

OFFICE OF THE DISTRICT OF COLUMBIA
LONG-TERM CARE OMBUDSMAN
ANNUAL REPORT
Fiscal Year 2008
(October 1, 2007 to September 30, 2008)



Submitted by:
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I. HISTORY

In 1975, the District of Columbia Office on Aging (DCOA) established the Office of the District of Columbia Long-Term Care Ombudsman with grant funds from the Administration on Aging. The 1978 amendments to the federal Older Americans Act required that each state and the District of Columbia (DC) establish a state-level Long-Term Care Ombudsman Program with three responsibilities:

- Investigate and resolve complaints about nursing homes
- Encourage citizens' involvement in nursing homes
- Monitor the development and implementation of regulations, laws, and policies affecting nursing home residents

A 1981 amendment to the Older Americans Act extended the ombudsman program's jurisdiction to board and care homes, called community residence facilities (CRFs), in DC. A 1987 amendment to the Older Americans Act elevated the ombudsman from a program to an office, required that adequate legal counsel be available, and granted immunity to ombudsmen for good faith performance of their duties. A 1992 amendment ensured against conflicts of interest and emphasized the roles of ombudsmen as advocates for change to improve the quality of care and quality of life for residents of long-term care facilities.

DCOA operated the ombudsman program until 1985, when DC awarded a grant to the Legal Counsel for the Elderly, part of the American Association of Retired Persons (AARP), to operate the DC Long-Term Care Ombudsman Program (Ombudsman Program). The Ombudsman Program has benefited from placement at Legal Counsel for the Elderly because of the available legal support and because of the access it has to the vast AARP network for the recruitment of volunteer resident advocates.

Passage of the Long-Term Care Ombudsman Program Act of 1988, D.C. Law 7-218, D.C. Code Ann. § 7-701.01 *et seq.*, strengthened the program by providing the Ombudsman Program with the tools necessary to carry out the responsibilities mandated by the federal Older Americans Act. The DC law also reinforced the Ombudsman Program's emphasis on advocating for and protecting the rights of residents of nursing facilities, assisted-living residences, and CRFs.

II. STAFFING

The Legal Counsel for the Elderly's DC Long-Term Care Ombudsman staff consists of a full time Ombudsman Director, Board and Care Ombudsman, Volunteer Coordinator, a part time Ombudsman Attorney, and one in a half full time administrative support staff. The Ombudsman Program staffs' focuses on long-term care complaint resolution, monitoring local and federal policy, regulation, and legislation to improve quality of care, and provides legal assistance.

To provide local ombudsman services for residents in nursing facilities, the Ombudsman Program contracts with one community-based senior service agency: the Emmaus Services for the Aging (Emmaus).¹ Emmaus has two full-time local ombudsmen to advocate for the rights of residents and to investigate complaints on behalf of residents in nursing homes. Emmaus monitors the quality of care of nursing home residents in all of the quadrants of Washington, DC. Both local ombudsmen are responsible for having a cadre of trained volunteer advocates to maintain a continuous community presence in the nursing facilities in their service areas.

III. LEGAL AUTHORITY

The Ombudsman Program is charged by DC statute with the following responsibilities:

- Advocate for the rights of older persons and other persons who are residents of nursing facilities, assisted-living residences, and CRFs
- Investigate and resolve complaints made by or on behalf of an older person or other person who is a resident of a nursing facility, assisted-living facility, or a CRF
- Monitor the quality of care, services provided, and quality of life experienced by older persons and residents in long-term care facilities to ensure that the care and services are in accordance with applicable DC and federal laws
- Establish and conduct a training program for program staff and volunteers
- Establish and maintain procedures to protect the confidentiality of information regarding residents

These responsibilities parallel those in the federal Older Americans Act, which also governs operation of the Ombudsman Program activities.

¹ The Ombudsman Program is restructuring its program operations and consolidating the local program in FY 09 to be housed inside Legal Counsel of the Elderly.

IV. SCOPE

Approximately 4,548 residents live in licensed nursing facilities, assisted-living facilities, mental health community residence facilities (MHCRFs), and community residential facilities (CRFs) in DC. The 18 nursing facilities licensed by the Department of Health (DOH) have a total capacity of 2,588 beds.² In addition, the DOH licenses and monitors 14 assisted-living facilities with approximately 824 units, and 19 CRFs for the elderly with 391 beds. Approximately 70 licensed MHCRFs have an estimated total capacity of approximately 326 beds, 64 independent and supportive independent living providers, with 419 units supported and sponsored by the Department of Mental Health (DMH). As of October 30, 2008, the DC Health Care Finance Office estimates that DC's licensed long-term care facilities are at 96.5 percent capacity.

