

TESTIMONY
UNITED STATES SENATE AGING COMMITTEE
CLAUDIA STINE, Director of Ombudsman Services
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Good afternoon. I am Claudia Stine, Director of Long Term Care Ombudsman Services for the State of Wisconsin. We are the program in our state charged under the Older Americans Act to provide complaint resolution and informational services to residents and families of nursing homes and board and care facilities. We also provide these services to elders living in the community and receiving Medicaid and other supportive services under a Medicaid waiver program.

I would like to thank Senator Grassley, Senator Breaux and Senator Kohl for inviting me to appear here today. This issue is the most critical concern for those folks who need and are receiving long term care. "Will those people caring for me treat me right? I don't want to go to a place that will hurt me. You hear so much...."

During the 1996-97 biennium, Ombudsmen received 357 abuse complaints in Wisconsin's nursing homes. This number represents about 7% of all the complaints taken on behalf of facility residents. While some of these complaints were residents abusing other residents, the vast majority concerned situations where the alleged abusers were caregivers employed by the facilities. We hear about and some times actually witness violations of a resident's right to be safe and free of abuse. These often involve physical abuse, which take the form of hitting, rough handling, or twisting a limb. Use of profanity against the resident, threatening behavior, yelling and calling a resident names are common types of verbal or mental abuse. We find cases of gross neglect including withholding necessary treatment or pain medications, ignoring a resident's toileting needs, or failing to promptly and adequately attend to a resident's personal hygiene needs.

It is widely believed that certified nursing assistants are responsible for almost all abuse situations. After all, they provide most of the hands-on care to residents. But we have found that professional nursing staff, as well as other employees of the facility with direct access to residents, has also been found abusive. For example, earlier this year, we investigated a case of a licensed practical nurse who hit a resident several times, twisted her arm and yelled at her. While this facility fired the nurse and the state's nursing home surveyors cited the facility for abuse, this person is legally able to seek and be employed in another facility or with another health care provider. The regional Ombudsman is requesting that the nurse's license be revoked but in the meantime, this nurse may well be employed in another health care setting.

Wisconsin's Nurse Aide Abuse Registry contained 460 names as of August 3, 1998. Of these persons, 319 or about 69% were determined abusive. The remaining names on the list are those people who were found to have misappropriated resident funds. One person was culpable in both categories.

However, abuse committed by staff who provides *other kinds* of services for residents are not listed. These may include housekeeping personnel, physical, occupational and speech therapists, food service workers and administrative staff. These people are commonly not thought of as potential abusers, yet they have continual interaction with residents. Under current federal law, there is nothing stopping these abusers from going to work at another facility or other geriatric care setting. Nor is there a way for facilities to find out about this type of employment history when they hire a new person. We know this happens because we have found these folks working in other facilities. When that occurs, the Ombudsman alerts the nursing home, but this circumstantial method is clearly woefully inadequate as a protection for vulnerable seniors.

Similarly, nurse aides listed on the abuse registry are not precluded from working in other geriatric care settings. Quite commonly, these persons will go to work in board and care places. Unfortunately under current federal law, they are only barred from working in nursing homes.

A certified nursing assistant listed on the Abuse Registry (and any other caregiver found to have committed abuse in a nursing home in Wisconsin) could go to another state to find similar employment. We do not know how frequently this happens for there is no national system that tracks these persons across state lines. While some states have voluntary agreements to exchange abuse registries, the system is sorely insufficient. Currently, Wisconsin shares and receives lists from only nine other states.

Wisconsin recently enacted a far-reaching law to address some of these issues. Effective October 1, 1998, all health care providers in Wisconsin will be required to conduct criminal background checks on all health care workers. A major shortcoming in this new system is the inability to check for criminal convictions in other states. If the provider has no information to indicate that the aide lived and worked in another state, it has no means to discern a person's criminal background that occurred out of state. No reliable data is available to determine how prevalent this situation is, but we do know that it occurs.

We know that abuse in nursing homes is greatly underreported. The most common reason is that families and residents alike fear retaliation from the abusing caregiver and from other nursing home staff. Families cannot be in a facility continually to protect their loved one against retaliation once they have voiced concern about abuse. "They're so over-worked here and h/she is doing the best they can. I don't want to get anyone in trouble. It was probably my fault anyway". This, too, is an often-heard response heard by regional Ombudsmen when talking with residents about an alleged abuse. The resident is living in the facility 24 hours a day and she doesn't want to "make any waves".

For similar reasons, some nursing home staff members are reluctant to report abuse. Fear of retaliation, of losing their jobs, or of retribution from their peers contribute to this inaction. Most nursing home staff are caring people. A facility employee might report abuse or neglect under the protection of anonymity or request her name be kept confidential. Some facilities do not report abuse, as they are required to do under federal law. Some of these instances are uncovered and surveyors cite the facility. But we are certain that there are many other instances. Unexplained bruising, frightened behavior from a resident when the abusing caregiver is near, and reticence to ask for help are all signs that something is definitely wrong in the resident's life in the facility.

As I mentioned earlier, our state's legislature recently enacted legislation to mandate criminal background checks for all health care providers employed in Wisconsin. However, we have no means to track these persons across state lines, nor do we have access to the Nurse Aide Registries of other states to assure that these persons will not be employed in Wisconsin. Speaking for the Board on Aging and Long Term Care we offer every support we can to the work of this Committee in legislating remedies to these dire problems. Simply put, some people should never be allowed to care for the most frail of our society. I speak for them because many cannot speak for themselves.