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OF
THE COLORADO STATE LONG-TERM CARE OMBUDSMAN PROGRAM
MAY 18, 2023

“The Impact of Long-Term Care Surveyor Staffing Shortages to the Quality of Life and Care for Residents”

Good morning, Chairman Casey, Ranking Member Braun, and members of the Committee. I am Leah McMahon, Colorado State Long-Term Care Ombudsman. Thank you for the opportunity to appear before you today.

I am the Director of the Colorado Long-Term Care Ombudsman Program (Ombudsman Program). In this role I represent the interests of approximately 45,000 vulnerable adults who reside in licensed assisted living homes and nursing homes in Colorado. The role of the State Long-Term Care Ombudsman encompasses coordination and oversight of the statewide Ombudsman representatives, providing systemic advocacy for residents by monitoring laws impacting residents in long-term care, and ensuring the confidentiality of all ombudsman records.

Long-Term Care Ombudsman Program

The nationwide Long-Term Care Ombudsman Program, authorized by the Older Americans Act, is an independent, health oversight agency that advocates for the interests of long-term care residents.¹ The importance of the office of the Ombudsman is recognized in the Older Americans Act and specifically has a requirement for an office of the Ombudsman programs with a director. Long-term care ombudsmen are authorized by federal and state law to work to solve individual problems for residents and to change policy and law to protect residents. Long-term care ombudsmen (Ombudsmen) empower, educate, and inform residents of their rights, and we are guided by the

¹ 42 U.S.C. §3058f & §3058g.

expressed interests and wishes of residents. We are in nursing homes every day listening to the concerns of residents and their families and advocating on their behalf.

In Colorado, during Federal Fiscal Year 2022, the statewide ombudsman program made 4,327 visits to facilities, investigated 3,321 concerns expressed by residents, family members and concerned individuals. The top concerns reported to the ombudsman program included quality of care, violations of the right for residents to be treated with dignity and respect, improper eviction and inadequate discharge planning by facilities, cleanliness of the facility, and concerns related to dietary needs. Nobody wants their family member to experience any of the above listed concerns. It is our responsibility as ombudsmen to advocate on behalf of residents to address these various issues.

A Day in the Life of The Long-Term Care Ombudsman

A day in the life of an ombudsman consists of fielding calls, educating the community, and providing information about the Long-Term Care Ombudsman Program and other issues related to long-term care and services, as well as visiting facilities to talk with residents about their care. During a visit to the long-term care facility, the ombudsman may meet with numerous residents and obtain consent to advocate on their behalf individually or on behalf of all residents. Ombudsmen receive consent from the resident to speak with family members, facility staff and regulatory agencies to resolve their concern. If concerns cannot be resolved by the ombudsman at the lowest level, the ombudsman may provide information to escalate the complaint. The ombudsman may suggest to the resident to file a complaint with the licensing and survey agency that in turn, can enforce state and federal regulations by making unannounced complaint investigations to the nursing home.

The Impact of Long-Term Care Surveyor Shortages to Residents

I would like to highlight to the Committee my concern about the impact of staffing shortages among long-term care surveyors. Over the last three years, the COVID-19 pandemic has had an enormous impact on the entire long-term care system. As we know, many residents tragically lost their lives to COVID-19 and the long-term care community feels the trauma of those losses every day.

Another lasting impact is staffing shortages at the Colorado Department of Public Health and Environment, the state agency responsible for licensing, surveying, and regulatory oversight of long-term care facilities. Nursing home surveyors have incredibly challenging jobs, which are made more demanding by agency staffing shortages. I have great appreciation and respect for surveyors and the survey process. I know from speaking with the state survey agency there are great difficulties in maintaining adequate survey staffing levels. It was also reported to me that the state agency needs to offer competitive wages for the initial hiring of surveyors. Training new surveyors is time intensive and can take up to a year. I see firsthand the impact these shortages have upon nursing home residents and their families.

Findings

Residents and family members have complained to my office about waiting long periods of time for a response after filing a complaint and at times, a lack of response from the regulatory agency. I recently called the regulatory agency nursing home complaint line on May 5, 2023, and listened to the outgoing message.² The outgoing voicemail stated, due to a high volume of complaint calls and emails, they could not estimate a return call time or email response. The message also stated there was a significant delay in responding to calls and emails. Family members and residents reported to the local ombudsmen that they were discouraged by the outgoing message and in some instances, decided not to leave a message with their complaint.

