

OFFICE OF THE DISTRICT OF COLUMBIA
LONG TERM CARE OMBUDSMAN
ANNUAL REPORT
Fiscal Year 2007
(October 1, 2006 to September 30, 2007)

Submitted by:
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I. HISTORY

The District of Columbia Office on Aging in 1975 established the Office of the District of Columbia Long Term Care Ombudsman with grant funds from the Administration on Aging. The 1978 amendments to the federal Older Americans Act required each state and the District of Columbia to establish a state level Long Term Care Ombudsman Program responsible for:

- investigating and resolving complaints about nursing homes,
- encouraging citizens' involvement in nursing homes, and
- monitoring the development and implementation of regulations, laws and policies affecting nursing home residents.

A 1981 amendment to the Older Americans Act extended the ombudsman program's jurisdiction to board and care homes, called community residence facilities (CRFs) in the District of Columbia. A 1987 amendment to the Older Americans Act elevated the ombudsman from a program to an office, required that adequate legal counsel be available and granted immunity to ombudsmen for good faith performance of their duties. A 1992 amendment ensured against conflicts of interest and emphasized the role of ombudsman as advocate for change to improve the quality of care and quality of life for residents of long term care facilities.

The D.C. Office on Aging operated the ombudsman program until 1985, at which time a grant was awarded by DCOA to Legal Counsel for the Elderly, part of the American Association of Retired Persons (AARP), to operate the program. The ombudsman program has benefited from placement at Legal Counsel for the Elderly because of the available legal support and because of the access it has to the vast AARP network for the recruitment of volunteer resident advocates.

Passage of the Long Term Care Ombudsman Program Act of 1988, D.C. Law 7-218, D.C. Code Ann. § 7-701.01 *et seq.*, strengthened the program by providing the ombudsman with the tools necessary to carry out the responsibilities mandated by the federal Older Americans Act. The District law also reinforced the Ombudsman's emphasis on advocating for and protecting the rights of residents of nursing facilities, assisted living residences, and CRFs.

II. STAFFING

The Office of the D.C. Long Term Care Ombudsman is operated by the D.C. Long Term Care Ombudsman, who is appointed to the position by the Executive Director of the D.C. Office on Aging. The Office also employs a full-time ombudsman who focuses on complaint resolution and advocacy in assisted living residences and CRFs. In addition to the full time Board and Care Ombudsman, the Office employs a part-time attorney to support both the Office of the D.C. Long-Term Care Ombudsman Program and subcontracted ombudsman program.

Furthermore, the D.C. long-Term Care Ombudsman Program contracts with one community based Senior Service Agency, Emmaus Services for the Aging, to provide local ombudsman services for residents in nursing facilities. Emmaus has two local ombudsmen, full-time, to advocate for the rights of residents and investigate complaints on behalf of residents in nursing homes. Emmaus Services for the Aging monitors the quality of care of nursing home residents in all of the quadrants throughout Washington, D.C. area. Both local ombudsmen are responsible for having a cadre of trained volunteer advocates to maintain a continuous community presence in the nursing facilities in their service areas.

III. LEGAL AUTHORITY

The Office of the D.C. Long Term Care Ombudsman is charged by D.C. statute with the following responsibilities:

- Advocate for the rights of older persons and other persons who are residents of nursing facilities, assisted living residences, and community residence facilities,
- Investigate and resolve complaints made by or on behalf of an older person or other person who is a resident of a nursing facility, assisted living facilities, or a community residence facility,
- Monitor the quality of care, services provided, and quality of life experienced by older persons and residents in long-term care facilities to ensure that the care and services are in accordance with applicable District and federal laws,
- Establish and conduct a training program for program staff and volunteers, and
- Establish and maintain procedures to protect the confidentiality of information regarding residents.

These responsibilities parallel those in the federal Older Americans Act, which also governs operation of Ombudsman activities.

