



# Governor's Council on an Age-Friendly Minnesota

Public Testimony

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# WHAT IS THE LONG-TERM CARE OMBUDSMAN PROGRAM

- ▶ Under the federal Older Americans Act (OAA) every state is required to have an Ombudsman Program that addresses complaints and advocates for improvements in the long-term care system.
- ▶ Each state has an Office of the State Long-Term Care Ombudsman headed by a full-time State Long-Term Care Ombudsman who directs the program statewide.



# WHAT DOES THE OMBUDSMAN PROGRAM DO

- Advocates for residents of nursing homes, board and care homes, assisted living facilities, and other similar adult care facilities.
- Educate residents, their family, and facility staff about residents' rights, good care practices, and similar long-term services and supports resources
- Ensures residents have regular and timely access to ombudsman services
- Provide technical support for the development of resident and family councils;
- Represent resident interests before governmental agencies; and
- Seek legal, administrative, and other remedies to protect residents.



# What is a Health Care Directive (HCD):

- A health care directive is the primary legal tool for any health care decision making when someone cannot speak for themselves. Appoints an agent provides written statements concerning future health care wishes.
- Nursing Homes have additional obligation to document in a prominent part of the residents medical record whether or not the individual has executed an advance health care directive. This is true for a new resident or a long-term resident. (42 CFR 489.102(a)(2))
- Patient Self-Determination Act (PSDA) is a Federal Law passed by Congress in 1990. Requires most hospitals, nursing homes, home health agencies, and HMO's to routinely provide information about advance directives at the time of admission.
- The PSDA requires at the time of admission:
  - A written summary of your health care decision-making rights
  - Facilities policies with respect to recognizing advance directives
  - Ask if you have an advance directive and document that fact in your medical record.
  - Educate their staff about advance directives
  - Never discriminate based on whether or not someone has an advance directive. It is unlawful to require someone to have or not have an advance directive.

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# Planning ahead:

- ▶ Decision making is much easier if planned for in advance while the person is competent.
- ▶ If the person in need can still make choices or discuss their wishes clearly, it is very important that their opinion is respected and act accordingly. Unfortunately, most people don't get much time to make this decision.
- ▶ Expressing preferences for end-of-life care in advance directives helps people and their families deal with questions that may arise when an elderly person becomes seriously ill, such as whether or not to resuscitate, and the kind of care they wish to receive following a terminal diagnosis.



# Status of COVID-19 in MN.

- ▶ As of 05/14/20:
  - ▶ About 81.7% of MN COVID-19 deaths were in nursing homes and residential care communities – highest percentage state in the nation.
  - ▶ State data reports 537 deaths out of a total of 663 deaths took place in long-term care facilities.
  - ▶ Residents of long-term care facilities account for less than 1 percent of MN population, 13 % of MN COVID-19 cases, and 81% of COVID-19 deaths.
  - ▶ *“For the generation that worked in our factories, fought our wars, taught our children, built the middle class, built the nation that we have, and gave each of us life and love we have to do more for our seniors. We cannot stop working we cannot stop legislating, we cannot stop appropriating dollars to help our seniors.”* Senator Casey’s Opening statement “Caring for Seniors Amid the COVID-19 Crisis”



# HCD in the midst of a crisis:

- ▶ The coronavirus crisis forces the topic of advance medical directives to the forefront.
- ▶ The pandemic is forcing many people into the impossible position of making the best decisions in the moment of crisis. Having an advance directive in place can provide reassurance that preference and choices will be honored.
- ▶ Common Misconception:
  - ▶ afraid they will lose control over decision making once they name a healthcare proxy or healthcare power of attorney. In reality, a person continues to make independent decisions until the point that they are unable to speak for themselves.
  - ▶ Some people fear the finality of filling out an advance directive however they can be changed or modified at any time. Some people consider adding a COVID-19 addendum for specific treatment options if they become sick with the virus, and then delete it after a vaccine becomes available.

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# Consider the affects of AGISM:

- ▶ Acknowledgement Ageism is oppressive and humiliating and can become a self-fulfilling prophecy.
- ▶ Negative societal stereotypes can cause the elderly to view themselves as weak and passive.
- ▶ Access to proper healthcare can not be based on age or disability status.
  - ▶ Applaud the recent call to attention efforts of the MBA regarding potential life sustaining and life saving resources if shortages occur.



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# Proposed Legislation: SF 4603, HF4693

- ▶ SF 4603 and HF 4693: Immunity from criminal, civil, or administrative liability to health care providers acting in good faith.
- ▶ Affects the ability of residents to exercise their right to hold providers of service accountable for substandard care.
- ▶ Prior to the COVID-19 residents in long-term care facilities were visited on a regular basis and protected by licensing inspections and in-person visits from the Office of Ombudsman for Long-Term Care none of which are operating in intended capacity currently.
- ▶ Well aware of the strain on the long-term care workforce and endorse efforts to improve the importance of said workforce.



Thank you

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