



*Voices for Quality Care (LTC), Inc. (Voices) is an all-volunteer, non-profit organization of people needing long-term care, their friends and families, family and resident councils, advocates, and concerned citizens working for quality long-term care services and supports in Maryland and Washington, DC.*

The Voices for Quality Care Board of Directors has become increasingly concerned regarding the growing problems created by the continual neglect of the state entities responsible for monitoring the quality of long-term care in Maryland. Within the next 10 years, the quality of long-term care will touch every Maryland citizen from the youngest to the oldest in one way or another. This is a serious issue.

New numbers on staffing in Maryland nursing homes point to a risk of harm for nursing home residents<sup>1</sup> while issues in assisted living facilities remain sincerely troubling. Yet three, and only three, sources of monitoring for long-term care facilities and services currently exist in the state, i.e., the Office of Health Care Quality (OHCQ), the independent Long-Term Care Ombudsman Program, and the Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities. Of these three, OHCQ and the Ombudsman Program are federal as well as state agencies and are governed by both state and federal laws and regulations. None of these three entities are currently in compliance with all aspects of the laws and regulations governing their operations. This has been an issue for years.

### **The Office of Health Care Quality is paralyzed by a lack of funding.**

For at least the last 16 years this agency, the sole entity with the authority to enter long-term care facilities, conduct inspections, investigate complaints, and require poor practices to be corrected, has not received staffing increases sufficient to actually fulfill the federal mandate to monitor care in nursing homes or the state mandate to monitor care in assisted living and in-home care programs. A report from the US Department of Health & Human Services (HHS) Office of the Inspector General (September 2017) found that Maryland, one of the wealthiest states in the nation, is one of only 4 states that cannot investigate immediate jeopardy and actual harm complaints within the required timeframe. This means that Maryland is non-compliant with federal law.

In 2007, 11 years ago, a law was passed that required OHCQ to undertake a full revision of the nursing home regulations in conjunction with numerous stakeholders<sup>2</sup>. Years of work by many stakeholders went into that revision. However, to date, no revised regulations have been accepted and put into practice. In the meantime, the federal government has finished and implemented a full review of the federal regulations governing the operations of nursing homes; thus making all previous reviews of the Maryland nursing home regulations obsolete. This leaves us with the same contradictory and outdated regulations that prompted the passage of that law in the first place.

A COMAR regulation requires that Maryland assisted living facilities (ALFs) be surveyed every 12-15 months to ensure good care for those Maryland citizens living in them<sup>3</sup>. In 2017, there were 1,580 assisted living facilities registered in Maryland. In 2017, renewal surveys were conducted in 614 assisted living facilities. In 2017, 141 initial surveys were conducted and 44 other surveys were conducted in assisted living facilities. That is a total of 799 surveys. That leaves 781 assisted living facilities unaccounted for. In addition, of the 1,234 complaints and facility self-reported incidents, only 911 were investigated<sup>4</sup>. This is not a lack of will on the part of OHCQ, it is a serious lack of adequate staffing.

## **The Long-Term Care Ombudsman Program is paralyzed by lack of staff.**

The Ombudsman Program in Washington, D.C. where Voices also provides services, has an assigned attorney very familiar with all aspects of long-term care law and who is active in the Program as required by federal regulations. DC also provides Ombudsman services to people needing in-home care situations.

The Maryland Ombudsman Program has the occasional input from the attorney who handles all of Department of Aging's (DOA) legal concerns<sup>5</sup>. In this program, Voices is still encountering several local Ombudsmen who appear to act as neutral mediators or extensions of the facilities to which they are assigned rather than as firm advocates for the residents as required by federal law and regulation. The Maryland Ombudsman Program does not handle in-home care complaints and it remains seriously understaffed at both the state level and in some of the local level programs. As a result, this Program is basically unable to robustly manage the federal requirement to make legislators and state agency personnel aware of how their decisions will affect people in long-term care<sup>6</sup>. The noncompliance by these federal and state agencies is primarily the result of years of neglect.

## **The Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities (Oversight Committee) is paralyzed by lack of will.**

This Committee has continually been noncompliant with the law that created it. It is required to *evaluate* care in nursing homes and assisted living facilities and to *make recommendations* for improvements<sup>7</sup>. In at least the last 16 years it has not done one full *evaluation* nor *recommendation* of any issue brought before it. The inaction is due, in part, to reluctance of committee members who are state employees to seem to be advocating for increased funding and staffing. State employees are concerned that to advocate for more effective oversight would put them in the position of opposing the Governor's budget priorities.

## **The Department of Human Resources (DHS) and the Maryland Department of Health (MDH)**

These agencies are responsible for administering the Maryland Medicaid Program and the resulting paperwork. While somewhat improved in recent years, processing the necessary paperwork is still slow and sometimes nonexistent. This has been apparent in recent attempts to assist transfers of residents from Maryland to DC nursing homes. These agencies are still having difficulty processing the necessary paperwork for various Medicaid situations including in-state and out-of-state transfers causing unnecessary stress for affected residents and their families.