IV. SCOPE

There are approximately 5,409 residents in licensed nursing facilities and community residence facilities in the District of Columbia. The 20 nursing facilities that are licensed by the District of Columbia have a total capacity of about 3,413 beds¹. There are also two nursing facilities with a combined total of 420 beds that are operated by the federal government and are not licensed by the District of Columbia; and St. Elizabeth's Hospital operates a 120-bed Medicaid-certified nursing home unit that is not locally licensed, thus does not fall under the Ombudsman Program's jurisdiction. There are approximately 134 licensed community residence facilities with an estimated total capacity of over 1,277 beds, and 11 assisted living residences with roughly 719 units (not licensed by the District of Columbia—see section 7.3). In addition, there are an unknown number of unlicensed CRFs operating in the District of Columbia with an unknown number of beds.

V. FY 2007 ACTIVITIES

A.	<u>Case Resolution and Information Services</u>	<u>YTD</u>
	Number of requests for information	1549
	Number of requests fulfilled	1549
	Number of individuals who filed cases ²	578
	Number of cases closed	549
	Number of cases still pending	29
	Number of complaints for which government policy or regulatory change or legislative action was required to resolve	4
	Number of complaints that were withdrawn by the resident or complainant	3
	Number of complaints which were referred to other agencies for resolution	258
	Number of complaints where no action was needed or appropriate	57

¹ The total number of beds listed in this report is a combination of nursing home beds, assisted living beds, sub-acute beds, residential beds, and independent living beds found in each nursing home's program being offered to the general public and monitored by the ombudsman program. These numbers will change in FY 08 due to two nursing home closures taking place between March – September 2007, and November – December 2007.

² A case is defined as any person lodging concerns (complaints) to the Ombudsman Program.

Number of complaints that were partially resolved but some problem remained	779
Number of complaints that were resolved to the satisfaction of resident or complainant	341
Number of complaints not resolved to satisfaction of resident or complainant	50

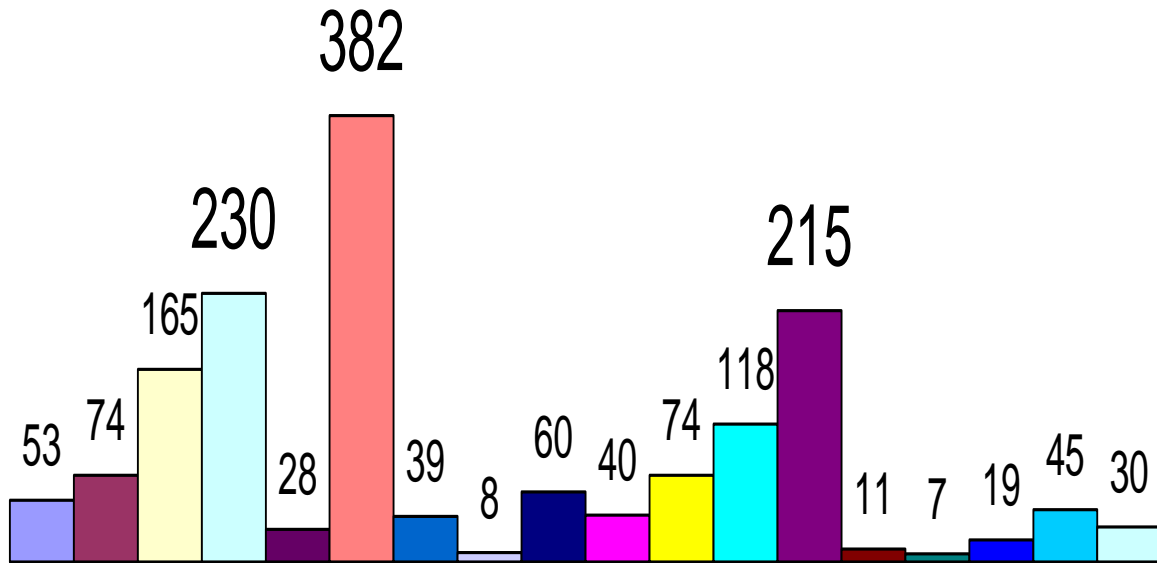
B. Complaint Analysis:

Total Number of Complaints Filed and Investigated: 1598

1. Itemized List of Complaints³:

³ The category of complaints listed on this page are the main topic areas that represent 133 sub-complaint categories that DHHS, Administration on Aging, mandated that each ombudsman and volunteer staffer must report during an investigations and/or monitoring visits when complaints are found. A complaint is defined as any problem or issue on which an ombudsman takes action on behalf of a nursing home, assisted living, or CRF resident. The number of complaints is larger than the number of individuals who file complaints because one individual often has several different complaints. For a complete list of codes, please contact the DCLTCOP at 202-434-2140.

