



**Joint Senate and Assembly Standing Public Hearing
Residential Health Care Facilities and COVID-19
August 10, 2020**

Testimony Respectfully Submitted by:

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I am Ann Marie Cook, President/CEO of Lifespan of Greater Rochester. I would like to thank you for holding this very important hearing about residential care during the COVID-19 crisis.

To give you some background, Lifespan was formed in 1971 and is a nonprofit organization dedicated to providing information, guidance, and services to help older adults take on the challenges and opportunities of longer life. Our agency offers over 30 programs and services to older adults and family caregivers. Last year we served over 43,000 people. We serve as the regional Ombudsman for the Finger Lakes region – a nine county area.

COVID-19 presented many challenges for residents and families. I would like to speak to you today on the importance of the Long-Term Care Ombudsman Program (LTCOP) and how imperative it is to strengthen this program. As you know, the LTCOP is a federally mandated program tasked with addressing residents' care and quality of life concerns. The program was established in 1972 by the Federal Older Americans Act in recognition of the need to address widespread abuse and neglect in nursing homes. Since that time, its mission has expanded to include other settings where vulnerable older adults and people with disabilities reside, including assisted living, adult homes, and family-type homes.

Throughout this pandemic, the LTCOP staff and volunteers have remained engaged with residents, families, and facilities to provide information and support to ensure that resident rights are protected. In fact, our regional program saw more calls in the month of April than we have ever had before. Because of COVID, we know that:

- Families were/are distraught.
- Families were/are frightened.
- Families were/are desperate for information.

I personally took a call from a woman named Kaye who was crying uncontrollably. Kaye said, ***"Today is my mother's 100 birthday. I dropped off a cake that I made for her, but I was told to drop it at the door. It would have to sit three days before they could give it to my mother. I don't know about her care. I***

don't know if they told her I was there. I don't know if she understands my absence. I may never get to celebrate a birthday with her again. Can you help me?"

Background: Every state has a LTCOP. The program has statutorily mandated functions and responsibilities delineated in the Older Americans Act. These include:

- Identifying and resolving complaints made by or on behalf of residents.
- Representing the needs of residents to policymakers and the public.
- Providing information and educational materials to the community, and
- Most importantly, advocating for the health, safety, welfare, and rights of people residing in long-term care settings.

In New York State, the program is authorized under Section of 218 of the Elder Law, which was updated by Chapter 259- of Laws of 2018 to bring the program into conformance with new Federal guidelines. LTCOP is to operate as an independent functioning office within the New York State Office for the Aging. The NYS Long Term Care Ombudsman has the authority to vet and hire staff at both the state and regional program level. She ensures staff are qualified and free of any actual or perceived conflicts of interest with the long-term care system. NYSOFA has done a great job of maintaining this independent office.

The pandemic has shown us, however, that there is a need to strengthen this important program and make changes.

I respectfully request your consideration of the following:

- ***Request that the Department of Health establish safe protocols for families to visit their loved ones in a nursing home.***

We hear heart-breaking stories of families who wonder if the basic needs of their loved ones are being met. Before COVID, they fed lunch to their loved one. They supported the staff by providing some of the care. They felt part of the care team. They know that homes are understaffed. People are wondering, ***"How do they have the staff to care for my family member? They are understaffed under normal circumstances."*** Families are questioning the 28-day rule and wondering when they will get back in to see their loved one.

- ***Provide funding for nursing homes to purchase technology tools to enhance resident communication options and help reduce social isolation.***

The number one reason people called was help in getting some communication established with their loved ones. The LTCOP quickly helped arrange Zoom-type meetings. When family members didn't have the technology for a Zoom, our staff went to their homes to facilitate a Zoom call. The isolation caused by the prohibition of visitors in nursing homes because of the Covid-19 pandemic impacts the physical and mental health of residents, especially those with dementia who lack full understanding of the reason family and friends have stopped visiting.

- ***Publicize LTCOP's availability to residents and their families.***

The program needs to be publicized more. People do not even know what an ombudsman is or does. During this COVID-19 crisis, we had no access for facilities, so it was even harder to get the word out. I

know the State Ombudsman sent letters reminding long term care facilities and the families they serve of the ongoing requirement to allow residents and families continued access to their ombudsman through various methods of communications including telephone calls and video conferencing.

To encourage continued access, NYSOFA and DOH need to promote LTCOP's resources through social media and news outlets around the State. Facilities need to be reminded of their requirement to provide access to LTCOP to residents and families.

- ***Provide LTCOP with additional statutory authority so that collaboration and information sharing between LTCOP and DOH is occurring to address issues raised by residents and their families that are not resolvable by LTCOP.***

There needs to be a partnership between the NYS Ombudsman Program and the Department of Health.