## **Solutions**

- A robust increase in staffing for OHCQ that is sufficient to allow that agency to easily manage long-term care facility and services surveys and complaint investigations in a timely manner is a necessity.
- An increase in the Ombudsman Program staffing sufficient to include at least a part-time dedicated attorney, additional staff in the Office of the State Ombudsman that will allow that Office to independently monitor all legislation and agency decisions that affect long-term care, and full staffing at the local ombudsman program levels is a necessity.
- Finding a way to ensure that the Oversight Committee actually fulfills the requirements of the legislation governing it, and providing sufficient dedicated support staff to ensure that it is able to effectively *evaluate* aspects of long-term care in Maryland, and to make significant *recommendations* for improvements is a critical necessity.
- State employees sitting on the Oversight Committee should be given an exemption from the prohibition against lobbying similar to that given to the Ombudsman Program by federal regulations, thereby allowing them to advocate for desperately needed improvements in the quality of care in nursing homes and assisted living facilities<sup>6</sup>.

## **Conclusion**

These problems are not new, but the rapidly increasing presence of large, remote corporate ownership and management companies that currently run many of our long-term care facilities and services along with the diminished operations of the Maryland long-term care monitoring system are compounding these issues. Within a relatively short period of time, the quality of long-term care in Maryland will touch each and every Maryland citizen in one way or another. The care of our most vulnerable citizens has too often been little more than an afterthought in many parts of our government. We are better than this.

## End Notes

1. For a complete analysis of payroll-based daily staffing in Maryland nursing homes during the 3<sup>rd</sup> quarter of 2017 through the 1<sup>st</sup> quarter of 2018, go to the Voices for Quality Care Website. <http://voicesforqualitycare.org/payroll-based-nursing-home-staffing-in-maryland/>

2. "During the 2007 Legislative Session, the General Assembly passed House Bill 837, entitled "Department of Health and Mental Hygiene – Regulation of Nursing Homes – Review," which directed the Department of Health and Mental Hygiene, in consultation with various stakeholders, to review current State laws and regulations with regard to oversight of nursing homes in Maryland." – Wendy Kronmiller, Director of the Maryland Office of Health Care Quality.

3. **COMAR 10.07.14.12.D.** An assisted living program shall be surveyed on-site, at least annually. The Department may extend the time between surveys to up to 15 months if it determines that a licensee has demonstrated satisfactory compliance with this chapter.

4. Maryland Department of Health, Office of Health Care Quality, Annual Report and Staffing Analysis, Fiscal Year 2017, Health-General Article 19-308(b)(4), Health-General Article § 19-1409(e), 2017 Joint Chairmen's Report (p. 72)

5. **Federal Long-Term Care Ombudsman Regulations-- §1327.11 Establishment of the Office of the State Long-Term Care Ombudsman.**

1) The State agency shall ensure that:

- (i) Legal counsel for the Ombudsman program is adequate, available, has competencies relevant to the legal needs of the program and of residents, and is without conflict of interest (as defined by the State ethical standards governing the legal profession), in order to—
  - (A) Provide consultation and representation as needed in order for the Ombudsman program to protect the health, safety, welfare, and rights of residents; and
  - (B) Provide consultation and/or representation as needed to assist the Ombudsman and representatives of the Office in the performance of their official functions, responsibilities, and duties, including, but not limited to, complaint resolution and systems advocacy;
- (ii) The Ombudsman and representatives of the Office assist residents in seeking administrative, legal, and other appropriate remedies. In so doing, the Ombudsman shall coordinate with the legal services developer, legal services providers, and victim assistance services to promote the availability of legal counsel to residents; and
- (iii) Legal representation, arranged by or with the approval of the Ombudsman, is provided to the Ombudsman or any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties.

(2) Such legal counsel may be provided by one or more entities, depending on the nature of the competencies and services needed and as necessary to avoid conflicts of interest (as defined by the State ethical standards governing the legal profession). However, at a minimum, the Office shall have access to an attorney knowledgeable about the Federal and State laws protecting the rights of residents and governing long term care facilities.

(3) Legal representation of the Ombudsman program by the Ombudsman or representative of the Office who is a licensed attorney shall not by itself constitute sufficiently adequate legal counsel.

(4) The communications between the Ombudsman and legal counsel are subject to attorney client privilege.

6. **Federal Long-Term Care Ombudsman Regulations-- §1327.11 Establishment of the Office of the State Long-Term Care Ombudsman.**

- 7)(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 long-term 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;
  - (iv) Provide leadership to statewide systems advocacy efforts of the Office on behalf of long-term care facility residents, including coordination of systems advocacy efforts carried out by representatives of the Office; and
  - (v) Provide information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns.
  - (vi) Such determinations and positions shall be those of the Office and shall not necessarily represent the determinations or positions of the State agency or other agency in which the Office is organizationally located.
  - (vii) ***In carrying out systems advocacy efforts of the Office on behalf of long-term care facility residents and pursuant to the receipt of grant funds under the Act, the provision of information, recommendations of changes of laws to legislators, and recommendations of changes of regulations and policies to government agencies by the Ombudsman or representatives of the Office do not constitute lobbying activities as defined by 45 CFR part 93.***

7. Senate Bill 4: Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities – Revisions ...this Act shall take effect June 1, 2018