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State Long-Term Care Ombudsman

**Testimony of Beverley Laubert, State Long-Term Care Ombudsman  
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House Bill 110  
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Chair Huffman, Vice Chair Antani, Ranking Member Antonio, and Members of the Senate Health Committee, I appreciate the opportunity to describe the Office of the State Long-Term Care Ombudsman's recommendations for House Bill 110.

**Ombudsman Mission and Activity**

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 – in their own homes and in long-term care facilities. The Office includes 92 state and regional staff and 240 volunteers certified by the State Ombudsman and working in twelve regional programs designated by the State Ombudsman. Our work includes resolving concerns brought to us and identified through regular visits, as well as providing education, information, and assistance on a variety of topics. Ombudsman representatives provide specialized advocacy services to MyCare Ohio and other managed care consumers, ensuring the managed care plans are meeting members' needs and providing access to benefits and services. In addition to individual advocacy, an important Ombudsman role is to review and comment on public policy impacting long-term care consumers. Amended Substitute House Bill 110 includes several proposals important to home care consumers as well as residents of nursing homes and residential care facilities.

Like many organizations, the Office of the State Long-Term Care Ombudsman has been challenged by the COVID-19 Public Health Emergency. In normal circumstances, we strive to visit facilities at least quarterly to meet with residents and advocate for them. When faced with COVID-19 and widespread restrictions on visitation, the program initially adjusted by contacting residents, families, and providers by phone and video. We also engaged Resident Council Presidents in teleconferences and held a Family Forum series. Federal COVID-19 funding has supported mailing post cards to residents of long-term care facilities, reminding them how to reach their advocate. Since March 1<sup>st</sup> of 2020, we've spoken to over 25,000 individuals and had nearly 7,000 calls with providers to offer consultation and technical assistance. In recent months, Ombudsman representatives have resumed in-person advocacy with residents to educate them about their rights, investigate and resolve complaints, and observe living conditions.

Through this variety of avenues, several themes emerged that will help you as you deliberate on the proposals in Amended Substitute House Bill 110.

- Despite federal and state policy changes that require long-term care facilities to host visitation for residents, many families still find it difficult to visit in person. Some haven't

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seen their loved ones indoors in over a year. Though visitation restrictions are being relaxed, residents still feel separated from their loved ones. Lack of human connection caused by this isolation is wearing on the mental health of residents and their families. We have heard that many facilities are not giving adequate attention to residents' mental health.

- Families also shared that care conferences are difficult to arrange virtually and the majority told us they have not been invited to participate at all. Care conferences are a great opportunity for residents and families to give input into the care plan that serves as the guide to resident preferences and needs. Even more concerning, through the Family Forum and day-to-day communication with regional Ombudsman representatives, we know that care plans are not being followed as they should be. In response, next month we will be sending post cards to every resident reminding them of their right to participate in planning their care and services.
- Staffing is an issue in many facilities. You likely know that when families visit, they don't just sit and talk about the weather. They ask questions about care, help with eating, personal hygiene, grooming, and cleaning, and check to make sure clothing is in good order. When families couldn't visit, the day-to-day caregiving they provided wasn't replaced by increased staffing by the facilities. Most residents and families who contact us report experiencing lower staffing levels resulting in long waits for assistance. We frequently hear about poor attention to resident grooming, late delivery of meals and medications, and lack of social engagement and positive dining experiences. We are glad that federal agencies recently issued new guidance allowing residents to return to the dining room and group activities with other residents.
- An overwhelming number of families have seen evidence of decline in the quality of care their loved one received over the past year and information from facilities about changes in condition has been lacking.

These concerns are reflected in our complaint data. Our top five complaints since October 1, 2019 include:

- Discharge or eviction, our most frequent complaint for years
- Visitation
- Response to requests for assistance
- Dignity and respect
- Symptoms unattended

### **Recommendations**

Amended Substitute House Bill 110 addresses some of the concerns facing long-term care consumers.