2007 Complaint Analysis

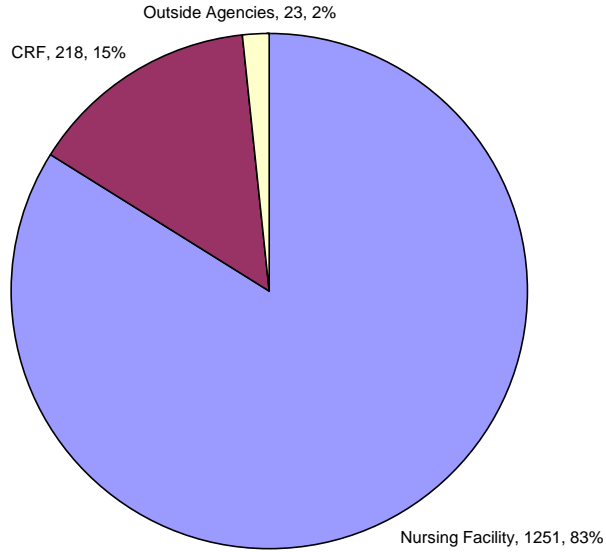


- Abuse, Gross Neglect, Exploitation:
- Access to Information:
- Admission, Transfer, Discharge, Eviction:
- **Autonomy, Choice, Exercise of Rights, Privacy**
- Financial, Property (Except Financial Exploitation):
- **Care:**
- Rehabilitation of Maintenance of Function:
- Restraints – Chemical and Physical:
- Activities and Social Services:
- Dietary:
- Environment:
- Policies/Procedures, Attitudes, Resources:
- **Staff:**
- Certification/Licensing Agency:
- State Medicaid Agency:
- Systems/Other:
- Public or other congregated housing not Providing personal care:
- Other Complaints than Nursing/CRF settings:

Total Number of Complaints Verified:

1492

2. Of the 1,492 complaints verified, the following are percentages that concern:



3. Number of grievances received concerning ombudsman breach of confidentiality 0

C. Hearings to Challenge Involuntary Moves of Residents

Total number of 6-108 Discharge and Transfer Notices received	3665
Notices of involuntary moves received	41
Hearing requests made to challenge an involuntary move	32 ⁴
Number of hearings held (These include status conferences and mediation)	54 ⁵

⁴ **Reason for discrepancy:** Nine of the 41 cases in which the resident was given a 6-108 Notice of Involuntary Discharge were resolved through informal mediation prior to the DCLTCOP having to file a hearing to challenge.

⁵ **Reason for discrepancies:** More than one hearing was needed to be held in order to resolve the legal complaint especially in regard to eight residents who received 8 Notices of Discharge for nonpayment at the same time. Total number of non-duplicated court filing for FY 07 was 32.

that led to resolutions favorable to the residents)

Cases won (Including status conferences and mediation)	39
Number of requests withdrawn (negotiated a satisfactory solution)	2

D. Maintaining A Presence In Long-Term Care Facilities
and the General Public

Nursing Facilities

1. Total number of hours spent by ombudsman staff and volunteers in nursing facilities	
Emmaus Services for the Aging	2722.5
United Planning Organization ⁶	1278.5
	TOTAL 4001.0

Total number of volunteer ombudsmen 15

2. Community Residence Facilities (CRFs)

Approximate number of CRFs	134
Approx. number of Assisted Living Facilities	11
Licensed CRFs visited	89
Suspected unlicensed CRFs visited	5
Assisted Living Facilities visited	11

E. Training and Outreach

1. 42 training sessions on residents' rights were provided to over 500 staff, paraprofessionals, and directors of MHCRFs and CRFs; the three main topic areas were: Residents' Rights, OBRA Regulations, and Discharge and Transfer Planning.