V. FY 2008 ACTIVITIES

A. Case Resolution and Information Services	YTD
Number of requests for information	1,839
Number of requests fulfilled	1,839
Number of individuals who filed cases ³	588
Number of cases closed	618
FY 07 carry-over cases	30
Number of complaints handled in FY 08	1,334
Number of complaints verified	1,314
Number of complaints partially or fully resolved	1,187
Number of complaints not resolved	26
Number of complaints withdrawn or with no action needed	32
Number of complaints referred to another agency	89

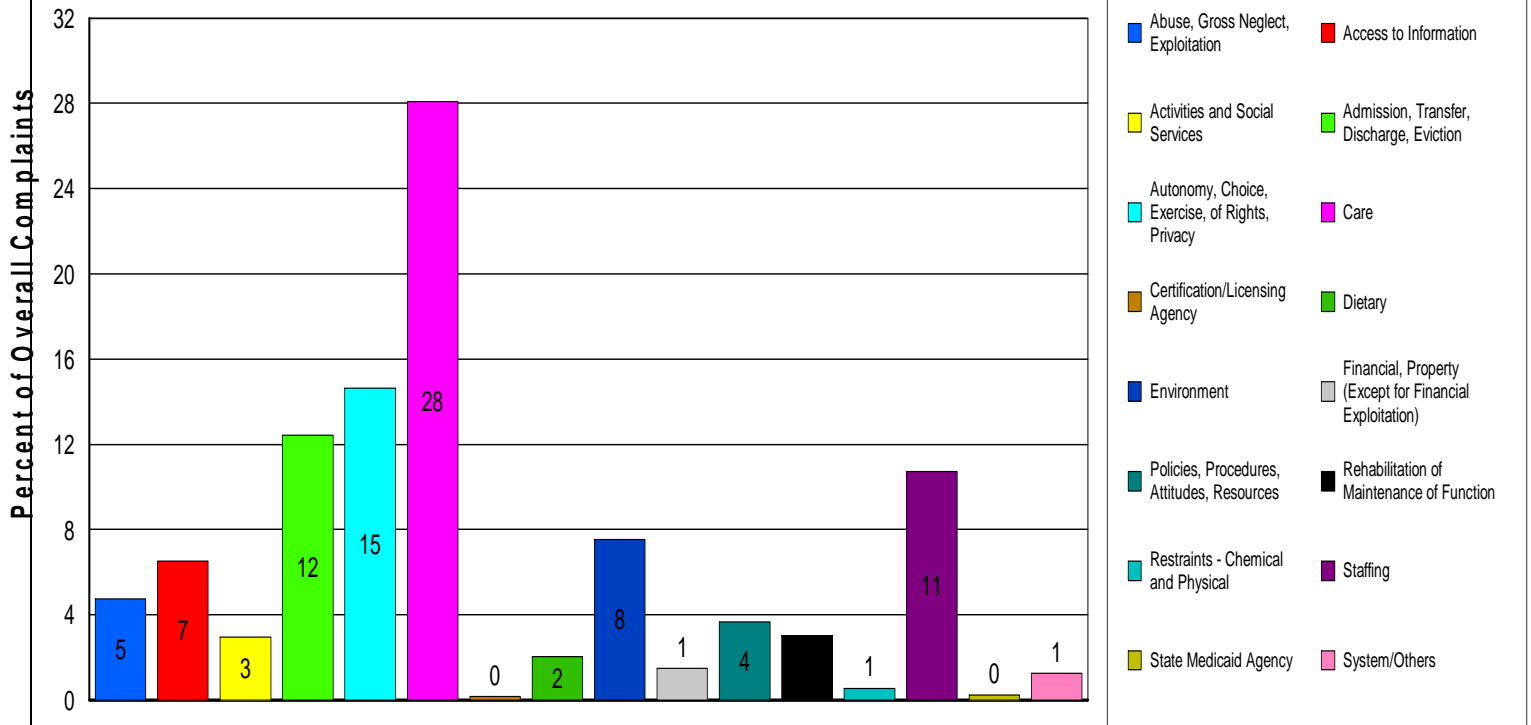
² The total number of beds listed in this report combines nonskilled and skilled nursing home beds. These numbers will change in FY 09 because of a new nursing home opening in December 2008.

