



# STATE OF CONNECTICUT

## STATE DEPARTMENT ON AGING

### LONG TERM CARE OMBUDSMAN PROGRAM

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### Aging Committee

### Public Hearing

Tuesday, February 5, 2013

### Testimony of Nancy Shaffer, State Long Term Care Ombudsman

Good morning Representative Serra, Senator Ayala and members of the Aging Committee. My name is Nancy Shaffer and I am the State Long Term Care Ombudsman. As you know, the Long Term Care Ombudsman Program is mandated by the Older American's Act and Connecticut General Statutes 17b-400 through 17b-406 to provide services to protect the health, safety, welfare and rights of the residents of long term care facilities. As the State Ombudsman it is my responsibility to facilitate public comment and represent the interests of residents in order to recommend changes to the laws, regulations, policies and actions which affect the resident's quality of life and care. On behalf of the 30,000 residents in Connecticut's skilled nursing facilities, residential care homes and managed residential communities, I would like to testify in regards to several bills that are before you today.

### **S.B. No. 519 (RAISED) AN ACT CONCERNING TRAINING NURSING HOME STAFF ABOUT RESIDENTS' FEAR OF RETALIATION.**

Issues of fear of retaliation for long-term care residents are well known in the work of the Long Term Care Ombudsman Program and are substantiated in research conducted by the University of Connecticut. The Fear of Retaliation is a prevalent issue for long term care residents, well known in the work of the Long Term Care Ombudsman Program, and substantiated by research conducted by the Center on Aging at the University of Connecticut (UConn Center on Aging 2009 study, "The Connecticut Long Term Care Ombudsman Program: Fear of Retaliation"). As individuals become more frail and dependent on their caregivers and the longer they reside in a long-term care facility, the more pervasive their concerns about retaliation when deciding whether to voice a grievance. By both Federal and State statute, long-term care residents have the "right to voice grievances and recommend changes in policies and services to facility staff or to outside representatives of the patient's choice, free from restraint, interference, coercion,

discrimination or reprisal" (CGS 19a-550 (b) (5)). The Connecticut Long Term Care Ombudsman Program has been dedicated to better understanding fear of retaliation and promoting awareness and education, both for residents and staff. We have learned that, in fact, sometimes staff does not recognize that their actions and behavior are perceived as retaliation by the residents. Over the years we've also had staff voice their desire to better understand the issue.

At the heart of Residents' Rights is the resident's ability to feel comfortable exercising his or her rights. This proposed legislation will provide an ongoing opportunity to promote education and awareness and nurture an environment of more open communication. I want to underscore that the intent of this legislation is not punitive. It is however an enhancement of Residents' Rights training. At a time when there is a great emphasis on Person-Centered Care, this training will promote that philosophy of caregiving. I also want to note that while the Ombudsman Program has developed a curriculum for staff, residents and families, this curriculum should not be viewed as the only training program.

I am proud to tell you that currently across the country many Long Term Care Ombudsman Programs use Connecticut's curriculum and instructional video for their own training purposes. The State of Connecticut now has the opportunity to affirm Residents' Rights by enabling them to exercise all of their rights without the fear of retaliation by passing this legislation.

I appreciate the collaboration of the two Connecticut provider associations, Leading Age and Connecticut Association of Health Care Facilities, and their support of this proposal. With their permission, I say that together, we urge you to pass S.B. 519 without delay so that fear of retaliation training will be a mandatory piece of the annual Residents' Rights training received by each facility staff member.

#### **H.B. No. 5760 (RAISED) AN ACT INCREASING THE PERSONAL NEEDS ALLOWANCE.**

In 2010 the Connecticut General Assembly voted to **temporarily** decrease the residents' Personal Needs Allowance (PNA) from \$69 to \$60 and remove the Cost of Living Allowance (COLA). During even these difficult financial times, we must respectfully ask that the General Assembly reinstate the PNA to what should now be \$72.75 and restore the COLA. If you can try to imagine what living on a monthly allowance of \$60 would mean for you, it may be easier for you to understand what that is like for each of the nursing home residents affected. \$60 must cover any phone or television service above the basic service provided by the facility. \$60 must also cover all clothing expenses, all hairdresser costs, postage stamps, individually preferred toiletries, snacks, transportation and even eyeglasses and hearing aides when not covered by

Medicaid. There is likely nothing left at the end of the month to buy individual quality of life expenses such as room decorations, a new coverlet for a bed, small holiday/birthday gifts for family, treating a great-grandchild to an ice cream or birdfeed for one's birdfeeder outside their window. Residents have told us these are the things they must oftentimes go without. In these difficult financial times, I respectfully ask you to reinstate the Personal Needs Allowance and restore the Cost of Living Allowance for our long term care residents.

**H.B. No. 5761 (RAISED) AN ACT CONCERNING NOTIFICATION TO POTENTIAL AND EXISTING NURSING HOME OWNERS.**

In 2012, the State of Connecticut experienced the closing of yet another Connecticut nursing home in financial distress. The State incurred the costs of the receivership of this home. The staff endured many months prior to the receivership of not having health care premiums paid by the owner and not knowing whether there would be proper and adequate food and supplies to care for their residents. Vendors were not making deliveries because of outstanding bills. The residents and their families were significantly impacted by the emotional costs of the uncertainties surrounding the home's financial instability as well as the adverse effects on their care and services. The owner of this home, Douglas Mittleider, in fact was previously prohibited in 2009 from doing business in Massachusetts for the next ten years. In March of 2009 Massachusetts Attorney General Coakley issued a press release in which she stated that Mr. Mittleider "financially abandoned and mismanaged the long term care facility", Governor Winthrop Nursing Home. The residents were left at significant risk due to staff shortages, incidents of patient abuse and neglect, safety code violations and broken equipment. And then Mr. Mittleider moved his business to Connecticut with his purchase of the William and Sally Tandet nursing home in Stamford. The State of Connecticut has a responsibility to ensure to the best of its ability that unscrupulous nursing home providers are not allowed to do business in Connecticut. It is a cost to the State, its business community and the frail and vulnerable individuals charged to our care.

