



State of Minnesota

Office of the Ombudsman for Mental Health and Mental Retardation

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Testimony before the Minnesota Senate Joint Committee on Sex Offenders in Nursing Homes June 3, 2004

Madam Chair and Members of the Committee,

I am Roberta C. Opheim, the Minnesota Ombudsman for Mental Health and Mental Retardation. I am here to comment on the larger practice of placing persons with mental illness who are under age 65 in Nursing Homes. While the placement of sex offenders has brought this issue to the forefront of attention, the growing practice of placing persons with mental illness under the age of 65 in nursing homes has been a concern to our office for many months. There are a number of factors that play into this, including but not limited to:

- the lack of places to house these individuals,
- the lack of adequate community services,
- funding constraints, and
- changes occurring in state provided services.

However, let me emphasize, we fully support deinstitutionalization.

The practice of placing vulnerable persons who are mentally ill or vulnerable elderly with convicted sex offenders in nursing homes is very troublesome.

When a person is in jail or prison for a crime, and that person is mentally ill, the corrections system is responsible for meeting their needs. I believe The Department of Corrections has made vast improvements in their mental health services since the Stempley Consent Decree of the mid 1990's, but they should continue their efforts to improve. If the person is so mentally ill their needs can not be met in jail/prison then they need active treatment more consistent with a psychiatric hospital or Rule 36 facility for more intensive treatment. A nursing home setting is generally not an active treatment setting regardless of any assurances of the receiving facility, especially in the dual issue of mental illness and criminal behavior.

However, the nursing facility is equally, if not more accountable because:

1. The facility does have the option to refuse certain placements so they should never have agreed to admit these persons in the first place;
2. If more than 50% of the residents are seriously and persistently mentally ill and under 65, then the facility is not considered a nursing home but an IMD (Institute for Mental Disease), and not eligible for payment under Medicaid;



an equal opportunity employer

3. The facility is ultimately responsible to have a:
 - a. Facility risk assessment, and
 - b. An individual risk assessment for each person placed there in order to make sure they know, understand, and protect individuals from their own vulnerabilities as well as from the risks of other residents.

While a facility may write what looks like a good plan, we see huge gaps in staff training and often a lack of adherence to the plan. The practice is often paper compliance.

The practice of placing persons under the age of 65 with mental illness in nursing homes is very disturbing and also contrary to State and Federal policy.

- The practice has become a low service level and low cost alternative to state/community hospitals, Rule 36 or other more intensive treatment settings.
- A nursing home may provide a bed and medication management but generally lacks active or intensive mental health treatment or mental health case management.
- Once in a nursing home, counties are no longer required to provide mental health case management and therefore no planning for return to community living occurs.
- This goes on despite the State policy and funding for relocation of persons under age 65 out of nursing homes.
- Nursing homes are becoming the defacto, life long institution that we fought to eliminate by closing State Hospitals.
- We have just shifted people to cheaper but even less desirable settings.
- Under the U.S. Supreme Court Olmstead Decision, the counties and the State are required to be developing community based living and service delivery, not just shifting people from one institution to another.
- During one recent nursing home closing, 29 individuals were identified as appropriate and eligible for community based relocation case management, yet only three individuals received that service.

Minnesota has worked hard to provide alternative living options for our seniors, which in part plays into why nursing homes are looking to fill their beds with alternative residents. But some of our elderly do not have the ability to live in those alternative living settings. These are among our most vulnerable citizens. When our elderly have no other options, it should not mean they must live their final years with sex offenders and younger persons with behavior disorders.

Persons with mental illness are also very vulnerable due to cognitive impairments that can affect many critical aspects of their life. They also deserve a safe environment to live, receive treatment and hopefully return to a functioning level that will allow them to return to more integrated community living. They should not have to spend their days with criminal sex offenders or with the frail elderly whose activities, interests and needs are different than their own.



Lastly, persons who are mentally ill but also convicted criminals (of any type of crime) need appropriate treatment for their mental illness that ensures that they do not reoffend, whether that is a result of deliberate criminal behavior or a result of a manifestation of their mental illness. They can be a perpetrator as well as a vulnerable individual. They need treatment and hope that they can return to a productive life.

This State and society have done a good job in rethinking, recognizing and developing alternatives for our developmentally disabled citizens. Four and five bed foster home care with waived services is an example of this. We have integrated our most institutionalized citizens into community setting including some of our developmentally disabled citizens with very challenging behaviors and very compromised physical conditions.

The Olmstead Decision clearly requires us to do this for other disabled citizens, including our mentally ill. However we, the State, the Counties and the public, have failed in doing this for the mentally ill in any consistent way.

The specific problems of the situation that brought us here today, rest in my mind with:

1. The facility for marketing to and accepting this population, as well as their failure to protect the other residents.
2. The placing agencies (county and State) for taking the path of least resistance and using a permanent placement for what should be a short term problem.
3. The State and counties for their failure to plan and adequately fund and develop alternative appropriate settings to meet the needs of these populations.

Line workers, case managers, hospital social workers, Department of Corrections discharge staff and even judges face daily challenges in what to do with these vulnerable mentally ill citizens. However until we force the development of better alternatives for the mentally ill, the line workers will continue to place these citizens in whatever facility is available whether the facility can meet the person's need or not.

The Ombudsman for Mental Health and Mental Retardation and the Ombudsman for Older Minnesotans have met about placement of the mentally ill and persons under 65 in nursing homes even before the issue of sex offender placement came to light. Both Ombudsmen programs will continue to monitor and advocate for appropriate placements for all Minnesota citizens.

Thank you for your time and attention on this important matter.

