil money penalties against residential care facilities which are commonly known as assisted living homes. Today, if a cited facility fails to correct significant and severe problems, ODH's only tool is to revoke the license. License revocation typically takes many months and can be a legal battle. During that time, the facility has no real incentive to change practices. We contend that if ODH had the ability to impose a civil money penalty, the home would have an incentive to correct swiftly. License revocation is an extreme measure that should be avoided if possible because it disrupts the lives of all residents and families. When homes do close, or in emergency situations, Ombudsmen are often on-site to assist residents select new living arrangements.

We also support the proposal to give authority to the Department of Health to take quick action to protect the health and safety of residents and to be reimbursed by the facility for expenses related to those actions. This authority would be used only in extreme situations and is important to the health and safety of residents.

Ombudsmen build on experience helping individual consumers, using data and knowledge of systems to make recommendations. Over many years we have developed a reputation for informing effective policy change, such as level of care rules, nursing home quality, and most recently the implementation of MyCare Ohio. The House-passed version of House Bill 49 calls for commissioning a thorough review of the assisted living waiver program. The waiver works and such a review doesn't seem to be the best use of resources; however, as the Department of Aging considers settings where the assisted living waiver can be provided in the future, we encourage stakeholder input on the development of quality standards. We recommend restoring the Governor's request to allow the Department to write rules about settings, with the addition of discussion of quality standards. Ombudsmen across the state are ready to be active contributors to those discussions. If you decide to keep the House-passed directive, the Office of the State Long-Term Care Ombudsman should be added as a participant in the review.

As the State of Ohio considers managing long-term services and supports, it is imperative that state agencies engage stakeholders in meaningful and consistent dialogue. The Office of the State Ombudsman receives federal funding to advocate for the members of MyCare Ohio. Since the MyCare

pilot began, we have responded to nearly 1500 member complaints and have provided general assistance to hundreds of members annually who seek better understanding of MyCare Ohio benefits their consumer rights and options. Ombudsmen meet quarterly with managed care plans and other stakeholders to communicate the issues and concerns we hear from their members, as well as our recommendations for change. We look forward to continual strengthening of our efforts in years 4 and 5 of the demonstration. The State Ombudsman requested \$500,000 in each year of the biennium to provide specific outreach to nursing home residents about their choice to have their MyCare Ohio managed care plan manage Medicare benefits in addition to Medicaid benefits. The House reduced the appropriation to \$200,000 each year, which would significantly reduce the assistance we could provide to members of MyCare Ohio to ensure that they have all the information they need to make a choice about their benefits.

This important dialogue about managed care has yielded many lessons learned from MyCare Ohio members. Essential elements include the importance of person-centered care planning, member knowledge of the components of their plan, the value of consistent and accessible case management, and strong oversight by the Department of Medicaid.

A new partnership with the Ohio Senior Health Insurance Information Program will ensure members have access to timely, unbiased information about their insurance coverage options, as well as their benefits and rights. We consider this partnership to be another step toward a strong beneficiary support system. If we expect success – even excellence - from MyCare Ohio and indeed from MLTSS, robust beneficiary supports must be built, honored and upheld. Regardless of the outcome of your consideration of the managed care proposals, the Office of the State Ombudsman and the regional Ombudsman programs have the experience and ability to effectively advocate for consumers within any care system.

Thank you for the opportunity for input. Ombudsmen understand the difficult balance the General Assembly faces and stand ready to inform policy change and raise the voice of consumers statewide. I offer our experience as a resource for your deliberations and urge your support for Ohio Department of Health initiatives in long-term care facilities and restoration of appropriation for quality improvement and outreach to MyCare Ohio members.