

Making Elder Care Better Since 1975

Kansas Advocates
for
Better Care



March 29, 2012

Chairwoman Schmidt and Members of the Senate Public Health Committee:

Kansas Advocates for Better Care is a not-for-profit organization dedicated to improving the quality of care for elders, adults and families using long-term care in Kansas.

Thank you for receiving our testimony regarding the appointment of the Kansas State Long-Term Care Ombudsman. KABC's testimony is focused solely on the need for a strong state ombudsman and Ombudsman program to advocate for elder and adult Kansans in long-term care. KABC's testimony is neutral on the current nomination.

Many of the more than 6,000 requests for assistance received each year by Kansas Advocates for Better Care come as a result of problems encountered by older adults living in a nursing home. Those problems range from being overcharged for medical supplies or services, to suffering bodily harm, to lack of staff to assist them. The overwhelming majority of elders and their families are extremely reticent when it comes to reporting problems and concerns. Sometimes they overcome those fears and report because continuing the current situation is more fearsome than the retaliation or reprisal that they worry will come.

Kansas elders and adults living in long-term care facilities have one authorized, independent representative to hear their complaints, assist them in resolving problems, and advocate for public policies that well-serve long-term care users – the State Long-Term Care Ombudsman. The Older Americans Act authorizes the Long Term Care Ombudsman to fulfill these crucial roles; Kansas statutes mirror the provisions of the Older Americans Act.

If the State Long-Term Care Ombudsman and program is not strong and focused for consumers, then more than 28,000 adults living in Kansas Adult Care Homes do not have an advocate.

Kansas statutes were changed in 1998 to strengthen the State Long-Term Care Ombudsman program because legislators recognized that vulnerable elders, persons with dementia and Alzheimer's, persons without family support, and all adults living in adult care homes deserved and needed access to a strong, independent advocate. The Ombudsman program is now housed in the Dept. of Administration and the State Ombudsman is appointed by and reports to the Governor. In recent years, additional ombudsmen were employed to better serve long-term care residents, although Kansas still falls lamentably below the recommended ratio of 1 ombudsman to every 2,000 residents in adult care facilities.

Currently all three Kansas government positions that provide leadership for programs critical to long-term care consumers are filled by licensed nursing home administrators – Secretary of KDOA, Commissioner of Licensing, Survey and Certification of Adult Care Homes at KDOA, and the State Long Term Care Ombudsman. KABC believes that this wrongly shifts the emphasis/tips the balance away from elder consumers in favor of long-term care providers, specifically nursing facilities. And that it sends a message to elder Kansans that provider perspectives are valued above those of elders and adults needing care.

While professional background as an administrator may give each of these persons knowledge of long-term care issues, which is one of the qualifications needed in an Ombudsman; being an administrator does not necessarily impart an awareness of or sensitivity to the many challenges that elder consumers face each day living in long-term care. On critical issues, such as staffing for resident care, an administrator’s professional responsibilities might result in their choosing a course more favorable to the nursing home’s business needs rather than to the elder consumer’s needs. Consumers legitimately bring that concern to this deliberation, “Will this important resident-designated advocate implement policies or apply policies in a way that is more favorable to nursing facilities and long-term care providers than to elders and adults safety and care?”

“If the ombudsman finds him or herself in a conflict of interest situation (whether it is a conflict of loyalty, commitment, or control), the resident, even more than the program, may suffer. The resident’s problem may not be resolved, certain avenues of resolution may be foreclosed, the resident’s voice may not be heard by policymakers, and the resident’s interests will be inadequately represented or altogether absent from the table at which public policy is made.” From *Real People, Real Problems*, Institute of Medicine Study of the Ombudsman Program.

It is not KABC’s position that appointing a non-long term care facility administrator as Ombudsman will assure that elder consumers will have a strong advocate. It will however assure consumers that there is no real or perceived conflict of interest about where the Ombudsman’s focus and favor resides. When an individual comes to government service and presumably will return to that same industry upon leaving public service, the perception, if not the actuality of conflict of interest is bolstered.

Thank you,

Mitzi E. McFatrach, Executive Director

[For Older Americans Act language on Conflict of Interest and the Role/Function of the Ombudsman see following page.](#)

Conflict of Interest Provisions in the Older Americans Act include:

Ensure that the Ombudsman –

- (A) Does not have a direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;
- (B) Does not have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;
- (C) Is not employed by or participating in the management of a long-term care facility; and
- (D) Does not receive or have the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility;

http://www.nasuad.org/documentation/nasuad_materials/NASUAD%20Ombudsman%20Report%20final.pdf
page 24

Ombudsman Functions include:

The Ombudsman shall serve on a fulltime basis, and shall, personally or through representatives of the Office—

(A) identify, investigate, and resolve complaints that—

(i) are made by, or on behalf of, residents; and

(ii) **relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or** rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of—

(I) **providers**, or representatives of providers, of long-term care services;

(II) **public agencies**; or

(III) health and social service agencies;

(B) provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents;

(C) inform the residents about means of obtaining services provided by providers or agencies described in subparagraph (A)(ii) or services described in subparagraph (B);

(D) ensure that the residents have regular and timely access to the services provided through the Office and that the residents and complainants receive timely responses from representatives of the Office to complaints;

(E) **represent the interests of the residents before governmental agencies** and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(F) provide administrative and technical assistance to entities designated under paragraph (5) to assist the entities in participating in the program;

(i) **analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of longterm care facilities and services** in the State;

(ii) **recommend any changes in such laws, regulations, policies,** and actions as the Office determines to be appropriate; and

(iii) facilitate public comment on the laws, regulations, policies, and actions;

(G)

(i) provide for training representatives of the Office;

(ii) promote the development of citizen organizations, to participate in the program; and

(iii) provide technical support for the development of resident and family councils to protect the well-being and rights of residents;

http://www.nasuad.org/documentation/nasuad_materials/NASUAD%20Ombudsman%20Report%20final.pdf page 21