

Approved: February 9, 2010

Date

MINUTES OF THE HOUSE AGING AND LONG TERM CARE COMMITTEE

The meeting was called to order by Chairman Bob Bethell at 3:30 p.m. on February 4, 2010, in Room 784 of the Docking State Office Building.

All members were present except:

Representative Owen Donohoe- excused
Representative Scott Schwab- excused

Committee staff present:

Doug Taylor, Office of the Revisor of Statutes
Iraida Orr, Kansas Legislative Research Department
Judith Holliday, Committee Assistant

Conferees appearing before the Committee:

Belinda Vierthaler, State Long-Term Care Ombudsman
Mitzi McFatrach, Executive Director, Kansas Advocates for Better Care
Tom Laing, Executive Director, InterHab

Others attending:

See attached list.

Chairman Bethell asked for approval of the committee meeting minutes for January 26 and 28. Representative Furtado made the motion, seconded by Representative O'Brien, to approve the minutes of both meetings. The motion carried.

Belinda Vierthaler, State Long-Term Care (LTC) Ombudsman, appeared before the Committee to testify on the purpose of the Long-Term Care Ombudsman program. (Attachment 1) Ms. Vierthaler gave a brief overview of her background prior to assuming the role of State LTC Ombudsman.

Ms. Vierthaler stated the mission of the LTC Ombudsman program is to advocate for the well-being, safety and rights of the residents in LTC facilities located in Kansas as required by the Older Americans Act. Under the program, complaints are investigated and resolved on behalf of residents relating to action, inaction or decisions of LTC facilities; and monitors federal, state and local government laws regarding LTC facilities.

The office provides support and guidance to volunteers, consultation to facilities, and on-going, in-service training and education. Education topics include resident rights, abuse/neglect/exploitation, general program overview, culture change, and family and resident councils. The LTC Ombudsman is one more entity that reminds facilities of their responsibilities to residents and also helps them achieve the goal of assisting residents in attaining the highest possible quality of life.

The Office of the State LTC Ombudsman provides training for each regional and certified volunteer Ombudsman, and provides the Legislature and Governor with an annual report on the types of problems experienced by residents and policy recommendations to solve those problems and improve the quality of care and life in LTC facilities.

Because of the recent budget cuts, the position of Volunteer Coordinator was eliminated, which impacts the ability to provide education to others. The Kansas program is two Ombudsman positions short of the National recommendation of one Ombudsman for every 2,000 residents.

Ms. Vierthaler stated her priority is to: 1) market the program to increase the visibility of the Ombudsman program; 2) increase volunteer recruitment efforts; and 3) address the increased involuntary discharge from LTC facilities.

Ms. Vierthaler stated that it is her hope that the Committee would have a better understanding of the Office of the LTC Ombudsman and how important the program is to the residents of adult care homes throughout the state.

Ms. Vierthaler was asked to explain the term "involuntary discharge." Other than for nonpayment, the term

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Minutes of the House Aging and Long Term Care Committee at 3:30 p.m. on February 4, 2010, in Room 784 of the Docking State Office Building.

applies to people who do not want to leave but the facility says they must due to the inability to meet the person's needs. With regard to satellite offices being closed and consolidated in Topeka, Ms. Vierthaler stated that there are several satellite offices open across the state.

Ms. Vierthaler stated that her office hopes to increase visibility by targeting senior centers, universities, and anyone to whom they can talk about the program and function of the LTC Ombudsman. Ms. Vierthaler stated that all of the Ombudsman staff currently serve as Volunteer Coordinators because that position was cut.

Mitzi McFatrach, Executive Director, Kansas Advocates for Better Care, testified in favor of the extension of ombudsman services to persons receiving long-term care but residing outside a licensed facility. (Attachment 2) She expressed gratitude to Representative Tom Sloan who introduced legislation, **HB 2242 - State long-term care ombudsman; expanding the authority of the state long-term care ombudsman to advocate for otherwise qualified individuals not in long-term care facilities**, to help protect the health and safety of persons receiving long-term care at home. Ms. McFatrach stated that the Ombudsman is uniquely positioned to understand and address the needs of long-term care recipients.

