



• November 2, 2011 •

Comments to the United States Senate Special Committee on Aging “Ensuring Quality and Oversight in Assisted Living”

On behalf of the thousands of residents who live in assisted living facilities across America, Families for Better Care applauds the U.S. Senate Special Committee on Aging for their commitment to ensuring residents who live in assisted living facilities receive quality care. Additionally, special thanks to Senator Nelson and his leadership in championing the rights of elderly and mentally disabled citizens.

Not too long ago, Florida’s assisted living model was *the* long-term care ideal for other states to emulate. Marketed to consumers as the “new alternative” for America’s aging baby boomer population, “assisted living” was intended to offer consumers a flexible alternative to the arcane, institutional environment of nursing homes. These residential care settings were fashioned to be a place where our parents and grandparents could live independently and receive assistance with routine daily activities.

But an investigative series by the *Miami Herald* has exposed gaping fractures within this once heralded enterprise.

Lax oversight, ambiguous or non-existent resident safeguards, and politically compromised ombudsman programs have contributed to a growing pandemic of resident neglect and abuse nationally. But some operators attest that these egregious issues are “just a Florida problem.”

Yes, these are serious problems in Florida, but the industry’s critique is far from the truth.

Florida has historically been the staging ground for enacting progressive legislation to protect seniors. Other states monitor Florida as a case study to determine “what works, and what doesn’t work.” So it only goes to show, that if problems are happening in Florida, equal, or worst, cruelties are happening to residents elsewhere.

But herein lies the problem; government agencies, providers, advocates, and consumers have little idea about the magnitude of these issues because of varying state laws that present an unclear picture of assisted living facility quality. Data are circumspect because of the lack of clear guidance by the federal government.

And with the addition of Medicaid waiver initiatives and nursing home diversion programs, the assisted living facility landscape is being dramatically altered.

Frailer, more vulnerable residents who require complex medical services are admitted into assisted living facilities whose staff are grossly undertrained and inadequately supervised. The influx of residents requiring more care has blurred the lines between assisted living facilities and nursing homes to unintentionally create “unregulated, mini-nursing homes.” These “pseudo-assisted living” are stretching the limits of state laws that govern the assisted living facility industry and are putting residents at risk for harm.

The establishment of federal regulations would ensure regulatory consistency from state-to-state and provide comfort to consumers to know that their “long-term care purchase,” in which they will be entrusting their very lives, is not a lemon. With the enactment of these regulations, Medicare.gov could be updated with assisted living reports to provide real-time regulatory data so consumers, and regulators, can adequately gauge assisted living facility quality.

Additionally, the Center for Medicare and Medicaid Services should be provided the authority to shut down those assisted living facilities with chronic problems when state regulatory agencies fail to take appropriate action on behalf of residents. This added measure would prevent resident abuse and neglect.

But the lynchpin to making all of this work for the residents is an autonomous Long-Term Care Ombudsman Program.

The Office of State Long-Term Care Ombudsman, authorized under the federal Older American Act, is *the* watchdog of the long-term care industry, mandated to advocate exclusively on behalf of residents.

A core tenant of the program is systems advocacy.

While the Older Americans Act provides some latitude for ombudsmen to initiate systems advocacy through a variety of mechanisms (e.g., commenting on proposed laws or rules, facilitating public comment, and developing resident and family councils) the Act falls short in protecting the ombudsmen.

Ombudsmen nationwide have, at one time or another, been forced to compromise on their systemic advocacy due to internal and external conflicts or willful interference. Politically charged entanglements and intimidation have crippled the ombudsman program throughout its history.

In fact, an unprecedented compliance review of Florida’s Long-Term Care Ombudsman Program by the Administration on Aging released in early September, uncovered federal violations by state officials, resulting in a “*grave blow*” that will “*affect the confidence that residents have in the program.*”

Although the Act establishes that willful interference with or retaliation against an ombudsman are unlawful, enforcement of these provisions are relegated to states to define. In Florida, these violations constitute criminal acts, punishable by a \$500 fine and a second-degree misdemeanor, hardly a deterrent from any insidious political impropriety.

The Older Americans Act must be amended to clearly define and ensure ombudsmen autonomy. Furthermore, any interference with an ombudsman should be a federal crime and warrant an investigation by the Department of Justice.

With well-defined federal oversight, assisted living facilities can cease from becoming boarding homes for elders and warehouses for residents with mental health challenges and live up to the person-centered care model they were intended to be, providing residents and consumers with a safer long-term care option.

If you have any comments or questions, please feel free to contact me by phone at 850.491.2198 or by email at brian@familiesforbettercare.com.

Yours in service,

A handwritten signature in black ink, appearing to read "Brian Lee", with a stylized flourish at the end.

Brian Lee,
Executive Director