³ A case is defined as any person lodging concerns (complaints) with the Ombudsman Program.

B. Complaint Analysis

Total Number of Complaints Filed and Investigated: 1,334

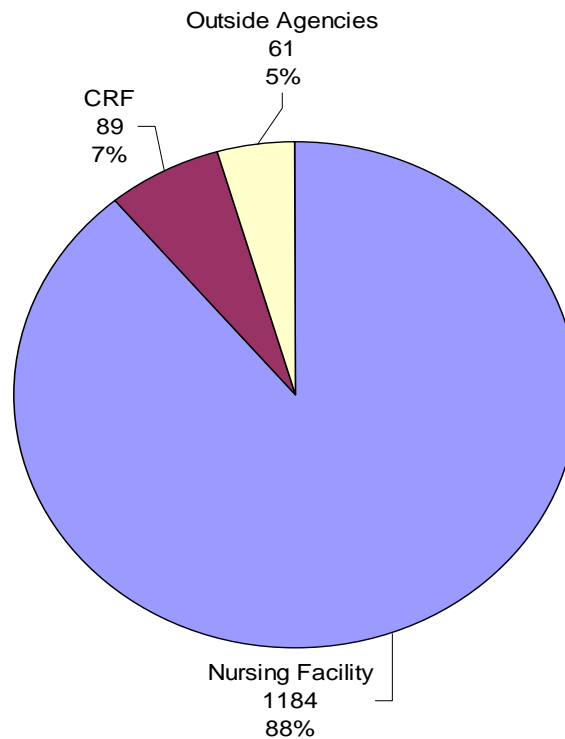
1. Percentage of Overall Complaints⁴



Total Number of Complaints Verified: 1,314

⁴ The categories of complaints listed are the main topic areas that represent 133 sub-complaint categories that DHHS, Administration on Aging, mandated that each ombudsman and volunteer staffer must report during investigations and monitoring visits when complaints are found. A complaint is defined as any problem or issue on which an ombudsman takes action on behalf of a nursing home, assisted-living facility, or CRF resident. The number of complaints is larger than the number of individuals who file complaints because one individual often has several different complaints. For a complete list of codes, please contact the Ombudsman Program at 202-434-2140.

2. Of the 1,314 complaints verified, three areas are defined:



C. Hearings to Challenge Involuntary Moves of Residents

Total number of 6-108 discharge and transfer notices received	2,267
Notices of involuntary moves challenged	30
Hearing requests made to challenge an involuntary move	19 ⁵
Number of hearings held (These include status conferences and mediation that led to resolutions favorable to the residents.)	39 ⁶

⁵ Reason for discrepancy: Eleven of the thirty cases in which the resident was facing Discharge or Medicaid decertification were resolved through informal mediations prior to the Ombudsman Program’s having to file a formal hearing to challenge.

⁶ Reason for discrepancy: More than one hearing was needed to resolve the legal complaint, especially in regard to the closure of one MHCRF.

Number of discharge and transfer meetings held to prevent issuance of discharge notice	2 ⁷
Cases won (Including status conferences and mediation)	39
Number of requests withdrawn (negotiated a satisfactory solution)	3

D. Maintaining a Presence in Long-Term Care Facilities and Assisting the General Public

Nursing Facilities

Total number of hours spent by ombudsman staff and volunteers in nursing facilities:

Emmaus Services for the Aging	2,959
Total number of volunteer ombudsmen visiting nursing homes	23

CRFs

Number of CRFs and MHCRF visited	137 ⁸
Number of assisted-living facilities visits	41
Nonlicensed CRF or ALR visits	3 ⁹
Suspected unlicensed CRFs visited	10

⁷ Reason for addition: These meetings were used with increasing frequency when discharge was threatened to resolve the issues or facilitate the discharge process without having a formal notice issued or hearing required. All were resolved to the satisfaction of the residents. This number was added to cases won.

⁸ For both CRF and assisted-living facilities, the numbers reported reflect repeat staff visits because of complex investigations.

⁹ Nonlicensed long-term care facility means hospital, psychiatric hospital, or independent living units.

E. Program Activity Report

In FY 08, the DC Long-Term Care Ombudsman Program participated in the following:

1. Provided 89 training sessions pertaining to long-term care issues to over 250 staff, paraprofessionals, and directors of MHCRFs and CRFs. The three main topic areas were behavior and mental health problems in long-term care facilities, discharge planning, and federal residents' rights (OBRA '87).
2. Conducted 161 training sessions, including monthly staff meetings and in-service seminars totaling 373 hours, to the staff and volunteers of the Ombudsman Program.
3. Hosted or participated in two city-wide training sessions.