⁶ United Planning Organization's contract was terminated by the Office of the D.C. Long-Term Care Ombudsman Program as of June 2007, thus the unit of services discrepancy reported per program. The local program was consolidated within Emmaus Services for the Aging.

2. 61 training sessions (including one monthly staff meeting/training seminar) were given to the staff and volunteers of the DCLTCOP totaling 122 hours.
3. The DC Long-Term Care Ombudsman Program hosted or participated in 5 city-wide trainings for CRF providers and long-term care social workers: Residents' Rights, Discharge and Transfer Procedures for Residents and Providers, Low-Income Housing Admission Protocols, and Medicaid Payability and Money Management responsibilities for Representative Payees. The speakers were from Department of Health, Medicaid Assistance Administration, Department of Human Services, Income Maintenance Administration, D.C. Housing Authority, Center Referral Bureau, DHS, Adult Protection Administration, D.C. Rape Crisis Center (addressing Elder Sexual Abuse Prevention and Supports) and lastly, the Office of the Inspector General, Medicaid Fraud Control Unit.
4. 168 consultations to facilities and providers were performed by the staff within 131 total hours, the three most discussed topic areas were:
 - a. Discharge/eviction planning notices,
 - b. Behavior Modification issues (dementia, mental health, etc.); and,
 - c. Transfer or eviction hearings.

The average length per consultation was approximately 45 minutes with providers

798 consultations to individuals were addressed by staff within 492 total hours, the three most discussed topic areas were:

- a. Discharge/eviction planning notices,
- b. Care Planning; and,
- c. Legal assistance and support.

The average length per individual consultation was approximately 40 minutes per individual.

5. The DCLTCOP staff either hosted or participated in 71 community educational seminars for the general public and has collaborated with a host partners, including: The D.C. Office on Aging, AARP D.C., Legal Counsel for the Elderly, Citizens Action Network, Leadership Council on Aging Organizations, NCCNHR, National Association of State Long-Term Care Ombudsman Programs, D.C. Long-Term Care Coalition, to just to name a few.
6. The DCLTCOP has had 31 interviews with local and national media outlets.

IV. Significant Achievements

The D.C. Long-Term Care Ombudsman Program has achieved the following in FY 07:

- The Long-Term Care Ombudsman Program wrote and published, in August 2007, an educational whitepaper entitled: Office of the D.C. Long-Term Care Ombudsman Program, Overview and Educational White Paper of the Assisted Living Facilities in the District of Columbia. The white paper analyzed the types of assisted living facilities located in D.C., how a D.C. resident can maintain independence and autonomy, and how Individualized Service Plans (ISPs) draft contracts and controls services and fees. This paper was researched, written, and edited by Steve Michael Clark, student intern with Legal Counsel for the Elderly, law intern with American University, Second Year; Joan E. Joseph, MEd in Gerontology and MS in Therapeutic Recreation from Columbia University; Mary Ann Parker, Attorney, Office of the D.C. Long-Term Care Ombudsman Program; Lydia Williams, Board and Care Ombudsman, Office of the D.C. Long-Term Care Ombudsman Program, and Gerald Kasunic, Director, Office of the D.C. Long-Term Care Ombudsman. Without a team approach and everyone's specific knowledge and experience in the assisted living arena, this project would not have been possible. To download a copy of the report visit: www.aarp.org/lce
- After drafting legislation entitled: the Assisted Living Residence Regulations Act of 2000; and participating for six and half years worth of government, provider, and advocacy meetings in order to create municipal regulations and licensure protocols for assisted living providers to no avail, the D.C. Long-Term Care Ombudsman partnered with Boise, Flexner, and Schiller's pro bono attorneys, William Iscaason and Chris Hayes, to lodge a mandamus law suit against the District of Columbia in October of 2006. Throughout the fiscal year, Ms. Mary Ann Parker, Ombudsman Program Attorney, Lydia Williams, Board and Care Ombudsman, and Gerald Kasunic, Director, collaborated with the pro-bono law firm to research laws, gather evidence and statistics, as well as provide affidavits in order to create motions and court briefs. The D.C. Superior Court's Judge Breman heard the case in late August of 2007 and shortly thereafter issued a Consent Order stating that the D.C. Department of Health, and the District of Columbia's Mayor, must have municipal assisted living regulations, licensure protocols, and a survey team created and operational by April 1, 2008.
- In March 2007, the Office of the D.C. Long-Term Care Ombudsman Program was able to obtain additional funding through Legal Counsel for the Elderly (host agency) to hire two part-time employees to assist Ilethia Moore, Local Long-Term Care Ombudsman, with the monitoring duties of the largest nursing home in D.C. closing. Beverly Living Center – Northwest cared for 335 residents at the time of its announcement. The part time ombudsmen assisted with: residents' discharge model planning and exit meetings, legal assistance needed during and after the residents'

