

Do surveyors have to witness a violation themselves to issue a citation for non-compliance?

It is not uncommon for a state surveyor to say they are unable to cite for non-compliance if they do not witness the violation themselves. However, that is not true.

State surveyors are required to follow investigative procedures laid out in the State Operations Manual. [Chapter 5](#) of the handbook gives exhaustive instructions on what a state survey agency must do when it has received a complaint. The guidance does not say a surveyor must witness an event to cite for non-compliance. It gives detailed information on how to cite for past non-compliance that has now been corrected. In other words, the situation that led to the complaint no longer exists because it was fixed. But the facility may still be cited for non-compliance.

We encourage you to review the entire chapter to understand the procedures; however, some of the most relevant sections are below (bold font added by NORC for emphasis).

For additional information about how and when surveyors are required to communicate with the Ombudsman program review [Ombudsman References in Federal Nursing Home Requirements](#).

What a survey team must do PRIOR to a complaint investigation.

5300.1 - Task 1: Offsite Survey Preparation

(Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

Review any information about the facility that would be helpful to know in planning the investigation.

Contact the ombudsman to discuss the nature of the complaint and whether there have been any similar complaints reported to and substantiated by the ombudsman. Review the related regulatory requirements or standards that pertain to the complaint. For example, if it is a complaint about abuse, review the requirements at 42 CFR 483.13. Plan the investigation. Before going to the nursing home, plan what information to obtain during the complaint investigation based on the information already acquired. Consider practical methods to obtain that information.

Notifying a facility of past non-compliance that has been corrected:

5300.5 - Task 7: Exit Conference

(Rev. 208; Issued:10-21-22; Effective: 10-21-22; Implementation:10-24-22)

Conduct an Exit Conference related to a complaint survey in accordance with the process described in the Exit Conference section located in the Long-Term Care Survey Process (LTCSP) Procedure Guide (<https://www.cms.gov/Medicare/Provider-Enrollment-andCertification/GuidanceforLawsAndRegulations/Nursing-Homes.html>). Do not inform the nursing facility of confidential information unless the individual who provided the information specifically authorizes you to do so. **If a deficiency is not present now, but was present and has been corrected, notify the facility orally and in writing that the complaint was substantiated because deficiencies existed at the time that the complaint situation occurred.**