1. The Executive proposal for an Aging Strategic Initiatives fund should be restored. The fund would support the Ohio Department of Aging's efforts to improve the systems and services available to Ohio's older adults and implement the ambitious Strategic Action Plan on Aging (SAPA). Our mission statement includes "wherever consumers live," and the Aging Strategic Initiatives included several goals we support:

- a. Long-Term Care Quality Improvement. As the State Long-Term Care Ombudsman, I am keenly aware of the deficits in care being offered to Ohio's long-term care consumers who rely on a network of providers for their quality of life. The \$5 million proposed in the As Introduced version of the bill could directly benefit these residents through careful review of deficient practice in areas like infection control and staffing with quality improvement projects designed to improve quality.
- b. SAPA:
  - i. The SAPA champions efforts to move toward access to in home long-term services and supports for those that choose them through increased spending on Medicaid home and community-based services and waivers. It also encourages Ohioans to engage in long-term care planning.
  - ii. The SAPA increases supports for caregivers. Family caregiving doesn't stop at the nursing home door; it continues from home and community-based settings through hospitals, and assisted living. Support for family caregivers is vital to sustaining their vigilance and hands-on assistance that often prevent the need for costly nursing home care.
  - iii. One goal of the SAPA that aligns with what we hear from consumers is the vital need for increased capacity within the direct care workforce. This is a problem acknowledged throughout the industry, and our long-term care system is desperate for a solution. We know that until we take decisive action, Ohioans will continue to be underserved or poorly served because of staffing capacity issues. Ombudsman representatives and I have ideas to contribute to solutions but the Department of Aging needs adequate funding to gather the evidence and work with stakeholders to implement new policies.
  - iv. Finally, the SAPA is underpinned by the principles of equity and elder justice. We strongly support, both here and in our daily work with consumers and providers, policies and practices that allow Ohioans to age with dignity and respect, and without fear of abuse and neglect. Dismantling ageism, working to eliminate disparities and inequities, and encouraging all Ohioans to value aging are integral to the success of the SAPA. I know we all want to be certain that older Ohioans with the greatest need are able to receive the services and care they require to live full, happy lives, and the SAPA advances that goal.
2. The bill would establish a Nursing Facility Payment Commission to analyze the efficacy of the nursing facility quality incentive payment formula, the nursing facility base rate, and nursing facility cost centers. The report of the Commission would include a determination of whether the quality measures need to be changed.

While we support a thorough review of nursing facility payment and inclusion of quality, we already know without a Commission that quality measures should change. The Commission's time would be better spent devising new measures to move quality forward without delay. Further, any discussion of quality in long-term care must include consumers. I have participated

in this work previously and, should the Senate choose to retain this provision, the Office of the State Long-Term Care Ombudsman should be a member along with the Departments of Aging, Health, and Mental Health & Addiction Services.

3. The House removed language that would have amended Section 3721.081 of the Ohio Revised Code to give the Ohio Department of Health tools to address egregious deficiencies in nursing homes. In situations that jeopardize the health and safety of residents the Department of Health should have the authority to direct swift corrective action. My Office's purpose is to resolve problems in long-term care facilities so regulatory intervention isn't needed. However, in 2020, 3% of complaints were also referred to regulators because providers would not work with us or because the problems were so egregious that enforcement action was needed. Residents need to know that when they need it, the system is prepared with the tools necessary to protect them.
4. Language supporting a bed buy-back program in temporary law 291.50 was also removed in the House. This would be a completely voluntary program allowing nursing facilities to surrender long-term care beds in certain counties. This one-time payment could support facilities converting to private rooms which can reduce the transmission of infections like *Clostridium difficile*, COVID-19, and influenza. And don't we all want to live in our own space with privacy? I've often noted that teenagers choosing a college get more choice in living arrangements than their 80-year old grandparents who need long-term care.
5. Intermediate remedies are needed to support quality residential care facilities (commonly called assisted living). Ombudsman representatives see homes with quality problems and have been frustrated by the inability of the Ohio Department of Health to act, short of license revocation. Financial penalties of just \$500 aren't sufficient to prompt lasting improvement. On the other hand, license revocation may be too extreme and is disruptive to residents who would have to move. Residents should not face the uncertainty that a license revocation proposal can create.