The first seminar for CRF providers and long-term care social workers addressed residents' rights, discharge and transfer procedures for residents and providers, low-income housing admission protocols, and Medicaid payability and money management responsibilities for Representative Payees.

The second seminar in collaboration with the Senior Medicare Patrol project and the DC Office on Aging, Adult Abuse Prevention Committee educated Medicare and Medicaid beneficiaries about potential fraud, waste, and abuse.

4. Provided 215 consultations, totaling 337 total hours, to facilities and providers, with the average provider consultation lasting 90 minutes. Consultations concentrated on three topics:
 - a. Discharge and eviction planning notices
 - b. Symptoms unattended, including pain management
 - c. Behavior-modification issues (for example, dementia and mental health)
5. Provided 680 consultations, totaling 584 total hours, to individuals, with the average consultation lasting 52 minutes. Consultations concentrated on three topics:
 - a. Discharge and eviction planning notices
 - b. Medicaid (decertification appeals and waiver services assistance)
 - c. Symptoms unattended, including pain management
6. Completed 74 noncomplaint visits through the Volunteer Division to ensure quality of care and life concerns.
7. Participated with Ombudsman staff and volunteers in a variety of activities:
 - 14 local and federal nursing home surveys
 - 26 resident council meetings and events
 - 6 family council meetings and events
 - 136 community educational trainings and events
 - 15 media interviews or discussions

VI. SIGNIFICANT ACHIEVEMENTS

In FY 08, the DC Long-Term Care Ombudsman Program achieved the following:

- Northwest Health Care Center–Beverly Enterprises, the largest DC nursing home, closed its doors November 20, 2007, with the promise that 355 residents would be safely and orderly placed by following the DC discharge planning procedures. Nevertheless, more than 32 residents needed both advocacy and legal assistance from the local ombudsman to ensure that both Northwest Health Care Center and receiving facilities properly planned to transport medication, health care equipment, personal belongings, and all legal documents for each resident. Because of the successful collaboration between the ombudsmen and Northwest Health Care Center staffers, each resident successfully moved to his or her alternative nursing home.
- The Ombudsman Program was contacted by two Northwest Health Care Center-Beverly Enterprise family members. Both had residents who had a claim filed against them in the National Arbitration for outstanding debt from the closed nursing home. Ombudsman Attorney Mary Ann Parker continued to assist the family members and residents to a positive and final resolution of their complaints. The Ombudsman Program advised both family members that each resident was likely to be judgment proof and that each resident could decide not to pursue the case legally.

During the first case, because of family illness and other financial matters, the resident and family requested the Ombudsman Program to settle the case first with the nursing home and the National Arbitration Forum. The Ombudsman Program's investigation found the amount allegedly owed in Beverly's claim was approximately \$1,000 less than what was reported to the National Arbitration Forum. As a result of approximately three weeks of mediation and negotiation, the case was settled for less than half of the reported amount, to the satisfaction of family and resident. Because of the zealous advocacy work conducted by the Ombudsman Program, Beverly Enterprises officials requested that both cases be dismissed from the National Arbitration Forum and settled all claims.

Because the second case took months of negotiation and several staff hours to reach resolution, the Ombudsman Program Office agreed to continue investigating the use of arbitration clauses throughout DC, and to educate residents, family members, and the public about how to protect themselves regarding these clauses and so-called "neutral arbitration agreements."

- Throughout the year, the Ombudsman Program developed and implemented an in-service training seminar for all 11 metropolitan police precincts to orient and train police officers to the Ombudsman Program and long-term care residents' rights. The Ombudsman Program met with more than 300 police officers, handed out approximately 350 information packets, and answered rights questions during roll call meetings. Along the way, the Metropolitan Police Department and the Ombudsman Program developed a strong professional relationship that led to discussions of creating an elder rights curriculum to be taught to police cadets in FY 09 or FY 10.

