

**NATIONAL CENTER FOR
STATE LONG TERM CARE
OMBUDSMAN RESOURCES**

**SUPPORTING
THE OMBUDSMAN'S NEW ROLE
IN THE LONG TERM CARE SURVEY PROCESS**

National Citizens' Coalition for Nursing Home Reform

Supported by the U.S. Administration on Aging

The NATIONAL CENTER FOR STATE LONG TERM CARE OMBUDSMAN RESOURCES was established with funding from the Administration on Aging in 1988 to enhance the skills, knowledge and management capacity of the State Long Term Care Ombudsman Programs. The Center provides national technical assistance, training, and information dissemination, serving as a resource on ombudsman related issues for State Agencies on Aging. The Center is administered by the National Association of State Units on Aging in cooperation with the National Citizens' Coalition for Nursing Home Reform. For more information contact the Center at 2033 K Street, NW, Suite 304, Washington, DC 20006. (202) 785-0707.

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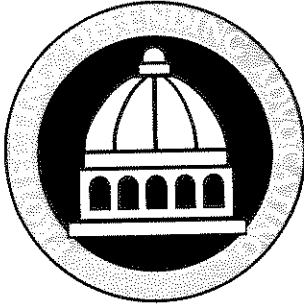
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National Citizens' Coalition for Nursing Home Reform

A Technical Assistance Brief

**By Barbara Frank
National Center for State Long Term Care Ombudsman Resources**

October, 1991

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SUPPORTING THE OMBUDSMAN'S NEW ROLE IN THE LONG TERM CARE SURVEY PROCESS

A Beginning Approach to This New Opportunity

The Older Americans Act requires the Office of the State Ombudsman to

"(H)(ii) analyze and monitor the development and implementation of Federal, State, and local laws, regulations, and policies with respect to long term care facilities and services in that State, and recommend any changes in such laws, regulations, and policies deemed by the Office to be appropriate; and

"(iii) provide information to public agencies, legislators, and others, as deemed necessary by the Office, regarding the problems and concerns, including recommendations related to such problems and concerns, of older individuals residing in long-term care facilities."

Federal procedures for surveyors inspecting nursing homes, issued by the Health Care Financing Administration in September 1989, provide new opportunities for ombudsman advocacy for nursing home residents with regard to these responsibilities effective October 1, 1990. Surveyors are instructed to seek information from ombudsmen about their experiences at the nursing home and to invite ombudsmen to the survey exit conference. Survey procedures also permit residents and families to have ombudsmen present during their interviews with surveyors. Through these new procedures:

- Ombudsmen have an official role in surveyors' evaluation of facilities' compliance with the law and regulations. Ombudsmen can assist residents who will be interviewed by surveyors and can provide direct information to surveyors about consumer experiences at the home.
- Ombudsmen have a mechanism to monitor the quality of surveys and to identify areas where systems advocacy is needed. State ombudsmen can convey consumer experiences and observations about the survey process to colleagues in the state survey agency.
- Ombudsmen have a vehicle for communication with surveyors. State and local ombudsmen can find new avenues for interaction and cooperative efforts with surveyors to strengthen government oversight of nursing home care.

To take full advantage of the opportunities provided by the survey process, state ombudsmen will need to work with the survey agency and the ombudsman network to establish:

- procedures for notification and surveyor-ombudsman information sharing
- mechanisms for gathering, analyzing and discussing ombudsman experiences with surveys
- guidance to local ombudsmen to ensure that they are prepared and able to fulfill their new responsibilities with regard to the survey process
- mechanisms for advocacy and cooperative activity with the state survey agency

1. OVERVIEW OF THE LONG TERM CARE SURVEY PROCESS AND THE OMBUDSMAN ROLE

SURVEY PROCESS

The survey procedures, contained in the State Operations Manual Transmittal 232 issued in September, 1989, describe the 11 tasks surveyors must perform to conduct their surveys:

- Off-site preparation
- Entrance Conference/On-site Preparatory Activities
- Orientation Tour
- Resident Sampling
- Environmental Quality Assessment
- Quality of Care Assessment
- Closed Record Review
- Individual and Group Resident Rights Interviews
- Dietary Services System Assessment
- Medication Pass
- Information Analysis and Decision-making
- Exit Conference

The two central pieces of the survey process are the in-depth review of the Quality of Care received by a sample of residents and the Interviews with residents chosen from the Quality of Care sample. These residents are interviewed about Residents' Rights and Quality of Life. In addition to individual interviews with residents, surveyors also conduct interviews with the family or legal representative of three residents who are unable to participate in an interview, and a group interview with members of the Residents Council and other residents who would like to be a part of the discussion.

