



STATE OF WISCONSIN  
BOARD ON AGING AND LONG TERM CARE  
1402 Pankratz Street, Suite 111  
Madison, WI 53704-4001  
(608) 246-7013  
Ombudsman Program (800) 815-0015  
Medigap Helpline (800) 242-1060  
Fax (608) 246-7001  
<http://longtermcare.wi.gov>

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**Testimony of  
Heather A. Bruemmer, Executive Director/State Ombudsman  
State Of Wisconsin; Board on Aging and Long Term Care  
Before the U. S. Senate Special Committee on Aging  
on the  
Reauthorization of the Older Americans Act  
May 26, 2011**

Chairman Kohl, Ranking Member Corker and members of the committee, thank you for this opportunity to testify on the reauthorization of the Older Americans Act (OAA). My name is Heather Bruemmer. I am the State Long-Term Care Ombudsman for Wisconsin and I am also representing the National Association of State Long Term Care Ombudsman Programs (NASOP).

It is a privilege and honor to be here on behalf of the Ombudsman advocates who work daily to assure the rights and well-being of hundreds of thousands vulnerable residents living in long term care settings in this nation. The significance of the effort to reauthorize the Older Americans Act cannot be overestimated. It is a primary duty of this nation to protect our most vulnerable individuals and to preserve their pride and dignity.

Everyone has a history, a story, and memories, so it is our responsibility to assure that all members of our rapidly aging population have the proper access to services that will respect their right to be who they are and who they have been. They deserve to have the best quality of life and care in the twilight of their lives.

The OAA provides critically needed home and community based services that forestall institutionalization and allow older adults to remain for as long as possible in the community with needed support. Since 1978, the Ombudsman Program has been a core component of the OAA. It is the only program in the Act that specifically serves consumers of services provided by residential care facilities.

I think that we all appreciate and value the importance of living in our own home and, as a result, there has been a remarkable growth in the amount of home and community based services available for seniors in Wisconsin. However, some elders can no longer live safely in their own homes and must move at some point in their lives to either an assisted living facility or a nursing home. In November of 2008, the number of Wisconsin Assisted Living beds surpassed the number of Skilled Nursing Facility beds, indicating a significant trend that is expected to continue into the future. This trend is not unique to Wisconsin as similar shifts in long term caregiving are occurring from the Atlantic to the mid-Pacific. All of the elders who live in long term care facilities of all sorts need to be able to rely on the advocacy services of the Ombudsman Program.

Wisconsin was one of the original pilot states when the Long Term Care Ombudsman Program was first created by Congress, and our state has continuously relied on and improved the advocacy resources available to aging consumers.

When the Wisconsin Board on Aging and Long Term Care was formed to be a home for the Long Term Care Ombudsman Program in 1981, there were only five Ombudsmen serving nursing home residents in all 72 counties. Today, a complement of 15 regional Ombudsmen and over 100 volunteers are serving 95,000 clients of nursing homes, community-based residential facilities, adult family homes, residential care apartment complexes, and persons who reside in their own homes and receive services through the Medicaid waiver programs.

As the need for and nature of long-term care services and supports have grown in scope and complexity, federal support for the LTC Ombudsman Program has not always grown in proportion to that need. When the mandate to serve residents in assisted living was added to our mission by the 1981 amendments to the OAA, there was no new fiscal authorization for this function.

The addition of responsibility for residents of assisted living has nearly doubled the number of potential consumers of Ombudsman advocacy services, yet there still has been no funding specifically directed toward meeting this objective.

Nationally, ombudsmen visited 79 percent of all nursing homes on a quarterly basis last year, yet only 46 percent of all board and care, assisted living and similar homes received a quarterly visit due to funding inadequacies.<sup>1</sup> Throughout the country, it has become increasingly more difficult for Ombudsman Programs to serve residents in assisted living. The inability of Congress to provide sufficient funding is certainly not the result of a lack of trying by champions of the Long Term Care Ombudsman Program such as yourself, Chairman Kohl, and the members of this committee.

Each year, the LTC Ombudsman Program resolves hundreds of thousands of complaints made by or on behalf of aging consumers nationwide.<sup>2</sup> Nationally, 77 percent of these complaints are resolved or partially resolved to the satisfaction of complainants as a result of Ombudsman activity. The majority of Wisconsin Ombudsmen's time is spent in skilled nursing facilities. If we were able to address the needs of people living in assisted living with the same intensity as we do the concerns of those living in nursing homes, our numbers would be astronomical.

