

The Long-Term Care Ombudsman Program and Its Coordination with State Survey Agencies



***CMS Survey, Certification
& Enforcement Program
and how it intersects with
the Long-Term Care
Ombudsman Program***

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The Medicare and Medicaid programs were signed into law on July 30, 1965. President LBJ is pictured at the signing ceremony in Independence, Missouri at the Truman Library. Former President Truman is seated beside him. LBJ held the ceremony there to honor President Truman's leadership on health insurance, which he first proposed in 1945.



Actor Kirk Douglas helped kick off the Campaign for Quality Care to pass OBRA. He is shown with the late Senator John Heinz and Representative Claude Pepper, both champions of reform legislation.

NURSING HOME REFORM ACT (OBRA '87): 20 YEARS OF HISTORY

OBRA '87 requires sweeping changes in federal standards to improve standards of care in nursing homes.

"Pioneer Network" of nursing homes organizes to develop and begin promoting principles underpinning "culture change."

CMS begins including some data on number and types of nursing staff on the agency's "Nursing Home Compare" website.

Special Committee on Aging

"THE NURSING HOME REFORM ACT TURNS TWENTY: WHAT HAS BEEN ACCOMPLISHED, AND WHAT CHALLENGES REMAIN?"

GAO report, "Nursing Homes: Efforts to Strengthen Federal Enforcement Have Not Deterred Some Homes from Repeatedly Harming Residents," faults "immediate sanctions" policy. Hearing features testimony from GAO, CMS, advocates, and academics, and highlights the success of Michigan's criminal background check program.

HHS publishes final enforcement rules for OBRA '87.

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"MEDICAID REFORM: QUALITY OF CARE IN NURSING HOMES AT RISK"

"We have witnessed dramatic improvements since 1987... but we are not there yet. Recent inspections of nursing homes reveal that deficiencies ranging from substandard care to conditions posing immediate harm to residents still exist in many nursing homes nationwide."

- Senator William Cohen

President Clinton announces "Nursing Home Initiative" to strengthen enforcement actions for poorly performing facilities, including legislation to require criminal background checks for workers and establish a national registry of nursing home aides.

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"BETRAYAL: THE QUALITY OF CARE IN CALIFORNIA NURSING HOMES"

"Too many people are suffering and dying... this is absolutely inexcusable. We have laws and regulations already in place that should be preventing these problems, but they are not enforced in any meaningful way."

- Senator Herb Kohl

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"SAFEGUARDING OUR SENIORS: PROTECTING THE ELDERLY FROM PHYSICAL AND SEXUAL ABUSE IN NURSING HOMES"

GAO report, "Nursing Homes: More Can Be Done to Protect Residents from Abuse," finds that allegations of abuse are often not reported promptly nor prosecuted fully.

HHS establishes "Nursing Home Compare" website.

Government Accountability Office (GAO) reports

- "Nursing Homes: Additional Steps Needed to Strengthen Enforcement of Federal Quality Standards"
- "Nursing Home Care: Enhanced HCFA Oversight of State Programs Would Better Ensure Quality"
- "Nursing Homes: Complaint Investigation Processes Often Inadequate to Protect Residents"

GAO releases "Nursing Home Fire Safety: Recent Fires Highlight Weaknesses in Federal Standards and Oversight" after two deadly nursing home fires in 2003. Audit finds federal regulations allow many facilities to operate without sprinklers and other fire protections.

CMS states that it will pursue a regulatory change to require the installation of smoke detectors in nursing homes and plans to include fire safety data on "Nursing Home Compare" website.

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"FEDERAL IMPLEMENTATION OF OBRA 1987 NURSING HOME REFORM PROVISIONS"

"There are significant indications that this major effort is seriously floundering. It is a complex law and there is no question that it poses considerable challenges in putting it into place. But these difficulties must not be made worse or even impossible because of bureaucratic obstacles or misplaced priorities."

- Senator David Pryor

The Commonwealth Fund releases "Assuring Nursing Home Quality: The History and Impact of Federal Standards in OBRA '87," finding significant improvements.

Institute of Medicine (IOM) publishes "Nursing Staff in Hospitals and Nursing Homes: Is It Adequate?" strongly endorsing OBRA '87's standards, but also calling for more nurse staffing.

HHS' "Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes" finds more than 90% of nursing homes do not provide sufficient staffing to protect residents, but agency does not implement minimum nurse staffing ratios.

New requirement for nursing homes to post daily staffing levels takes effect, requiring facilities to include the daily nursing staff hours.

GAO report requested by Senators Herb Kohl and Charles Grassley, "Nursing Homes: Despite Increased Oversight, Challenges Remain in Ensuring High-Quality Care and Resident Safety," finds inconsistency in how state surveyors conduct inspections and cite serious deficiencies.

CMS' mission is to ensure effective, up-to-date health care coverage and to promote quality care for beneficiaries.



More than 3 million Americans rely on services provided by nursing homes at some point during the year. 1.4 million Americans reside in the Nation's 15,800 nursing homes on any given day. Those individuals and an even larger number of their family members, friends, and relatives, must be able to count on nursing homes to provide reliable, high quality care.