I would like to highlight a few examples of what family members and residents reported as concerns to the Colorado Long-Term Care Ombudsman Program. For instance, a local ombudsman received a call about a report of a resident not getting medications as prescribed. The family member called the survey agency, listened to the outgoing message on the voicemail and decided not to leave a message about the complaint. The family informed the ombudsman about the decision to not leave a message, and the ombudsman encouraged the family member to call back. Another example includes a local ombudsman receiving calls from several family members who in the past six months did not receive a response to their complaint they filed via email. The ombudsman suggested calling the complaint line to see if that would illicit a response. The same family members called the ombudsman back and reported calling and filing a complaint but did not receive a response from the survey agency. The complaint line receives an extremely high volume of calls and is managed by one dedicated person.

Case Example 1

In March 2021, a local ombudsman was in a long-term care nursing home (memory care) and observed several instances of abuse and neglect. This included observing a staff member yelling at a frail, elderly, resident, and residents not receiving adequate incontinence care. This is a clear violation of resident rights. The local ombudsman called the regulatory agency nursing home complaint line, in addition to other appropriate agencies, to report the concern. The regulatory agency did not report back for one year after the complaint was filed. This delay can have negative impacts to the quality of care, safety, and health for not just one affected resident, but all residents. The potential for greater risk to a person's health is increased when they are required to sit in feces and urine-soaked protective garments without receiving proper care. It can lead to open sores that can cause infections to the point of needing hospitalization.

² [Regulatory Agency Nursing Home Complaint Line \(Listened to outgoing voicemail, May 5, 2023\)](#)

Case Example 2

In November 2022, a local ombudsman received a call from a nursing home resident, who reported having to wait long periods of time after making requests for assistance and having skin breakdown due to not receiving timely incontinence care. The residents reported that it appeared there were not enough staff to assist all the residents. The local ombudsman visited these residents and together they called the regulatory agency nursing home complaint line. The ombudsman assisted one of the residents with making this call and reports following up with the resident who stated they did not receive a return call. No one appears to have received a return call.

Case Example 3

In December 2022, a local ombudsman received a complaint from a resident's family member, who reported that a nursing home did not appear to have enough staff to care for the residents. The family members also expressed concern about skin breakdown after visiting with their loved one. The family member inquired about what regulatory agency to call. The ombudsman provided the regulatory agency nursing home complaint line information. The local ombudsman stated the surveyors conducted a survey two months after the reported time the family called the complaint line. Again, this can have a negative impact on the health, safety, and welfare of residents.

Case Example 4

In 2022, a family member contacted the local ombudsman and reported concerns about a family member living in a nursing home. The ombudsman met with the resident and the resident reported regularly waiting hours to receive assistance. The ombudsman observed the resident crying while the resident reported that the nursing home staff yelled at the resident often, refused to let the resident out of their room and physically shoved the resident's wheelchair with the resident in the wheelchair into the room and then slammed the door shut. The resident also reported that staff pulled their hair, physically shook the resident, and left the resident in the bathroom after assisting them to the toilet. The resident requested the ombudsman to file a complaint to the state survey agency. It was reported a year later that the ombudsman received a call from the surveyor stating they were investigating the complaint. The ombudsman informed the surveyor that the resident moved out due to abuse and neglect. The family later informed the ombudsman the resident suffered from night terrors due to Post Traumatic Stress Disorder.

These are just a few examples my office has received over the past couple of years. I know current surveyors are working as hard as they can to be responsive to resident complaints and concerns. But it appears there are just not enough staff. These shortages place residents at significant risk of harm, even death.

Surveyors have an extremely complicated job, and the survey agency is the only entity with the authority to enforce standards that facilities must meet regarding the quality of care and services residents receive. Thus, it is important for CMS and State Survey Agencies to have the necessary staff

and resources to conduct annual surveys and respond to complaints in a timely manner. Otherwise, residents' health and safety are at risk.

Working shorthanded impacts, the ability of surveyors and survey agencies to effectively do their jobs. Through conversation with the state surveyor agency, it was stated to attract and retain skilled surveyors, they need to be able to provide competitive salaries. Wage levels need to be sufficiently competitive to attract the highly skilled workers necessary to execute survey requirements.

Recommendations

The Colorado Office of the State Long-Term Care Ombudsman recommends:

1. Increasing funds to assist state survey agencies to hire and retain long-term care nursing home surveyors to meet the workload.
2. Offer competitive salaries for required nursing surveyor positions, which could be the most difficult positions to fill and maintain within the regulatory agency.
3. Create dedicated recruitment and trainer positions to hire and train new surveyors.

I appreciate this opportunity to appear before this Committee and for your time and attention regarding vulnerable adults who live in long-term care facilities. I look forward to answering any questions you may have.