We recommend a system of intermediate steps such as graduated fines and bans on admission to incentivize swift and sustained correction of deficiencies. Such proposals have been considered by previous General Assemblies, but you can act now to advance protections for your constituents in assisted living facilities.

6. Ohio needs more robust licensure and enforcement for Class 2 Residential Facilities (RF2) licensed by the Department of Mental Health and Addiction Services (MHAS). Like assisted living facilities, there are few enforcement options available to MHAS when a provider accepts residents who are far beyond their scope of licensure to care for, employs individuals with criminal backgrounds, or provides care below standards. The Office suggests:
  - a. Increased funding for MHAS to monitor more frequently to assure that these homes are not offering care to individuals beyond their capability

- b. Annual inspections instead of every two years during which MHAS monitors quality
- c. Documentation of more frequent medical evaluations. Currently facilities must only have records that a resident was seen by a physician within the twelve months prior to admission to evaluate whether health or cognitive status declines indicate a higher level of care is needed
- d. Disclosures to prospective residents and their families regarding the limits that a facility type has (e.g., no medication administration, no wound care, no training in medical care, no advanced dementia care, no nursing care)
- e. Required training for these homes to seek Long-Term Care Consultation from Area Agencies on Aging as resident needs progress
- f. Annual level of care assessment for all residents

### **Ombudsman Support**

This testimony began with a description of the Ombudsman mission and how we have sought input from consumers and their families to inform our budget recommendations. I will end with an assurance of how my Office is using funds in the budget to advocate for your constituents responsibly and effectively.

We know volunteering is not only important to those we serve, but also to those who volunteer. We look forward to continuing to grow and strengthen our volunteer corps and increasing civic engagement with your ongoing support. We now have a full-time Volunteer Coordinator in every region and the State Office and have recruited new volunteers to expand our ability to perform outreach to consumers and their families. I am proud to say that while many of my colleagues across the country have struggled to maintain their volunteer corps during this unprecedented time, we have increased our corps of dedicated volunteers in Ohio and have instituted performance measures for recruitment and engagement. With this budget, you are supporting national leaders; in fact, one of our Volunteer Coordinators and I were asked by the National Ombudsman Resource Center to speak at an event about Ohio's success. Very soon, some of you will receive a letter recognizing one or more Ombudsman volunteers in your district.

Throughout the pandemic, I have met with Ombudsman representatives initially three times a week, then twice, and now weekly to provide information, updates on state orders and federal guidance, and to give them the opportunity to share their challenges and successes for statewide learning. My goal has been to live and breathe the message of "In This Together Ohio."

We issued evolving guidance to Ombudsman representatives for continuity of operations, returning to in-person advocacy with the goal of increasing verification and resolution of problems. We are collaborating with the Department of Health's Bureau of Infectious Diseases for infection control education and instruction in the use of personal protective equipment. We used federal supplemental funding to purchase personal protective equipment (PPE) for our representatives and have worked within the state's Emergency Operations Center for distribution. After equipping them with guidance, PPE, and related instruction, I have asked our regional programs to set ambitious targets to return to

regular presence in long-term care facilities. Your constituents deserve nothing less from their advocates.

In the coming biennium, the Office will resume the long-term care facility consumer satisfaction surveys, starting with the Family Satisfaction Survey. The family survey is mailed to approximately 90,000 family members, friends and guardians who provide valuable feedback on the care being offered in Ohio's nursing homes and assisted living facilities. We will follow with the Resident Satisfaction Survey when it is deemed safer for in-person interviews with residents regarding their care and quality of life.

We will continue to represent the experiences of consumers as we serve on the Dementia Task Force, the Supreme Court's Subcommittee on Adult Guardianship, the Ohio Elder Abuse Commission, the Adult Protective Services Advisory Council, the Amber Alert Advisory Committee, Emergency Operations Center Support Functions, and other groups, as a means to amplify the voices of those who receive care and services through Ohio's system of long-term services and supports.

I appreciate the efforts of the General Assembly in meeting the needs of the long-term care consumers in the state. We look forward to any opportunity to assist your offices in raising the voices of your constituents. With your continued support, the Office of the State Long-Term Care Ombudsman will effectively and passionately advocate for consumers wherever they live.