discharges, as well as conduct 30 day follow up phone calls and one – one visits to ensure a safe and orderly transfers. Even during the writing of this report, Ms. Moore and her staff continue to follow up with families and residents to ensure each complaint or concern has been resolved to the best of their abilities.

- In March 2007, Gerald Kasunic, liaison for the National Association of State Long-Term Care Ombudsman Programs (NASOP), arranged a meeting with Senator Robert Byrd (D – W.V.), the Chairman of Senate Committee of Appropriation, Larry Medley, W.V. State Long-Term Care Ombudsman, and Brian Lindberg, Executive Director of the Consumer Coalition of Quality of Care, to discuss the national long-term care ombudsman program's Older Americans Act appropriations; especially to ensure that each state ombudsman program will be able to expand their programs to advocate for residents residing in assisted living programs.
- In April 2007, the Beverly Living Center – Northwest nursing home refused to readmit a resident from a hospital claiming that while there was an available bed there was not an available dialysis chair. Because the resident needed in-house dialysis, the lack of a chair was enough to block her readmission. Beverly Living Center – Northwest's Nursing Home Administrator claimed that it was their facility, not the independent dialysis center, who could dictate whether there was an available chair since the nursing home contracted with the dialysis unit. The Ombudsman Program became involved on the resident's behalf because the nursing home did not seem to applying this new policy fairly nor was it supported by either federal or District law. In addition, the resident's family suspected that the nursing home was trying to block readmission because the resident's daughter had been very vocal in her complaints regarding the quality of care her mother had received. The Ombudsman Program filed an appeal on the resident's behalf which stayed the discharge. At a discharge hearing, the Ombudsman Program successfully argued that the nursing home was inconsistent and arbitrary in its policy regarding the holding of dialysis chairs. Furthermore, the Ombudsman Program confirmed through a witness that there was available chair. After hearing this evidence, the administrative law judge (ALJ), with the agreement of the parties, ordered that the resident be admitted to the facility immediately.

This case is significant not only because an ALJ ordered readmission of a resident to both a bed and dialysis chair, but he also allowed and reinforced the dialysis center's autonomy in these matters. During this time, another case was reported to the Ombudsman Program that the Specialty Hospital of Washington – Hadley was refusing to readmit a resident because this new resident also needed dialysis treatment and the facility administrator said it was their policy not to provide out-of-facility dialysis while the resident was residing in this nursing home. Our local ombudsman (Charles Marquardt) advocated on behalf of the resident; with the result being the nursing home changing its policy, thus avoiding going to court.

- The Local Long-Term Care Ombudsman, Charles Marquardt, and Mary Ann Parker, Attorney for the Ombudsman Program, challenged 6-108 Notices of Discharges

issued by a nursing home to eight residents based on nonpayment. In each Notice, Grant Park Care Center claimed the resident did not pay his “patient pay amount” as a Medicaid beneficiary. The Ombudsman Program filed a Motion to Quash all eight Notices because the reason for discharge was confusing, vague, and in violation of the District law. At the final hearing, the Administrative Law Judge agreed with the Ombudsman Program’s argument that the reason provided in the Notice was defective because it only vaguely referred to “patient pay amount”, as well as did not provide any definitive fiscal amounts or specific details regarding each residents’ discharge. In the ALJ’s final order, he explained what must be included in future notices of discharge against residents for nonpayment; because “nonpayment” is used as a frequent argument by nursing home administrators to discharge residents, this guidance from the Court will continue to benefit residents in the future.

