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Federal Report Cites State's Wrongdoing in Nursing-Home Ombudsman Program
(09/1/11 The Orlando Sentinel) By Kate Santich

Federal investigators have determined the state's Department of Elder Affairs violated the U.S. Older Americans Act by interfering with what is supposed to be an independent nursing-home watchdog program, officials announced Thursday afternoon.

The findings cite a series of violations, including muzzling the program's communication with the news media and restricting its ability to lobby the Legislature on behalf of nursing-home residents. The report also criticized the department's selection and firing of volunteers who make up the bulk of the watchdog program's workforce, saying that "it must be clear to the volunteers that they work for and are answerable only to the Long Term Care Ombudsman."

The report, by the federal Administration on Aging, did stop short of saying that the dismissal of Brian Lee — who had led the Long Term Care Ombudsman program for seven years — broke the letter of the law. But it added that the action "raised troubling concerns" and was "contrary to the spirit" of the 1965 Older Americans Act that created the ombudsman program.

It also called his departure "a grave blow" to the program and said current conditions are having "a chilling effect" on the volunteers.

Lee, formerly a \$78,000-a-year state employee, said he was heartened by the report and felt "a little bit vindicated."

"I'm thankful that, in their diligence, the investigators took the time to dig as much as they did and put together this comprehensive of a report. It tells the real story of what went on," he said. "Ultimately, it's going to help this ombudsman program and other [states'] ombudsman programs with what is supposed to be their true intent ... of helping the residents."

At Florida's Department of Elder Affairs, spokeswoman Ashley Marshall said legal staffers were planning to seek "clarification" on the report.

"We were concerned and quite confused," Marshall said. "It seemed to be quite vague, and it didn't seem to be based on a lot of specific facts. ... But we're of course always doing our best to make sure that we're in compliance with the Older Americans Act."

At the Administration on Aging, Assistant Secretary Kathy Greenlee said the findings — and intent — were clear.

"Our review found that Florida did not comply with the Older Americans Act, a critical law for protecting seniors in Florida and across the country," she said. "We expect Florida to come into full compliance with the law."

The administration gave the state 30 days to submit a plan detailing how it will correct the problems.

The ombudsman program, established in every state, was designed to protect the rights of those in nursing homes and long-term-care facilities by investigating and resolving complaints and helping to shape state policy. But soon after Gov. Rick Scott took office in January, troubles erupted for the Florida ombudsman.

On Feb. 7 — just 11 days after Lee had sent a letter to the state's nursing homes requesting ownership

information — Scott's office advised Lee's boss at the Department of Elder Affairs that it was time for Lee to go and for the ombudsman program to "go in a new direction," the report said.

Yet two days later, leaders in the department told the Administration on Aging — before the formal investigation was launched — that they were "unaware" of why Lee had resigned.

Elder Affairs officials then told Lee's temporary replacement, acting director Aubrey Posey, that the letter requesting nursing-home ownership information needed to be "fixed." On Feb. 16, Posey issued a retraction of the request.

The ownership information is generally considered sensitive, advocates for residents say, because companies sometimes try to protect their assets from lawsuits by setting up complicated corporate structures.

The Department of Elder Affairs has maintained that Lee's departure was simply part of the normal turnover with the inauguration of a new governor, though Lee — a Republican — had previously worked under both Republican and Democratic administrations. The report called the department's argument "unpersuasive."

"The motivation for the state's action appears to have been a desire to stop Mr. Lee from carrying out his duties under the statute rather than a desire to go affirmatively in a 'new direction,'" the report said.

Lynn Dos Santos, a volunteer ombudsman who had been an outspoken supporter of Lee, was essentially fired by the department — or "de-designated" — after sending emails to fellow volunteers that the department contended violated Florida's so-called Sunshine Law of open government. Investigators said they had "grave concern" about the claim, which they said — if true — would require advance public notice of the intent to have a discussion every time one volunteer communicated with another about their work.

Dos Santos, who lives in Sarasota County, said she was "thrilled" by the report. "It just shows that this governor and this department have taken what used to be a wonderful program and turned it into a sham. I wouldn't even want to be a member of the program now."