OMBUDSMAN ROLE

The survey procedures identify several areas for surveyor - ombudsman interaction, including:

- contact with ombudsmen when surveyors arrive at the facility, as part of surveyors on-site preparation. The surveyors **must**:
 - * "Inquire whether complaints have been received about the facility, the nature of the complaints, whether these complaints have been validated, and whether there are complaints pending validation."
 - * "Advise the ombudsman of the likely time the exit conference will occur and invite the ombudsman to observe in the exit conference."
 - may ask the local ombudsman for assistance in contacting families to be interviewed
 - permit residents and families to have the ombudsman present for their interviews with surveyors.

To assist in these tasks, this Technical Assistance Brief includes the following sections:

1. Overview of the long term care survey process and the ombudsman role
2. Notification issues
3. Ombudsman Activities During the Survey
4. Long Term Activities to Strengthen the Ombudsman Role and Improve the Survey Process
5. Preparing for a Survey is a Year-Long Effort for a Local Program

The Brief describes a wide range of potential activities with the intent of raising awareness about possible ways to work with the survey system as appropriate within the priorities and resources of each state's program. The Brief draws on training sessions with surveyors in Washington State and in states in HCFA Regions IV and V; Sessions on the Ombudsman Role in the Survey Process at the National Ombudsman Training Conference, May, 1990 in Denver, Colorado and May, 1991 in Mobile, Alabama; and (3) telephone contact with ombudsmen and surveyors over the last year.

2. NOTIFICATION ISSUES

State Ombudsmen need to work out procedures with the state survey agency and with the local ombudsman network to determine how notification will work. It is critical to think through the timing of the notification and the process, such as who is notified and by whom.

Federal law prohibits surveys from being announced in advance and creates financial penalties for anyone who lets a nursing home know that the survey is about to occur. HCFA's survey procedures direct surveyors to contact the Ombudsman after arrival at the facility. However this creates problems for ombudsmen, who may not be immediately available or immediately able to respond to the call, when there is no advance notice, and therefore not able to provide important information to the surveyors.

Therefore, states are encouraged to consider arrangements which ensure that ombudsmen are able to provide the necessary information to surveyors, (and contingencies if the original arrangement does not work on a particular occasion). Design the notification process to assure the most streamlined way of notifying the individual in the ombudsman program who will respond to the surveyors.

■ Possible Arrangements with the Survey Agency:

- * Give surveyors the phone numbers of the local ombudsman to call the local program directly and save the time needed to transmit the message through the state office.
- * Develop a procedure with surveyors for a follow-up to the initial call if the ombudsman is not immediately available or needs time to review files before providing information to the surveyors. Making an appointment for the return phone call is helpful. Surveyors can tell the ombudsman office when and where they will be for a return call to avoid having to leave a series of messages through the nursing home.
- * Explore an agreement which allows the survey agency to notify the ombudsman in advance (it should bind the ombudsman to keep the survey unannounced and could subject the ombudsman to the federally mandated fine if s/he discloses the survey schedule).

■ Possible Arrangements within the Ombudsman Program:

- * Develop a procedure within the ombudsman program for quick responses to the surveyor's call.
- * Each local program should try to decide ahead of time who will respond to calls from surveyors about which nursing homes.
- * Local programs can inform each nursing home that they are to be called when the surveyors come.
- * In many states, homes are required to post information about the ombudsman program; making sure that posters with the correct local number for the ombudsman are visible in the nursing home can assist in this notification process.

3. OMBUDSMAN ACTIVITIES DURING THE SURVEY

This discussion is targeted to ombudsmen who will be directly involved with surveyors during the survey. It is based on the experiences of local ombudsmen and surveyors and suggests a range of potential activities.

■ Responding to Surveyors Request for Information

* Guide the surveyors to sources of information:

Ombudsmen can identify areas of the nursing home, problem trends, and individual staff or residents for surveyors to focus on during the tour, the Quality of Care review and the Individual and Group Interviews. Find out what types of information surveyors are looking for so that your information can be tailored to their needs.