Intuitively, we believe that individuals living in assisted living have complaints and concerns that are going unheard. The Ombudsmen cannot confirm this assumption with any degree of certainty due to their inability to visit and advocate for the persons in these provider facilities with the same frequency that we devote to nursing home residents.

The LTC Ombudsman Program offers significant consumer protections to residents. The complexity and diversity of consumers who live in residential care facilities is growing. Noteworthy concerns such as falls, medical mismanagement, medication errors, pressure ulcers, and abuse situations have been on the rise in Wisconsin. Ombudsmen spend a tremendous amount of time investigating these incidents, and also providing education and guidance to facility managers and staff to help prevent reoccurrence of these problems. Unfortunately, the Wisconsin Long Term Care Ombudsman Program is still confronted with the reality of inadequate resources to provide the additional staff necessary to help reduce the incidence of these potentially very dangerous issues.

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<sup>1</sup> Source; 2008 AoA National Ombudsman Reporting System Data

<sup>2</sup> In excess of 250,000 complaints were lodged in nursing homes and board and care facilities in 2008 – source; AoA National Ombudsman Reporting System Data

Ombudsmen spend much time educating and empowering facility leadership, staff and families in methods of providing care that is consumer-centered, consumer-directed and based upon meaningful relationships with caregivers. In Wisconsin and across the nation, Ombudsmen focus on providing service to individuals, taking into account their life history, the rights they are entitled to, and their preferences for services that will provide the highest quality of life and care.

Resident and family councils are the vehicles by which open communications are fostered and facilitated as a means to ensure a common understanding of the issues and concerns that must be addressed in order to deliver excellent quality care and a high level of perceived quality of life. When considering the reauthorization of the OAA, it is important that this requirement to maintain resident and family involvement with the assistance of the Ombudsman Program be continued.

Access to confidential Ombudsmen services is critically important to the individuals we serve in long term care. We are recommending that this reauthorization ensure that private and unimpeded access by individuals to the Ombudsmen services in a confidential setting is not compromised.

The sections of the Act relating to the process of and limitations on disclosure of client information need clarification and emphasis. The current language needs to be strengthened so that facilities are entirely clear that this right of access to and control of information guaranteed to individuals is of the utmost importance to meeting the goals of the Act. We would also recommend changing all references to “files” relating to residents or clients to “information” by amending §712(d) of the Act. We want to ensure that all information provided by those seeking assistance and maintained by the Ombudsman is subject to the recommended OAA disclosure provision, not only that information which is contained in files or records.

It is important that the text of OAA clarify that the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA) do not impede the access to resident health records by the Ombudsman and representatives of the program. The Administration on Aging has declared, in a memorandum (AOA-IM-03-01; dated February 4, 2003), that the

Ombudsman Program representatives are performing a health care oversight function and they are not impacted by the HIPAA Privacy rules.

Ombudsmen throughout the country report having contact with more and more individuals who cannot speak for themselves and have no legally authorized representative to speak on their behalf. We ask that provisions in Title VII of the OAA be amended to add language that will encourage states to intensify their efforts to educate the public as to the value and importance of completing the documents necessary to establish a trusted surrogacy relationship with a personal advocate.

Wisconsin's Board on Aging and Long Term Care and the National Association of State Long Term Care Ombudsman Programs support the recommendation which would amend Title II of the Act to provide a base appropriation beginning at \$1 million to the National Ombudsman Resource Center (NORC) with subsequent annual increases. NORC has proven to be a valuable site for Ombudsman Programs to obtain training, resources, and technical assistance despite woefully inadequate funding throughout its history. It would be extremely helpful to expand the Center's training capacity and ability to work with state regulators on improving the investigative processes used to deal with resident complaints.

The OAA gives us a strong foundation – and reauthorization gives us a window of opportunity to build an even more robust demonstration of the nation's concern for the well-being of our elders. It is extremely important that Congress and the aging network come together to strengthen our Long Term Care Ombudsman Programs to provide a safe, homelike environment and to protect those members of our aging society who rely on the providers of long-term residential care services.

On behalf of the Wisconsin Long Term Care Ombudsman Program and NASOP as advocates for the nation's vulnerable facility residents and consumers of long term care, I thank you, Sen. Kohl, Ranking Member Corker and members of the committee, for allowing me to share our thoughts about the reauthorization of the Older Americans Act with you.

I will be happy to answer any questions that you may have.