Under the current oversight structure in nursing homes, the Kansas Department on Aging investigates complaints of abuse, neglect and exploitation. The State Long-Term Care Ombudsman advocates on behalf of facility residents at their request. In home settings, Social and Rehabilitation Services (SRS) Adult Protective Services investigates complaints of abuse, neglect and exploitation, but there is no parallel component like the ombudsman for consumer advocacy, and Adult Protective Services does not address long-term care. Other states have passed legislation regarding long-term care ombudsman oversight on behalf of elders and others receiving community based long-term care.

Ms. McFatrach stressed that her agency does not want legislation which mandates to serve without adequate resources, or without a way to offer the protections such legislation was intended to provide.

Chairman Bethell asked Ms. McFatrach if she would be willing to serve on an Advisory Committee with other agencies on this issue and she stated that she would.

Tom Laing, Executive Director, InterHab, testified on his agency's recommendation to broaden the Ombudsman's role to include long-term care settings for persons with developmental disabilities. (Attachment 3) Mr. Laing stated that this expansion of the Ombudsman's role would likely include a fiscal note, but that a well-run Ombudsman's office would certify and utilize volunteers in its work, and that there are numerous persons willing to become trained as active volunteers for Ombudsman assignments.

In response to the question regarding whether there are case managers for persons in the Frail Elderly (FE), Physically Disabled (PD) and Developmentally Disabled (DD) waivers, Mr. Laing stated that there are case managers who, with training, could fill the role of ombudsman in abuse cases. He further stated that all personnel are required by law to report any instance of abuse.

Chairman Bethell asked Mr. Laing if he would be interested in serving on the Advisory Committee and he replied that he would.

The next meeting is scheduled for February 9, 2010.

The meeting was adjourned at 4:15 p.m.

AGING AND LONG-TERM CARE COMMITTEE
TESTIMONY FROM THE STATE LONG-TERM CARE OMBUDSMAN
Belinda Vierthaler, MSW
February 4, 2010

Representative Bob Bethell, Committee Chair and Members of the Committee, thank you for the opportunity to provide testimony regarding the State Long-Term Care Ombudsman.

The mission of the Office of the Long-Term Care (LTC) Ombudsman is to advocate for the well-being, safety, and rights of residents in LTC facilities located in Kansas. The Ombudsman office assists these residents in attaining the highest possible quality of life.

LTC Ombudsman programs were created in the mid-1970's. The program operates in all 50 states and 2 U.S. Territories as required by the Older Americans Act. The Kansas program was established in 1980. The Ombudsman program is an advocacy program, not regulatory.

The purpose of the LTC Ombudsman program is to investigate and resolve complaints made by or on behalf of residents relating to action, inaction or decisions of LTC facilities. This task is generally taken on by the Regional Ombudsman or by the Certified Volunteer Ombudsman, although serious investigations are immediately referred to the Regional and/ or State Ombudsman.

The Regional Ombudsman also provides support and guidance to the volunteers, provides public education, consultation to facilities and on-going in-service training and education. The topics for educational offerings are endless, but some of the most frequent are resident rights, abuse/neglect/exploitation, general program overview, culture change, family and resident councils.

The Office of the State LTC Ombudsman develops continuing education programs to educate residents, their families/legal representatives, and facility staff. It analyzes and monitors federal, state and local government laws with respect to LTC facilities. It provides for the training of each regional and certified volunteer Ombudsman, as well as providing the legislature and Governor Mark Parkinson with an annual report regarding the types of problems experienced by residents and policy recommendations to solve such problems and improve the quality of care and life in LTC facilities. Additionally, our program provides information and recommendations to media representatives, when necessary.