- Robert J. Rhudy, Executive Director of the Maryland Legal Services Corp., is working with the city of Vancouver, British Columbia, to create an elder law and advocacy office for the Canadian elder and disabled citizens. Because the Ombudsman Program is ranked as one of the best advocacy programs throughout the nation, Mr. Rhudy visited the D.C. Long-Term Care Ombudsman Program and Legal Counsel for the Elderly to discuss: staff operations and duties, reviewed our organizational chart, asked questions regarding our office set up, and inquired advocacy and legal approaches to cases and referral resources. As part of his evaluation, Mr. Rhudy asked the Ombudsman program if we created a new office what types of computer software and hardware would we want, and we gave him a tutorial of our current system and our wishes to upgrade. Mr. Rhudy also discussed the location of such an office and we suggested a law firm, university setting, or research firm, and emphasized the need for autonomy and physical independence of the office (and staff) in order to be successful. Mr. Rhudy stated that he may return in a few months to discuss this project in further detail when the Vancouver office opens.

VII. RECOMMENDATIONS FOR LEGISLATIVE SYSTEMS AND REGULATORY CHANGES

1. Inadequate Staffing

Problem: Staffing shortages continued to be a major issue in D.C. nursing facilities due in part to poor benefits and wages of certified nursing assistants (CNAs), especially now that the third most commonly reported complaint in FY 07 to the Ombudsman Program. The high maintenance needs of residents and low retention rate for nursing staff is the most serious area of concern for nursing home administrators. Another area of concern is the lack of modern training that would affect the culture and supervision of staff, which becomes a systemic issue affecting staffing ratios. As the Centers for Medicare and Medicaid Services (CMS) studies have pointed out, there is a direct relationship between quality of care and nursing staff. This topic were addressed in Council Member

Catania's Long-Term Care Task Force in 2005 and 2006; and is now revitalized with the Mayor's Long-Term Care Work Group to address long-term care improvements, including nursing home workforce issues. The Long-Term Care Ombudsman Program will continue to work with all of the Mayor's LTC Work Group members and to advocate for legislation and regulation changes using the recommendations within the Long-Term Care Task Force's report.

Barriers to resolution: 1) Fiscal: the City Executive Branch and the City Council will need to infuse funding in D.C.'s 2009 fiscal budget using either CMP funds or the "bed tax" being collected by the Department of Health, Medical Assistance Administration to ensure staffing ratios standards are met, 2) the D.C. Board of Nursing will need to collaborate with the Ombudsman Program and the LTC Coalition members to create a training curriculum, and 3) DC Health Care Association (DCHCA) will need to be a participant, along with other LTC stakeholders, to create, implement, and maintain training standards to improve delivery of services.

Recommendation(s) for system-wide change: 1) The Ombudsman Program will need to attend each LTC public hearing pertaining to improving quality of care and life in LTC facilities, especially those hearings targeting nursing homes, 2) Openly discuss training curriculum with the President of the DCHCA, and 3) the Ombudsman Program will need to be active in the collaborative efforts in creating and maintaining training and ratio standards, and 4) the Ombudsman Program will need to advocate for CMP and bed tax funds to be directed and used to increase the work force while at the same time ensuring that the funding is not being pocketed by the nursing home providers and their investors.

2. Amendments to and Implementation of the D.C. Assisted Living Residence Regulations Act of 2000

Problem: D.C. assisted living residence legislation was passed in January 2000, however the Department of Health has yet to created and published Assisted Living Licensure Regulations.

