

Comments to the Governor's Assisted Living Facility Task Force

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My name is Brian Lee. For most of the past decade, I served as Florida's State Long-Term Care Ombudsman and have worked as an ombudsman for over 13 years.

I currently serve as the Executive Director of a nursing home and assisted living facility resident citizen advocacy group called Families for Better Care.

Before I go over my remarks, I would like to acknowledge the comprehensive ALF investigation by the *Miami Herald* and the outstanding reporting by Michael Sallah, Carol Marbin Miller, and Rob Barry who worked diligently to shed the light on the unfortunate reality of the abuse and neglect of residents that exists in far too many assisted living facilities.

In my tenure as the State Ombudsman, I personally encountered residents lying in feces, medications given inappropriately (or not at all), little or no activities, verbal abuse of residents, and malnourished residents starving from lack of food.

In one incident, I recall a woman approaching me and begging for our help, fearing that "the facility would kill her" for speaking with the ombudsman.

However, while that may be the case, let me state that there are many **good facilities** and **decent, caring operators** throughout our state, but there are far too many poor providers too often skirting regulations in the interest of squeezing a few more dollars out of the residents' pockets and into their own checkbooks. And in some cases, our ombudsmen were told that some regulators looked the other way and allowed providers to ignore the regulations.

It is most unfortunate that many of the nefarious providers have soiled the reputation of this industry through devious acts that have resulted in the neglect and abuse of residents.

Now many of the good operators are in "**damage control mode**," having become more concerned about protecting the "industry's image" working to stem the tide of additional regulations instead of working to ensure residents are safe.

A good example of this "pass-the-buck" philosophy is reflected in this advocacy statement posted on one trade association's website (which shall remain nameless), encouraging their members to write policymakers, and more or less, blame state regulators for the industry's mistakes. The posting states:

"The industry received no information from the state that such tragic incidents were occurring or the inability of the state to enforce sanctions against these communities. Had we been made aware, we would have worked to provide the Agency with any resources they needed to address these situations."

That statement is ludicrous.

If that were the case, providers should be raising cane for overpaying in association membership dues because their respected associations fail to grasp the ALF landscape.

To further confuse the public dialogue, the industry throws around terms like “*deregulation*” and “*duplication of agency services*” in order to gain policymakers’ sympathies regarding their “hardships” by portraying an overregulated industry, when, in fact, the exact opposite is true.

So it is my hope that the *Miami Herald’s* efforts will ultimately result in improved care and safety standards for residents, either through resident-focused recommendations from this workgroup or through increased public scrutiny of this broken industry.

Now, how can assisted living quality be improved?

For today’s purposes, I have categorized my thoughts into two of the workgroup’s focused objectives: regulation and consumer information.

For **Regulation** I propose:

Regulation

- **The Agency for Health Care Administration should inspect standard licensed ALFs at least every 15-18 months, whereas facilities with specialty licenses are inspected at least annually.**

It is clear from the *Herald* series, ombudsman assessments, AHCA surveys, and even the new Senate Interim report on ALFs, enforcement is lax. Inspections must be ratcheted up so surveyors can prevent “problems from developing into atrocities.”

I ask that you reject the notion of an abbreviated survey process for “good” providers. This is fraught with problems and may have catastrophic results for residents. First of all, who would determine what is a “good” provider? The next question would be, what criteria will be used?

Let’s imagine that criteria could be determined, but there are still problems. The best analogy that I can give you is from my personal experience serving as the chair of Governor’s Gold Seal Panel on excellence in Long-Term Care. The Gold Seal is an award presented to nursing homes that excel in long-term care service delivery. Part of the application process includes site visits to the nursing homes. The facilities are aware of these visits in advance.

These facilities are the to be the “*best of the best*,” the “*elite in quality care*” preparing for a “Gubernatorial visit.” But on several occasions, there were actual incidents that I worked to resolve as an ombudsman, e.g., food issues,

medications problems, residents needing assistance, etc. The moral of the story, problems happen everyday in long-term care facilities no matter how “good” the places are, and they need more oversight, not less.

Reigning in the inspection process is not the answer.

- **Enact legislation that makes administrative sanctions payable within 30 days of citation.** Appeal timeframes for facilities often lag for months, possibly years and sometimes result in uncollected fines. Under a revamped appeal process, a facility may appeal the sanction and be reimbursed by the state if they receive a favorable determination.
- **Finalize the promulgation of the Long-Term Care Ombudsman Program’s Administrative Assessment rule into the Florida Administrative Code.** The Administrative Assessment has been a sore spot for providers for years. Efforts are now afoot by the Office of State Long-Term Care Ombudsman to forgo the statutorily mandated process to promulgate these procedures. Let’s get these done in accordance with the proper process so residents, families, consumers, and operators are aware of how the process will work in protecting residents.
- **Authorize the Ombudsman to issue civil penalties for willful interference of the ombudsman and also for retaliation against an individual who faithfully discloses information to the ombudsman, violations would be subject to a \$5,000 and \$10,000 fine respectively (funds could be used to support the efforts of a statewide resident council).** These violations could be appealed to an administrative hearing officer or district court. New Mexico has implemented a similar process, giving comfort to their residents that they can speak up about concerns without the fear of retribution.
- **Establish an Assisted Living Facility Administrator Licensure process and create a board that governs the actions of the licensee.** The truth is, qualifications for administrators are anemic. Oversight is even worse. Creating this board creates a layer of accountability and professionalizes the administrator position. Recent proposals within the Senate Interim Report provide a good starting, but should be expanded further.

As for Consumer Information and Choice, I recommend:

Consumer Information and Choice

- **Enact legislation that provides residents discharge protection that mandates specific reasons for relocation, provides ample notice to residents and avails residents to an administrative appeal hearing process analogous to nursing home residents.** Whether in nursing homes or assisted living facilities, when asked by ombudsmen why residents don’t express grievances more regularly, residents frequently respond, “they will

kick me out of my home.” In an ALF, that is even more the case. Right now, there are no safeguards in place to ensure residents are not wrongly evicted from their homes against their will. In nursing homes, there is an administrative appeal process that minimizes these discharges. But in ALFs, it can be open season on residents.

- **Enact legislation that permits residents and families to respectively establish independent groups within the facility** focused on improving conditions and care for residents without interference; facilities should provide space for the residents and families to convene as needed.
- **Create an independent statewide assisted living facility council that meets bi-annually.** Two-thirds of the council’s membership would consist of residents, ombudsmen, and families in addition to one member from each respective trade association.

As mentioned during the first Task Force meeting in Tallahassee, the ALF issues that must be addressed are vast and complex. That is why an ongoing statewide group should regularly meet to discuss these issues and develop solutions as needed, at least until Florida restores the lost luster it once had as the preeminent state in long-term care, now ranking a paltry 44th in the country.

- **Establish a consumer assisted living facility guide similar to the Agency’s nursing home guide;** of which, criteria could be developed with substantial input from the statewide ALF council.
- **Prohibit any binding arbitration agreement language in resident contracts.** These contract clauses doom a resident’s right to access due process whenever care disputes may arise.

In closing, I leave you with this quote from Hubert Humphrey, shared with me recently by an ALF family member who called me for assistance:

“It was once said that the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life -- the sick, the needy and the handicapped.”

I pray this statement resonates loudly with this group, with our Legislature and with our Governor, as policy decisions made in the coming months will impact the lives of our parents and grandparents for years to come.

May God grant you wisdom in this colossal task.