I have served in the role of the State LTC Ombudsman since August 5, 2009. I have my Bachelors and Masters of Social Work from the University of Kansas. I have worked on a geri-psych unit, operated assisted living facilities and served as the Administrator for nursing homes. This experience has helped me to hit the ground running in my new role. I would like to focus on marketing the program to

increase visibility, increase volunteer recruitment efforts and work on new educational offerings such as, preventing involuntary discharges and promoting culture change/creating home.

During these tough financial times, our program is very important. Because of the recent Medicaid cuts facilities are cutting their budgets. It is crucial that we are there to advocate for residents to make sure their quality of life and the quality of care does not decrease. The LTC Ombudsman is one more entity that reminds facilities of their responsibilities to residents and also helps them to achieve the goal of assisting residents in attaining the highest possible quality of life.

Our program has also been hit by the budget cuts. The Kansas program is 2 Ombudsmen short of the National recommendation of 1 Ombudsman for every 2,000 residents. We had to delete the position of the Volunteer Coordinator and are extremely limiting overnight stays. This impacts our ability to attend educational opportunities, thus limiting our ability to provide education to others.

Thank you for the opportunity to testify today. My hope is that you have a better understanding of what we do and how important the Long-Term Care Ombudsman program is to the residents of adult care homes throughout the state of Kansas.

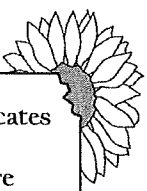
“Advocating for Quality Long-Term Care” since 1975

Aging and Long-Term Care Committee

Chairman Bob Bethell

Testimony presented by Mitzi E. McFatrach, Executive Director

February 4, 2010



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for
Better Care

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Since 1975 Kansas Advocates for Better Care (KABC) has given voice to long-term care consumer concerns. Over three decades, long-term care options have grown – from nursing homes, to assisted living, to continuing care retirement communities, and now, increasingly toward home and community based care – allowing elders and persons with disabilities to age in the place of their choosing.

Kansas Advocates for Better Care appreciates Representative Tom Sloan’s leadership in introducing legislation that would move Kansas in a direction which would better protect the health and safety of persons receiving long-term care at home.

Kansas Advocates for Better Care strongly supports HB2242 and its extension of ombudsman services to persons receiving long-term care but residing outside a licensed facility. We believe the bill that you are considering is the correct direction for Kansas to move. It would offer Kansas recipients of long-term care an independent, objective authority, able to intervene on their behalf whether they were in a nursing home or in their own homes. The Ombudsman is uniquely positioned to understand and address the needs of long-term care recipients.

Under the existing oversight structure in nursing homes Kansas Department on Aging investigates complaints of abuse, neglect and exploitation in nursing facilities. The State Long-Term Care Ombudsman advocates on behalf of facility residents at their request. In home settings, SRS Adult Protective Services investigates complaints of abuse, neglect and exploitation. But there is no parallel component (like the ombudsman) for consumer advocacy in the home setting.

State legislatures in twelve other states have recognized the need and passed enabling legislation for long-term care ombudsmen to advocate, mediate and negotiate on behalf of elders and others who receive community based, long-term care services in their homes. Two other states, Georgia and New Mexico have passed legislation to extend the long-term care ombudsman’s authority to serve persons transitioning from nursing homes to the community as part of their Money Follows the Person program. Three states passed legislation mandating community long-term care ombudsman services in the years just prior to the passage of OBRA Nursing Home Reform in 1987.

Establishing an ombudsman for the home-based care program does the following important things. It:

- Fills the gap in the existing system to provide the same level of advocacy for persons receiving long-term care, whether in their homes or in a nursing home,
- Builds public confidence about the safety and health oversight for home-based services,
- Provides some level of protection when the inevitable occasionally occurs, and
- Provides a safety net for the minimally regulated services of home-based care.

