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Senate Special Committee on Aging

“The Nursing Home Reform Act Turns Twenty: What Has Been Accomplished, and What Challenges Remain?”

May 16, 2007

Statement of the Center for Advocacy for the Rights and Interests of the Elderly (CARIE)

The Center for Advocacy for the Rights and Interests of the Elderly (CARIE) and its Philadelphia Long Term Care Ombudsman Program is pleased to be given this opportunity to acknowledge the 20th Anniversary of The Nursing Home Reform Law, OBRA '87. OBRA '87 has been instrumental in encouraging all stakeholders to work together to change the culture of the nursing home to make it a truly better place to live for our elderly. As a local ombudsman program serving a large urban area, we visit 3,000 residents living in 20 nursing facilities. CARIE regularly educates residents, family members and staff persons about resident rights. Our statement reflects our first hand experience of the impact of OBRA's accomplishments as well as the challenges that remain.

CARIE's ombudsman program was part of the nationwide effort sponsored by NCCNHR to define quality of care from the resident's perspective that informed the Nursing Home Reform Law. We utilize key principles set forth in OBRA '87 every day to ensure residents are educated about their rights, are given the opportunity to make informed decisions about their care, and are empowered to exercise their rights to ensure their quality of life.

OBRA '87 created rights and opportunities that enable residents to take greater control of their lives through participating in the care planning process and in the survey process itself. The law also provides ombudsmen with the tools and support needed to educate residents and families about resident rights and about the performance of the nursing facilities in which they reside. We remember the days when the survey process consisted primarily of reviewing records, and when consumers and even the ombudsman had extremely limited access to long term care survey reports. In our area, consumers reviewed these records so infrequently that even the custodians of the information (the local Social Security offices) did not know where the reports were maintained! Since information is more readily available now, the ombudsman, residents and their families can be alerted to problems at prospective facilities as well as monitor the progress being made to remedy identified problems.



Center for Advocacy for the Rights and Interests of the Elderly

100 North 17th Street, Suite 600 Philadelphia, PA 19103

T: 215.545.5728 F: 215.545.5372 W: www.carie.org



Although several facilities in Southeastern Pennsylvania were pioneers in restraint reduction even before OBRA '87, many nursing home residents in the state were physically and chemically restrained prior to the new law. OBRA provided an additional impetus for facilities in our state to recognize best practice and to drastically reduce the use of restraints to the extent where today, the ombudsman is sometimes called upon by family members who mistakenly believe that restraints would provide greater safety and promote better quality of life for their loved ones, but the nursing facility will not employ them.

While it is true that OBRA '87 has paved the way to “promote and protect the rights of each resident” and places a strong emphasis on individual dignity and self determination there is still much more work to be done.

Dignity and Respect

Residents of long term care facilities regularly reach out to the ombudsman program for assistance in realizing their right to be treated with dignity and respect. Their complaints often focus on the tone or attitude of the caregiver rather than the content or the words that are used. This subtle difference is not easily substantiated by surveyors unless the incident is witnessed by a bystander who is considered to be reliable. Residents' voices must continue to be heard as well as believed, and we must all work harder to eliminate failures to promote and protect dignity and respect in long term care. It is important that facility staff at all levels receive training to ensure they have the needed communication skills and understand the impact their communication style has on residents. It is also important for survey staff to receive training so that they can more readily identify and substantiate this common but overlooked problem.

Residents' voices must be heard

Residents' experiences as reported to surveyors must also be heard. As recently as April 2007, an ombudsman attended a closed resident meeting conducted by the PA Department of Health during its annual survey. Residents told the inspectors about their continued problems with call bells, stating that their call bells are not answered in a timely manner or that staff come in and turn off their bells without providing the needed care. They must then wait to receive help. Even though residents voiced these concerns to the inspectors and the ombudsman verified their complaints based upon a number of open cases, the inspectors did not substantiate these complaints or cite them at the level of a deficiency. To no one's surprise, they were also unable to verify these complaints through observation while conducting their inspection. We echo Alice Hedt's (Executive Director, NCCNHR) statement that residents should have the right to challenge survey findings that do not appropriately address deficiencies experienced by residents.

Insufficient Staffing

Over the past three years, 32% of the complaints received by our local ombudsman program were care related. The highest number of complaints received by the

ombudsman (in order from most frequent to least) are, personal hygiene, complaints of not being turned, improper handling, failure to respond to requests for assistance and medication administration and organization. Half of these complaints were verified.

Most of the care complaints that the ombudsman receives and observes at facilities can be remedied by better staffing levels for all shifts. Residents regularly complain to the ombudsman about staffing levels at nursing homes, stating their needs are not being met because of insufficient staffing. Residents have even told the ombudsman that sometimes they don't ask for help when they need it because they feel bad for the caregivers.

The residents' needs range from those related to basic quality of care such as being assisted to the bathroom or being changed promptly when that assistance is not provided, to quality of life issues like being unable to enjoy the fresh air and sunshine on a beautiful day because there is no staff person available to assist them to leave the building or to provide supervision.

We have also received anonymous calls from staff people who want to convey to the licensing agency that their facilities' payroll records should be examined to corroborate the records of staffing levels. These situations must change. In order to truly promote an atmosphere that emphasizes individual dignity and self determination, facilities must have the staffing necessary to be able to provide basic care and enable the choices that residents make.

CARIE also recognizes other connections between the experiences of direct care workers and residents, and supports the need to address workforce issues as a crucial part of realizing quality long term care. CARIE leads a statewide coalition, Better Jobs, Better Care PA, to advocate for changes in Pennsylvania that will positively impact the working conditions, benefits, and career options for direct care workers with the goal of improving quality of care for residents.

It is extremely frustrating to continue to witness the problems that frail older adults endure from poor staffing and, that after 20 years, since the passage of OBRA, to realize more hasn't been done to address the staffing problems in nursing facilities. There is overwhelming evidence from research, from residents and their families, and even the staff themselves about the detrimental impact of inadequate staffing levels. We hope that Congress will finally address this major problem and implement and enforce policies necessary to ensure facilities are adequately staffed to meet residents' needs.

Founded in 1977, CARIE is a nonprofit organization dedicated to improving the quality of life for frail older adults. CARIE's focus of concern spans the long term care continuum from those who are homebound to those who are institutionalized. Older adults who experience physical frailty or psychological impairment frequently have difficulty advocating for their needs and are often a silent group. CARIE works to protect their rights and promote awareness of their special needs and concerns.

In conclusion, CARIE urges Congress to build upon the accomplishments of OBRA, consider our recommendations as well as support the recommendations made by NCCNHR and Charlene Harrington. Thank you for the opportunity to provide comments. I can be contacted at 215-545-5728 or menio@carie.org for any questions or clarification.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Diane A. Menio".

Diane A. Menio
Executive Director