Barriers to resolution: Even though the Ombudsman Program has won its writ of mandamus law suit this September and the D.C. Superior Court issued a Consent Order for the District of Columbia to create a licensure protocol and survey division, the Department of Health (DOH) has recently begun using the Assisted Living Resident Regulatory Act of 2000 starting is past October. However, the Ombudsman program is requesting that the DOH issue regulations, assisted living licenses, develop an enforcement process, and create a training division that would focus on quality of care delivery services, resident and staff satisfaction survey process, and regulatory compliance. Government resources have yet to be established to create a strong enforcement division, licensing protocols, and sections of the regulations must be revisited and revised so as not to conflict with alternative DC Municipal Regulations, Title 22, Chapter 34 regulations governing residents' rights, money management counseling, and regulatory enforcement.

Recommendation(s) for system-wide change: 1) advocate for the development of adequate training, implementation and enforcement 2) advocate for expansion of enforcement and complaint investigation staff/division; 3) advocate for strong residents' rights' regulations that will reflect quality assurances, expectation surveys, and satisfaction survey within the regulatory protocols, including monetary sanctions and adequate assisted living licensing protocol standards; 4) collaborate with stakeholders to create a research group to analyze and research best practices and strategies in order to introduce cultural and managerial change in assisted living residences, and; 5) seek legal remedies if the District of Columbia is not focused on creating regulations, policies, or protective enforcement units that will oversee the assisted living industry.

3. Insufficient Oversight and Weak Enforcement of Board and Care Homes (Community Residence Facilities-CRFs), (Mental Health Community Residence Facilities-MHCRFs) (Supported Independent Living-SILs)

Problem: Residents in CRFs, MHCRFs, and Supported Independent Living under 22 DCMR Chapters 34 and 38 continues to endure unprofessionally delivered services and poor quality of care due to untrained community residential providers.

Barriers to resolution: 1) Due to the longevity of practicing limited enforcement measures against providers who are poorly delivering services or operating below minimum standards, the DOH and Department of Mental Health (DMH), enforcement survey teams do not take decisive enforcement actions, 2) Unmonitored providers are not sanctioned or held to any licensing standard since enforcement teams are not upholding and enforcing the D.C. Municipal Regulations governing all CRF providers, 3) DMH residents are being funneled to supported independent living without monitored wrap-around services ensuring quality and consistency, and 4) DMH Supported Independent Living (SILs) providers are not sanctioned or held to the licensing standards due to the definition of their contracted services, even though providers continue to deliver the same mental health community services to residents.

Recommendation(s) for system-wide change: 1) advocate for both the Department of Health and the Department of Mental Health to impose higher monetary penalties for civil infractions by unlicensed and licensed CRF providers; 2) advocate for DCRA, University Legal Services, and the Adult Protection Services to assist with inspections of suspected unlicensed, unsafe housing programs; 3) register the severity of the issues with policy makers and legislators; 4) continue to work with advocates, legislators, regulators and the community to generate a supply of quality CRFs and assisted living residences; 5) continue to work closely with the DMH to ensure that workable policies and procedures are created, implemented, and enforced and that DOH develops administrative policies and procedures for its CRF regulatory system; and 6) continue to work closely with DMH and DOH ensuring that the MOA agreements are upheld by each agency, including: sharing information regarding complaints, unusual incidents, annual reports, and quarterly meetings, and 7) Work closely with the DOH and DMH

enforcement offices to advocate for managerial cultural change that will incorporate a new strategy to improve enforcement standards.

4. Family and Resident Council Regulation Implementation

Problem: Due to facility interference with both resident and family councils, and the Department of Health stating that there is no local regulations to protect resident and family councils, councils in the nursing home are not protected and strongly influenced by providers regarding how each council produces: grievances, city council testimony, or how councils can positively impact their own living environments.

Barriers to resolution: Because the DCMR Title 22, Chapter 32 does not list either family or resident council protective services, the long-term care providers can interfere with each council without fear of enforcement sanctions or fines.

Recommendation(s) for system-wide change: 1) Create and introduce regulations to the city council, 2) work for passage of the new family and resident council regulation, and 3) ensure that the newly accepted regulations are published in the DCMR and enforced by DOH, HRA.