- + Lead surveyors to residents with a range of experiences, both to residents who are satisfied and dissatisfied, to residents with different abilities, interests, needs and problems.
- + Guide them to rooms and wings where they can see physical environment problems.
- + Mention strengths and weaknesses of the facility and concrete factors that contribute to the satisfaction or dissatisfaction of residents.
- + Ombudsmen can point surveyors to sources of information, such as incident and accident reports, resident councils minutes, or other helpful information.
- + Provide surveyors with information about residents' experiences with the assessment and care-planning process.

* Give surveyors facts and let them draw their own conclusions:

Surveyors can do more with facts than with opinions. Provide them with specific information such as time of day, area of the nursing home, relevant staff and circumstances with respect to complaints or conditions with which the ombudsman program is familiar. Specific information about what has occurred and what the results have been is more helpful to surveyors than general information. Surveyors must verify all information and can use ombudsman accounts to verify residents' information, and vice versa.

■ Be a Presence in the Nursing Home During the Survey

- * Let residents know why the surveyors are there and how residents can talk with them.
- * Oftentimes residents are not familiar with the survey procedures or experience stresses related to the surveyors' presence. Explain what is happening during the survey and, if information is available, what the surveyors are finding.
- * Let families know the surveyors are there and help facilitate their communication with the surveyors.

■ Resident Interviews

* Direct surveyors to Informative Residents:

Ombudsmen can recommend residents and families who should be interviewed and can suggest areas that surveyors might want to explore with residents, as long as ombudsmen do not violate residents' confidentiality by doing so.

* Be with residents who want you there during the interview:

Ombudsmen can be present with residents who request their involvement. They may feel better able to respond to surveyors and transmit their information to surveyors in a way that will be most useful to surveyors. Being with a resident during the interview can assist ombudsmen in efforts to make sure that they are private (no nursing home staff are in attendance unless a resident asks for their participation) and do not result in retaliation.

* Assist residents who may, due to language, communication or cultural/racial differences, may not be as easily able to communicate with surveyors:

Residents may find it difficult to communicate with surveyors either because of language differences, or difficulty with communication, or for cultural or racial reasons may experience difficulty in interviews with surveyors. Ombudsmen may be able to assist surveyors and residents with communication or identify resources such as the resident's family or friends who may be able to assist with communication.

* Support residents who fear retaliation:

Residents may fear adverse consequences from speaking to surveyors and may wish that ombudsmen monitor their treatment after the survey. Let residents know you'll be there to follow-up after surveys to make sure that residents who spoke with surveyors do not experience retaliation.

* Attend the group interview if residents want you to:

You can prompt and encourage residents to bring up issues you know have been before them. Do not interfere with the role of the surveyor and do not talk for residents. Get the ball rolling on topics you know they have in mind. Help residents to be specific about the information they are providing to surveyors, without violating their confidentiality. Don't take over the conversation, and let the surveyor establish his/her own rapport with residents.

* Be aware of the quality of the interviews:

Assess the resident interviews based on residents' comments and on whether information is used in making survey determinations. Share information with the state Ombudsman and local ombudsmen for use in working in the long term on issues with the state survey agency.

■ Exit Conferences and Local Follow-up

Although ombudsmen are observers at the exit and are not permitted to participate in the discussion, ombudsmen can still support residents through their presence:

* Assist with separate exit conferences for residents:

Surveyors may convene a separate exit for residents at which ombudsmen may play a role as facilitator. If surveyors do not convene the conference, ombudsmen may find it useful to meet with interested residents and share factual information. Make sure to work out procedures with the state survey agency related to what information can be shared.

* Be a presence after surveyors leave:

After the survey, ombudsmen can answer questions that residents have about the results. It will be important to make sure that any information provided is factual and not speculative.

* Monitor residents treatment and be aware of potential retaliation:

Ombudsman can monitor residents who have provided information to surveyors to provide them with protection and assistance if they fear or experience retaliation.

* Review and discuss with residents the survey findings and resulting actions by the facility:

Residents may need assistance to interpret the results of the survey and understand what actions the facility must take as a result. Discuss to what extent the survey findings reflect their view of the facility, and what they can do if they wish to provide the survey agency with additional information. Residents may also need information about follow-up surveys and what actions the state will take as a result of its findings.

* Transmit information to survey agencies if ombudsmen disagree with survey findings:

It will be important for State Ombudsmen to establish procedures for local ombudsmen to follow both within the ombudsman program and between the ombudsmen and the surveyors to handle situations where ombudsmen disagree with survey findings.