- There is not a requirement that DOH provide updates or details about the final outcomes of resident complaints raised by LTCOP, even with the permission of the resident. There needs to be.
- To report issues of concern, the LTCOP is expected to call DOH's 1-800 nursing home compliant hotline if there is an issue raised that they cannot resolve. There is no inter-agency agreement or cooperation.
- In addition, DOH is not required to communicate with LTCOP to hear about issues and challenges they are identifying – staffing, quality of care issues, etc. – that could prove useful after they have completed a facility survey.
- We request that you require that DOH allow LTCOP staff and volunteers to represent residents when they request at facility-initiated discharge proceedings, a polite way to describe when a nursing home resident is being evicted.

- ***Provide additional resources for residents and families appealing involuntary discharges.***

Lifespan started an involuntary discharge task force. We started this group because long-term care residents were not provided legal counsel, information or help when they received an eviction notice. The ombudsman stepped in as their only advocate. Nursing homes should be required to provide a listing of free legal advocacy options, facility Ombudsman contact information, and additional information on resident rights consistent with adult care facilities, upon serving a notice of involuntary discharge.

- ***Provide \$2.7 million in additional funding.***

The aging service network has requested this funding in the past. This program, as you know, is operated, in large part, through a cadre of dedicated volunteers. While I believe we should continue to use these trained and certified volunteers, it is not enough support to provide the appropriate advocacy to people in long term care.

A few years ago, the NYS Comptroller conducted an audit of the Ombudsman Program. That report pointed out that only 600 of New York's approximately 1500 long term care facilities (nursing homes, adult care facilities and family-type homes) have an assigned volunteer ombudsman, leaving over 900 facilities to be covered by the less than 50 paid staff (some of whom are part-time) across the state.

- The audit compared national funding for LTCOP vs. NYS's funding. It concluded New York State is underfunding LTCOP. As a result of this limited number of paid staff, only 36% of all long-term care facilities were visited quarterly by LTCOP.
- The audit spoke to the value of the program model. Most people who filed complaints had received frequent visits by ombudsmen before the official complaint was filed. Residents need a trusted and known person to share issues/concerns. They are afraid of retribution. Ombudsmen need to be in the facilities to really understand care issues. It cannot be done from afar. "Boots on the ground" matter. We need staff in the facilities.
- We believe the additional investment would be more than offset by cost savings generated by ensuring better care.
- ***Support the "Reimagine" workgroup chaired by Office of the Long-Term Ombudsman, NYSOFA, DOH, and AARP and request a report of their findings.***

As part of the effort to enhance the future success of this program, it was recently announced that the Office of the NYS Ombudsman will be working to coordinate with NYSOFA and DOH to help facilitate a redesign of the program through advancing a five-point plan to help long term care residents and their families access services through LTCOP.

The goals of the workgroup will focus on:

- Developing a cohesive statewide training for certifying new ombudsmen, including development of a standardized web-based training to allow for more flexibility and increase the volunteer pool.
- Increasing collaboration and information sharing between LTCOP and DOH to address issues raised by residents and their families that are not resolvable by LTCOP.
- Developing clear guidance for residents and families regarding when to contact an ombudsman and when to file a complaint with the Department of Health.
- Engaging with schools of social work and schools of nursing to develop opportunities for students to obtain credits for becoming a certified ombudsman.
- Exploring strategies to best harness the power of volunteers, as well as research alternative models to expand the program.
- ***Expand LTCOP volunteer recruitment strategies.***

While I strongly believe we need more paid staff, in the short-term, we need more volunteers. Most of our volunteers are older. They have already retired. Many have informed us that they do not feel comfortable going back into facilities when they open because of the risk of COVID-19. The State could help with this immediate need by:

- Providing information to all state employees regarding becoming a volunteer ombudsman.
 - Working with the Corporation for National and Community Service to have LTCOP listed on their web portal as a volunteer option.
- Coordinating outreach to AARP and other stakeholders about development of a volunteer recruitment campaign. LTCOP offers retirees and other interested volunteers of all ages an

excellent opportunity for those seeking a meaningful and rewarding way to use their skills to help others in their community.

There is a famous quote by Mahatma Gandhi in which he says, ***“The true measure of any society can be found in how it treats its most vulnerable members.”*** Thank you for holding this public hearing about some of the most vulnerable members of our society. Thank you for reimagining a long-term care system that can ensure we are protecting the quality of care and quality of life for all older adults in New York State.

Thank you. Please contact me at (585) 244-8400, if you have any questions or need any additional information.