The provider associations along with the Ombudsman Program have had ongoing discussions about this bill. And we welcome the opportunity to continue the conversation with this legislative body. One suggestion is to revise the language which requires that the notice statement be "printed in not less than eighteen-point boldface type" and add language affirming the value Connecticut places on the quality of care provided to its residents. We all want to be sure another individual of such poor business practice and character never again

does business in Connecticut. Notice of potential criminal liability at time of a change of ownership hopefully will deter an individual so inclined.

**H.B. No. 5762 (RAISED) AN ACT CONCERNING A STUDY OF FUNDING AND SUPPORT FOR HOME AND COMMUNITY-BASED CARE FOR THE ELDERLY AND ALZHEIMER'S PATIENTS.**

Last week Governor Malloy announced the State of Connecticut's Strategic Rebalancing Plan. In this plan the Governor affirms his goal to offer consumer choice in long term supports and services, provide opportunity for individuals to live in a setting of their choosing and with significant savings to the State. As the State develops this Plan it is important to fully understand the needs of individuals diagnosed with Alzheimer's disease or a related dementia and identify optimal care and services. We know that living in our own home as we age is an overarching value and goal for people as they age (University of Connecticut, Long-Term Care Needs Assessment, 2007). It is no different, possibly even greater reason, for individuals with dementia to have care in their home. Understanding the unique needs of Alzheimer's patients and their caregivers is critical to establishing Home and Community-Based care and services. Further study is in the consumers, providers and State's best interest and will inform the strategic rebalancing plan for Connecticut's long term services and supports for the future. The Long Term Care Ombudsman Program supports H.B. 5762.

**H.B. No. 5763 (RAISED) AN ACT CONCERNING GRIEVANCE COMMITTEES IN NURSING HOME FACILITIES.**

Connecticut General Statute 19a-550 (b) (6) requires that residents of long-term care facilities have the right to voice their grievances and "shall have prompt efforts made by the facility to resolve grievances the patient may have, including those with respect to the behavior of other residents." The Long Term Care Ombudsman Program received more than two thousand complaints from residents and their families in Federal Fiscal Year 2012. However, we often also hear from residents and families that they don't want to complain for a variety of reasons so those grievances are likely not captured in data.

Nursing homes are required to have an established grievance log and the Department of Public Health reviews this log at the time of their annual survey. Many providers have established

best practices to hear and resolve complaints, but unfortunately this is not always a standard practice. At times the resident or family member asserts that they brought their concern to the administration but nothing was done to resolve the concern. In one example, a family member complained to the Regional Ombudsman about missing laundry. The individual reached out to the Ombudsman only after numerous complaints to the nursing home staff. We were then told there was no record of their complaints and therefore the facility would not take responsibility for the missing items.

Some providers assert that there are other mechanisms by which residents and families can voice their complaints. I agree. However, the Resident Care Plan is not that place. Ideally this is a multi-disciplinary meeting at which the resident and staff discuss care and health issues such as physical functioning needs (e.g. ambulation, range of motion, weight loss/gain, etc). This generally fifteen minute conference is not the venue to discuss complaints such as missing laundry, poor staff response time, or roommate conflicts as examples. The Resident Council is a place to discuss grievances, but it is a public forum with written minutes and this is not always the ideal mechanism at which a resident wants to bring forth a concern.

The Ombudsman Program supports a revision of H.B. 5763 from "each nursing home facility *shall* establish a grievance committee" to "each nursing home facility *may* establish a grievance committee". Those facilities which have best practices in place are not then required to establish a new mechanism for residents to express themselves. But this option provides the Ombudsman and/or other agencies to suggest or recommend to a nursing home that they establish such committee when current practices are not satisfactory.

#### **H.B. No. 5766 (RAISED) AN ACT CONCERNING NURSING HOME COMPLIANCE WITH COMFORTABLE AND SAFE TEMPERATURE STANDARDS.**

The Ombudsman Program strongly supports adequate temperature controls in every Connecticut nursing home. This proposal attempts to ensure that residents live in a safe and comfortable environment at all times, including the summer heat. A few years ago the Department of Public Health conducted a survey of all of Connecticut's skilled nursing facilities and found that all of the homes have some air conditioning system, generally at least in the hallways and large common areas such as dining rooms. The concern of the Ombudsman Program is that these systems be maintained so that when needed they function adequately. Systems in disrepair are often the reason for inadequate temperature controls during Connecticut's summer heat waves. As in our own homes, most of us exercise proactive maintenance and cleaning schedules. If nursing homes do the same then generally speaking the home's air conditioning system should be prepared for the first series of hot temperatures.

When maintenance and cleaning schedules are not kept up to date, the home should be accountable. Unfortunately, the only way to assure this may be the possibility of a fine or imposed sanction. I urge a greater standard for Connecticut providers to maintain their heating and cooling systems in order to keep residents not just comfortable but also safe.

Respectfully submitted,

Nancy Shaffer, M.A.

State Ombudsman

Department on Aging