* Monitor survey results for consistency with exit conferences to make sure they are not inappropriately altered:

Ombudsmen can monitor the survey results to make sure that problems identified in the exit conference are included in the final survey report. Surveyors have, from time to time, reported that their findings are inappropriately changed and have said they welcome ombudsman involvement in the exit conference as a possible means of monitoring such occurrences.

4. LONG-TERM ACTIVITIES TO STRENGTHEN THE OMBUDSMAN ROLE AND IMPROVE THE SURVEY PROCESS

State Ombudsmen can establish procedures within the ombudsman program and with the survey agency to address systemic issues that emerge from ombudsmen's participation in surveys.

■ Follow-up on the surveys.

Reviewing survey reports is critical in the ombudsman's role as advocate for residents. Do reports reflect what ombudsmen heard in the exit conference? what residents and families told the surveyors? what ombudsmen told surveyors? what is going on in the facility?

What happens if ombudsmen disagree with survey findings? Have an arrangement with the survey agency and within the ombudsman program to identify and discuss such problems:

* Establish a process for communicating differences of opinion about survey findings:

Develop a system for local programs to notify the state ombudsman when a serious discrepancy exists between survey findings and conditions in the facility as they are known to the ombudsman or when problems exist in the way interviews or the survey are conducted.

* Establish a point of contact within the survey agency:

A designated contact person for ombudsmen within the survey agency who can look into such matters, can share information about the rationale for final survey determinations, and can inform the survey agency if information from the ombudsman indicates that there is a need to examine the situation further.

* Work to Make Sure Residents and Ombudsmen's Voices are Heard

Surveyors must verify information in making their findings. Sometimes, residents' information can be discounted if it cannot be verified by another source. If this happens, state ombudsmen can work with the survey agency to develop procedures and training to address this problem. Some survey agencies are finding ways to use residents' information without verification from another source, by showing a pattern of residents' rights violations at the home, even though they happen in different ways for different people, and by documenting the validity of resident's other information to verify their reliability as a source. Ombudsmen can assist surveyors by supplying corroborative information or attesting to residents' reliability.

* Have local programs monitor the quality of surveys and note inconsistencies among surveyors:

Does a survey team cite problems in one home and allow the same problems to go uncited in another? Do different surveyors cite different problems? How do they determine scope and severity? How do they use resident and ombudsman information? Develop statewide training and protocols to assist local ombudsmen to monitor survey practices and results in the homes in their area to evaluate the overall quality of the survey program to be shared throughout the statewide ombudsman program and with the state survey agency.

■ **Use the New Role in the Survey Process to Expand Existing or Develop New On-going Agreements and Mechanisms for Interagency Communication**

Many State Ombudsmen already have on-going working relationships and memoranda of understanding with their State Survey Agency. The new role in the survey process provides an opportunity to review these arrangements and determine where they can be expanded or revised. If they are not already, the following activities and communication mechanisms could be a part of these arrangements.

* Interagency Meetings To Share Information and Address Problems

Regularly schedule meetings between the survey agency and the ombudsman program to share information about problems ombudsmen identify with the survey process or specific surveys, as well as to talk through other issues related to the well-being of residents. For example, an ombudsman brought to the attention of one state survey agency that residents were afraid to complain because they had experienced retaliation. The surveyors didn't know if they could write a defensible deficiency without using residents' names, yet to use residents' names could subject them to further retaliation. Discussion is continuing about how to write a defensible citation and protect residents' confidentiality in situations where they fear harm. Many such issues can be resolved through inter-agency deliberations.

* Training

Conduct cross training or hold joint training between ombudsmen and surveyors can provide a vehicle for communication of ways that each program can be more helpful to the other. Training can also include information about how to develop defensible deficiencies, how the law and regulations are being interpreted by the survey agency, and good techniques for communication with residents.

State survey agencies and state ombudsman programs could coordinate public education efforts related to the Nursing Home Reform Law and initiatives to train residents in how to be effective participants in the survey process.

* Set up a routine way to share information with the survey agency outside of surveys

Work out a system within the ombudsman program and with the survey agency for investigations by the survey agency of complaints investigated by the ombudsmen and referred to the survey agency, including how ombudsmen will be involved in the investigation and notified of the results.