- In September 2007, the Ombudsman Program won its writ of mandamus law suit, with the assistance of Boies, Flexner and Schiller, LLP. The DC Superior Court issued a Consent Order for DC to create a licensure protocol and survey division: the courts mandated that the Department of Health (DOH) license each assisted-living facility by April 2008. The Ombudsman Program continued to monitor each licensure application and the procedures until all 14 assisted-living facilities were properly licensed by the court's designed deadline. Because of the efforts and legal remedies brought by the Ombudsman Program, each DC assisted-living resident has both protection and individual treatment rights to govern the care being received.
- Because of the past several years of the Ombudsman Program's legal and advocacy success in protecting residents from illegal discharges from long-term care facilities, the Kansas State Long-Term Care Ombudsman Program's Gilbert Cruz invited Gerald Kasunic to train over 125 staff, volunteers, and citizen advocates. As the training agenda developed, Cruz expanded the training session to include advocacy strategies to protect residents' intimate relationships within a facility. The discharge training session included reviewing the DC and Federal discharge and transfer laws, reviewing discharge and transfer notices for errors, and introducing landlord tenant laws to protect assisted-living residents who are not protected by Kansas state licensing regulations.

The second training session focused on how to investigate and remain objective when nursing home administrators are lodging sexual complaints or discharge notices to relieve the administrators of any possible liability. Kasunic introduced a training video developed by the Hebrew Home for the Aging entitled "Freedom of Sexual Expression: Dementia and Resident Rights in Long-Term Care Facilities." Participants in both sessions gave an 85 percent satisfaction rating to the presentations.

- The Ombudsman Program succeeded in obtaining additional funding through the DC Office on Aging to hire a badly needed volunteer coordinator and to expand the volunteer program to monitor assisted-living facilities and CRFs. Kyle Hreben was hired at the end of December 2007 and began a mass-mailing recruitment of volunteers during 2008. Through Hreben's efforts in FY 08, the Ombudsman Volunteer Program has increased its active volunteers and work load by 98 percent, assigned volunteers to each nursing home, introduced upgraded training materials to volunteers seeking certification, and represented the Ombudsman Program by attending elder community events.
- Lydia Williams, Manager and Board and Care Ombudsman, has developed a strong professional relationship with the Licensure Division of the Department of Mental Health, with whom she has jointly investigated and advocated on the behalf of more than 30 residents from two separate mental health providers that are closing their businesses. Williams' investigations have demanded nonstandard business hours and weekend monitoring to ensure that residents are neither illegally moved nor moved into worse situations.

VII. RECOMMENDATIONS FOR LEGISLATIVE SYSTEMS AND REGULATORY CHANGES

A. Inadequate Staffing

Problem: Staffing shortages continued to be a major issue in DC nursing facilities, in part because of poor benefits and wages of certified nursing assistants, especially now that this staffing shortage is the third most commonly reported complaint in FY 07. The high maintenance needs of residents and low retention rate for nursing staff are the most serious areas of concern for nursing home administrators.

Another area of concern is the lack of modern training that would affect the culture and supervision of staff, a deficiency which becomes a systemic issue affecting staffing ratios. As the Centers for Medicare and Medicaid Services (CMS) studies have pointed out, a direct relationship exists between quality of care and nursing staff. These topics were addressed in Council Member Catania's Long-Term Care Task Force in 2005 and 2006 and are now revitalized with the Mayor's Long-Term Care Work Group to address long-term care improvements, including nursing home workforce issues. The Ombudsman Program will continue to work with all of the Mayor's Long-Term Care Work Group members and to advocate for legislation and regulation changes using the recommendations within the Long-Term Care Task Force's report.

Barriers to resolution:

1. **Fiscal:** To ensure staffing ratio standards are met, the City Executive Branch and the City Council will need to infuse funding in DC's 2009 and 2010 fiscal budget, using either civil monetary penalty funds or the "bed tax" being collected by the DOH Medical Assistance Administration.
2. **Training:** To create a training curriculum, the DC Board of Nursing will need to collaborate with the Ombudsman Program and the LTC Coalition.
3. **Delivery:** To create, implement, and maintain training standards to improve delivery of services, the DC Health Care Association (DHCA) will need to be a participant, along with other long-term care stakeholders.

Recommendations for system-wide change:

- Attend each long-term care public hearing that pertains to improving quality of care and life in long-term care facilities, especially those hearings targeting nursing homes.
- Openly discuss training curriculum with the president of the DHCA.

- Become active in collaborative efforts to create and maintain training and ratio standards.
- Advocate for civil monetary penalties and bed tax funds to be directed to increase the work force while at the same time ensuring that the funding is not being pocketed by the nursing home providers and their investors.

B. Amendments to and Implementation of the DC Assisted-Living Residence Regulations Act of 2000

Partially Resolved: The Ombudsman Program considers this goal met: The Ombudsman Program and Boies, Flexner and Schiller, LLP, have successfully brought legal action against the Mayor and the Department of Health to develop assisted-living regulations, licensure protocols, and a survey team by April 2008. The Ombudsman Program continues to participate as an active member of the Long-Term Care Committee to assist in the development of long-term care standards. If need be, the Ombudsman Program will act upon the long-term care residents' requests to revisit the issue at a later date.