HOUSE AGING & LONG TERM CARE

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We do not wish to see the responsibility of the Ombudsman extended beyond the program's ability to provide adequate service to those in licensed care facilities. Such a move would undermine the efficacy of the Ombudsman's office and in essence remove the health and safety protection currently in place for those in licensed long-term care facilities. The Institute of Medicine has recommended a ratio of one ombudsman to every 2,000 residents of long-term care facilities. In Kansas we are currently short of that recommendation by at least two ombudsmen.

We do not want the legislature to create a hollow promise to persons receiving long-term care at home by extending the Ombudsman's mandate to serve without the resources necessary to serve. A few states have taken this approach and left their citizens without access to advocacy and left the ombudsman program without a way to offer the protections it was intended to provide.

Consumers of long-term care are woefully aware of Kansas' current economic plight. Given the current realities of the state finances, KABC would recommend the following to the Aging and Long-Term Care Committee:

1. Create and fund a pilot program which would provide access to the ombudsman program for persons receiving long-term care services in their home setting and launch the pilot in a limited geographic area.
2. Charge the pilot program with the responsibility of determining the scope of need for advocacy services; to configure and test the limits of a workable community ombudsman model; and to gather and analyze data that would inform an expansion of the ombudsman program or an acceptable alternative that would address long-term care in home settings statewide.
3. Direct the State Long-Term Care Ombudsman to convene stakeholders for the purpose of
 - identifying critical components for home based long-term care advocacy,
 - analyzing existing models and funding options,
 - making recommendations for adequate staff to recipient ratio
 - determining covered population,
 - collecting relevant data,
 - developing policies for maintaining confidentiality,
 - defining the scope of response ability, and training for staff
4. Direct the State Long-Term Care Ombudsman to report stakeholder findings and recommendations to the Aging and Long-Term Care Committee for further action.
5. Provide for language in HB 2242 that
 - affords legal jurisdiction and authority for the Ombudsman to enter private homes within the pilot's scope.
 - limits the Ombudsman's responsibility for the pilot to persons who have previously received long-term care within a facility.
 - allows the Ombudsman to offer services to residents of the Kansas Soldiers Home and the Kansas Veterans Home.
 - amends or revises the definition of "resident" and "facility" under KS 75-7303 to allow prior residents of facilities to be served in their homes within the scope of the pilot.

This is good legislation that addresses a critical need for consumers of long-term care. The Members and Board of Kansas Advocates for Better Care urges this Committee to advance HB 2242.

Thank you for the opportunity to express our position.

Sincerely,

Mitzi E. McFatrach
Executive Director
Kansas Advocates for Better Care
A 501 (c) 3 designated non-profit membership organization



INDEPENDENCE
INCLUSION
INNOVATION

February 4, 2010

TO: Representative Bob Bethell, Chair, and
Members, House Committee on Long Term Care

FR: Tom Laing, Executive Director, InterHab

Thank you, Mr. Chair, and members of the committee, for today's opportunity to discuss ombudsman services in government, which are a well-tested and successful model by which citizen concerns are more quickly heard and more expeditiously addressed. We urge the committee in its deliberations to consider the changing service models of long term care, i.e. from facility-based care to home- and community-based care, and expand the concept of such services to incorporate home and community based services.

Specifically, we recommend the committee to broaden the Ombudsman's role within the broader array of long term care – namely, in addition to programs that serve our older citizens that the Ombudsman's scope of review would also include long term care settings for persons with developmental disabilities.

We recommend these proposed enhancements with an awareness of the likely State fiscal note if such changes were made. We understand that any expansion will cost money, but we a well run Ombudsman's office would certify and utilize volunteers in its work. Certainly in the DD community network (and I assume the case is the same in the community of care for older Kansans) there are numerous persons who would be willing to become trained as active volunteers for Ombudsman assignments.

We ask the committee to consider an expansion of the role of the Ombudsman for the reasons stated above. Thank you for receiving this testimony. We respectfully request your thoughtful consideration of our recommendations.

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