



COMMISSION ON AGING

August 1, 2022

The Honorable Nancy King
James Senate Office Building, Room 121
11 Bladen Street
Annapolis, MD 21401

Dear Senator King,

I am writing on behalf of the Montgomery County Commission on Aging (CoA) to request your assistance with an urgent issue affecting Montgomery County (MC) nursing home residents and their families. The CoA is authorized by the Older Americans Act and was established by MC in 1974 to advise County government on the needs, interests, and issues of older adult residents, and to advocate on their behalf at the local, state, and national levels.

A primary focus of the CoA is the protection and support of our vulnerable citizens who reside in nursing facilities. These individuals deserve high quality care and a safe living environment. Unfortunately, there are times when nursing facilities are remiss in their duties to their residents. Regulations and enforcement to ensure the safety and health of residents in nursing facilities are essential for this at-risk population. We are writing to you because we believe that proper enforcement of the regulations is not taking place in Montgomery County and we have been unable to make headway trying to work with the State agency on this issue.

The CoA addressed this issue with you in December 2021 during our Legislative Breakfast when we expressed our concerns about the problems created when the State of Maryland did not renew its decade-old Memorandum of Understanding (MoU) with the Montgomery County Department of Health and Human Services (MCDHHS). The MoU had authorized nursing home surveyors employed by MCDHHS to conduct and be responsible for all nursing home survey inspections and complaint investigations in the County. The MoU expired on July 1, 2021, when the State Office of Health Care Quality (OHCQ) assumed responsibility for all nursing facility inspections and investigations in Montgomery County along with the rest of the State.

It is our understanding that since July 1, 2021, there were no annual surveys of the 33 nursing facilities in Montgomery County and about six complaint surveys were conducted. The Montgomery County Long Term Care Ombudsman Program filed numerous complaints on behalf of nursing facility residents that have not been investigated. In addition, the MCDHHS Licensure & Regulatory Program submitted two complaints regarding infection control concerns observed by County sanitarians that also have not been investigated. In fact, we have not been able to determine how many, if any, infection control inspections were conducted in Montgomery County since July 1, 2021, when the state assumed responsibility for such inspections.

Department of Health and Human Services

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We have been trying to communicate with staff at OHCQ about these concerns but to date, they have been unresponsive to our request for information. OHCQ also has failed to respond to our requests for information regarding its plans to conduct the necessary oversight and investigations that had previously been performed by MCDHHS surveyors. Moreover, the CoA was informed by MCDHHS officials that they too have heard nothing from OHCQ.

Obviously, the CoA, County officials, nursing home residents, and the many families of nursing home residents who have filed complaints are frustrated and concerned about the failure of OHCQ to address our concerns. Therefore, we are requesting your assistance to obtain the information we believe is critical to carrying out our responsibility to advocate on behalf of vulnerable adults in Montgomery County. Specifically, we would like to know:

1. How many annual inspections have been conducted at MC nursing homes since July 1, 2021?
2. How many infection control inspections have been conducted in MC nursing homes since July 1, 2021?
3. How many complaints relating to nursing facilities in MC has OHCQ received since July 1, 2021 (including those filed by the MC Long Term Care Ombudsman Program) and how many of those complaints have been investigated?

In addition, we have not received answers to questions that we asked Dr. Patricia Tomsco Nay, OHCQ Executive Director, in a letter dated March 29, 2021. We would like to have a clear understanding of how the State plans to ensure the well-being of our vulnerable residents of nursing facilities through the survey and inspection process. The additional questions are attached as an addendum to this letter.

The CoA urges you to determine why we have not received responses to the questions we have raised concerning the activities OHCQ plans for Montgomery County and to request that the information we seek be provided without further delay from the appropriate authorities. The need for transparency on the part of OHCQ cannot be overstated.

Your help to make the nursing facility inspection and survey system fully functioning, effective, and transparent in Montgomery County is greatly appreciated. We must make sure that our vulnerable residents in nursing homes and their concerned families are getting the care and attention that they need and deserve.

Sincerely,

Barbara Selter

Barbara Selter

Please see addendum on the next page.

Addendum

1. Are there OHCQ surveyors dedicated to Montgomery County nursing facilities and if not, how is the OHCQ absorbing the work of the eight Montgomery County surveyors who had been employed by Montgomery County under the expired MoU?
2. Under the expired MoU, one Montgomery County nursing facility surveyor acted as a liaison to the Long-Term Care Ombudsman Program Director. This allowed the two entities to collaborate to resolve some residents' issues quickly and effectively. Is there a state nursing facility surveyor assigned to such a liaison role? If so, who is that person and when will the two agencies begin working together? If not, how will problems previously resolved through collaboration be handled to avoid the lengthy delay of a complaint investigation?
3. What are OHCQ's plans for recruiting and retaining new nursing facility surveyors to absorb the work of the previous Montgomery County surveyors? We are concerned that given the heavy traffic in Montgomery County, the high price of gasoline, and the fact that OHCQ does not cover mileage, the surveyors may prefer not to have to travel to Montgomery County. What is OHCQ's plan to motivate surveyors to work in Montgomery County without it being viewed as a punishment assignment?
4. Federal regulations require that ten percent of surveys begin off hour (or off shift) e.g., 6 am or on a weekend. Under the MoU, Montgomery County surveyors exceeded the requirement as about 25 percent of their surveys began off hour. Is the State in compliance with this Federal regulation and how does OHCQ plan to ensure that there will be off hour surveys in Montgomery County?
5. The Federal requirement is that complaints be investigated within 10 days. Prior to the expiration of the MoU, the State took about 33 days to investigate a complaint and the County took 20 days. Does OHCQ have a plan to comply with the Federal regulation?
6. Montgomery County surveyors were following the Federal requirement that every nursing facility undergo an annual survey and inspection. During Covid, under CMS emergency orders, no annual inspections were conducted. As of today, it appears to us that CMS is focusing on infection control inspections in lieu of annual surveys. What is the State's plan for conducting infection control surveys and annual surveys in MC and the rest of the State?