C. Insufficient Oversight and Weak Enforcement of Board and Care Homes in CRFs, MHCRFs, and Supported Independent Living (SILs)

Problem: Residents in CRFs, MHCRFs, and SILs under 22 DCMR Chapters 34 and 38 continue to endure unprofessionally delivered services and poor quality of care because of untrained community residential providers.

Barriers to resolution:

1. The DMH enforcement survey teams do not take decisive enforcement actions because of the longevity of practicing limited enforcement measures against providers who are poorly delivering services or operating below minimum standards.
2. Unmonitored providers are not sanctioned or held to any licensing standard because enforcement teams are not upholding and enforcing the DC Municipal Regulations governing all CRF providers.
3. DMH residents are being funneled to supported independent living without monitored wrap-around services ensuring quality and consistency.
4. DMH SIL providers are not sanctioned or held to the licensing standards due to the definition of their contracted services, even though providers continue to deliver the same mental health community services to residents.

5. DMH CORE Service Agencies providing case management and representative payee services are not sanctioned for mismanaging community-based services or residents' funds.

Recommendations for system-wide change:

- Advocate for both the Department of Health and the DMH to impose higher monetary penalties for civil infractions by unlicensed and licensed CRF providers.
- Advocate for the DCRA, University Legal Services, and the Adult Protection Services to assist with inspections of suspected unlicensed, unsafe housing programs and to introduce new enforcement regulations to address nonlicensed housing units.
- Register the severity of the issues with policy makers and legislators.
- Continue to work with advocates, legislators, regulators, and the community to generate a supply of quality CRFs and assisted-living residences.
- Continue to work closely with the DMH to ensure that workable policies and procedures are created, implemented, and enforced and that DOH develops administrative policies and procedures for its CRF regulatory system.
- Continue to work closely with DMH and DOH ensuring that the memo of agreements are upheld by each agency, including sharing information regarding complaints, unusual incidents, annual reports, and quarterly meetings.
- Work closely with the DOH and DMH enforcement offices to advocate for managerial oversight of case management and money-management services.

D. Family and Resident Council Regulation Implementation

Problem: Facilities interfere with both resident and family councils, and the Department of Health states that there are no local regulations to protect resident and family councils. Councils in the nursing home are not protected and are strongly influenced by providers regarding how each council produces grievances, how the city council secures testimony, or how councils can positively impact their own living environments.

Barriers to resolution: Because the DCMR Title 22, Chapter 32, does not list either family or resident council protective services, the long-term care providers can interfere with each council without fear of enforcement sanctions or fines.

Recommendations for system-wide change:

- Create and introduce regulations to the city council.
- Work for passage of the new family and resident council regulation.
- Ensure that the newly accepted regulations are published in the DC Administration of Municipal Regulations (DCMR) and enforced by DOH and HRA.

E. Strengthening DC's Lemon Law

Problem: Both long-term care and home-bound residents receiving defective durable medical equipment do not have current protections under DC Law, Title 50, Subtitle II, Chapter 5, to obtain replacement equipment.

Barriers to resolution: Because the DC Law, Title 50, Subtitle II, Chapter 5, does not address durable medical equipment within its language, the Ombudsman Program should develop a strong collaborative relationship with the DC Consumer and Regulatory Affairs Office to ensure that they are willing to enforce the law and to enforce sanctions against poor providers.

Recommendations for system-wide change:

- Create and introduce regulatory amendments to the city council.
- Work with the DC Consumer and Regulatory Affairs Office for passage and enforcement of the amended regulation.
- Ensure that the newly accepted regulations are published in the DCMR.

**OFFICE OF THE DISTRICT OF COLUMBIA LONG-TERM CARE
OMBUDSMAN VOLUNTEERS FY08**



Stephanie Brown



Naomi Monk



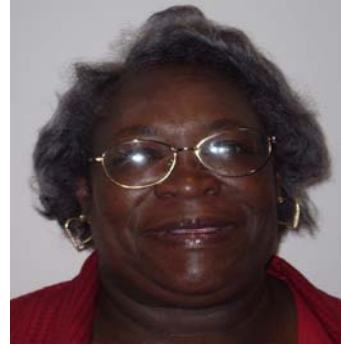
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