■ **Support Strong Enforcement**

Establish state procedures to provide a vehicle for ombudsmen to share information they have that supports surveyors determinations that enforcement actions are warranted. Such vehicles can include providing testimony or submitting affidavits to hearing officers reviewing recommendations of the survey agency for enforcement action. Working agreements between the State Ombudsman Program and the State Survey Agency could address ways for the ombudsman program to participate in decisions about which sanction is appropriate, ways for ombudsmen to monitor a

facility's achievement of compliance after a survey and ways to support residents while action is being taken. Monitor situations in which you believe enforcement action should be taken and work with the survey agency to encourage solid enforcement activity.

■ Train Local Ombudsmen

Ombudsmen need to be familiar with the laws, regulations and survey guidelines for nursing homes and for the long term care survey process and how surveyors evaluate situations and determine that deficiencies exist, such as the severity and scope scales, and how surveyors can use information from residents and ombudsmen to build a case for a deficiency.

Ombudsmen also need to be trained on their role and procedures in the survey process. Important topics for a training include:

- what ombudsman involvement in the survey process can accomplish for residents
- how ombudsmen should conduct themselves:
 - * at the exit conference (as observers)
 - * at a resident individual or group interview (and support residents as facilitator if requested, without taking over the conversation)
 - * with respect to residents' confidentiality
- the mechanics and procedures in local programs to respond to survey agency requests
- how to be selective and set priorities for involvement in surveys, given the limits of what the ombudsman can cover
- how to decide when a volunteer can respond and when the ombudsman coordinator should do so
- how to prepare for requests from surveyors, including how to document complaints, how to organize files to retrieve information easily, tracking complaints sent to the state survey agency and their outcomes, and maintaining any other information about the facility useful to surveyors

5. PREPARING FOR THE SURVEY IS A YEAR-LONG EFFORT

I. WORKING WITH RESIDENTS:

■ Working with the resident council:

A. Education on Rights, Regulations and the Survey Process: Attend resident council meetings regularly. Take the opportunity to inform residents about the regulations and their rights by teaching them any regulations relevant to any complaints or concerns that are mentioned at the meeting. Always respond to the complaints they bring up in the meeting and encourage them to know, ask about and exercise their rights.

B. Encourage resident councils to make their minutes a useful record: Many surveyors read resident council minutes as part of the survey or in preparation for the interview with the council. Help residents be sure the minutes accurately and fully reflect the issues brought before the council, providing a record of problems, including those resolved. Problems residents bring to ombudsmen can, with resident's permission, be brought to the resident council and included in the minutes. Minutes can include recurring problems, with council actions taken and facility responses, repeated for several months in a row.

■ Educate residents:

A. About their rights: Some residents are so accustomed to the treatment they receive at the home that they don't notice or articulate their actual condition to surveyors. Tell residents about the regulations and that they do not have to accept situations which do not support their well-being. Let surveyors know if you are directing them to residents who will not be able to articulate that what they confront is problematic. Although surveyors need to show the severity of a problem to support their deficiencies, they do not have to rely on a resident's own judgement that there is a severe problem. A resident can confirm that something has happened and the surveyor can verify its severity through professional judgement.

B. About the survey process: Let residents know about their role in the survey process. When you work with residents to resolve their problems, let them know what kind of information would be important to share with surveyors. Let the resident council know what kind of questions surveyors will be asking so council members can think about the group interview ahead of time. Be available if residents would like you present during the interview. Be sure to follow-up with residents afterwards.

II. OMBUDSMAN PREPARATION

■ Learn about assessments and care plans:

Care plans need concrete measurable goals to be effective. Ask residents if they know about their assessments or care plans, if they attend their care conferences, what it is like for them to participate. If residents have concerns about their care, encourage them to use the care planning process as a forum to bring their concerns to facility staff. Be willing to assist residents by helping them understand what their care plans say, helping prepare for the best participation in the care plan process, helping residents be assisted at the conference by a representative of their choice.

As permitted by residents, share your information about facilities' practices and residents' experiences regarding resident assessment and care planning to assist surveyors in identifying residents for the quality care assessment and residents' rights interview.

■ **Maintain on-going records and documentation:**

Your ability to respond quickly and thoroughly to surveyors when they call may well depend on how you organize your records all year long. As you become familiar with the survey guidelines you can organize your files to be able to document your case work and report to surveyors in a way that they can quickly utilize. Keep track of patterns of problems, areas of the facility in which they occur and how they relate to the regulations. Get residents' permissions ahead of time to share information with surveyors and encourage residents and families in advance to be prepared to speak with surveyors. Note this in your records about the home.