Action Plan for Further Improvement of Nursing Home Quality

The CMS Nursing Home Action Plan is based on CMS' Three-Part Aim for improving U.S. healthcare. The Three-Part Aim comprises three objectives:

- Improving the individual experience of care;
- Improving the health of populations; and
- Reducing the per capita cost of care for populations.





Create Strategic Approaches through Partnerships

No single approach or individual can fully assure better health care. Rather, CMS combines, coordinates, and mobilizes many people and techniques through a partnership approach.



Create Strategic Approaches through Partnerships

Thru partnerships, quality improvement may be addressed at the state and national level, leading to improvement in the health of nursing home populations. This, in turn may reduce health care costs and may achieve better care, better health and higher quality.

CMS & AoA Partnerships

Effective quality assurance in nursing homes is best achieved through the combined, motivated, and coordinated approach by many stakeholders in the health care system.

Although each entity within the system may have different roles and responsibilities, the goal of quality care is advanced when an increasing number of entities in the system can act synergistically. When such a concerted action is achieved, the total can indeed become greater than “the sum of its parts.” Therefore, it is CMS’ mission to encourage collaboration among the principal individuals and organizations that are responsible for ensuring quality.

CMS Responsibilities & Coordination with the LTC Ombudsman Program

Appendix P - Off –site Survey Preparation

Note any potential areas of concern reported by the **ombudsman** office and note resident names reported as potential sample residents, residents for closed record review, or family members for family interviews and the reasons for their recommendation by the **ombudsman**.

The team coordinator and/or designee is responsible for completing the following tasks:

- Contact the **ombudsman** office in accordance with the policy developed between the State survey agency and State **ombudsman** agency.
- The purposes of this contact are to notify the **ombudsman** of the proposed day of entrance into the facility and to obtain any information the **ombudsman** wishes to share with the survey team.

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7207.2 - All Surveys Must Be Unannounced The State has the responsibility for keeping surveys unannounced and their timing unpredictable. This gives the State agency doing the surveying greater ability to obtain valid information because it increases the probability that the surveys will observe conditions and care practices that are typically present. While the Act and implementing regulations referenced in §7207.1 require that standard surveys be unannounced, it is CMS' intention and expectation to not announce any type of nursing home survey such as abbreviated, onsite revisit, or complaint surveys. Therefore, if CMS conducts standard surveys or validation surveys, the regional office must follow the same procedures as required of the States to not announce surveys. The only exceptions to this policy would be if, for instance, some additional documentation was required and the most efficient way to obtain it would be through making an appointment and revisiting the facility or asking that it be provided via electronic means. **The State should notify the State ombudsman's office according to the protocol developed between the State and the State ombudsman's office. This protocol must ensure strict confidentiality concerning the survey dates.**

7904.2 - Federal Surveys For Federal surveys, CMS will contact the State survey agency and provide the information needed for the **State to notify the ombudsman on CMS's behalf.**

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Appendix P – Meetings & Interviews

Throughout the survey, discuss observations, as appropriate, with team members, facility staff, residents, family members, and the **ombudsman**.

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Appendix P – Group Interview

If the **ombudsman** has indicated interest in attending the group interview, ask the president of the Resident Council if that is acceptable to the group; if it is, notify the **ombudsman** of the time/place of the meeting.

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§ 483.10 Resident rights:

The facility must furnish a written description of legal rights which includes—(iii) A posting of names, addresses, and telephone numbers of all pertinent State client advocacy groups such as the State survey and certification agency, the State licensure office, the State **ombudsman** program, the protection and advocacy network, and the Medicaid fraud control unit;

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§ 483.10 Resident rights: (j) *Access and visitation rights.* (1) The resident has the right and the facility must provide immediate access to any resident by the following:

(iv) The State long term care **ombudsman** (established under section 307(a)(12) of the Older Americans Act of 1965);

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F173 - §483.10(j)(3) -- The facility must allow representatives of the State **Ombudsman**, described in paragraph (j)(1)(iv) of this section, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with State law.

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Location and Notification of Medication Regimen Review Findings

Establishing a consistent location for the pharmacist's findings and recommendations can facilitate communication with the attending physician, the director of nursing, the remainder of the interdisciplinary team, the medical director, the resident and his or her legal representative (in accord with 42 CFR 483.10(b)(2),(d)(2)), **ombudsman** (with permission of the resident in accord with 42 CFR 483.10(j)(3)), and surveyors.

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Interpretive Guidelines: §483.10(j)(1) and (2)

The facility must provide immediate access to any representative of the Secretary of the Department of Health and Human Services, the State, the resident's individual physician, the State long term care **ombudsman**, or the agencies responsible for the protection and advocacy of individuals with developmental disabilities or mental illness. The facility cannot refuse to permit residents to talk with surveyors. Representatives of the Department of Health and Human Services, the State, the State long term care **ombudsman** system, and protection and advocacy agencies for individuals with developmental disabilities or mental illness **are not subject to visiting hour limitations.**

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Personal Property §483.10(I)

If residents' rooms have few personal possessions, ask residents, families and the local **ombudsman** if:

- Residents are encouraged to have and to use them;
- The facility informs residents not to bring in certain items and for what reason; and
- Personal property is safe in the facility.

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§ 483.12 Admission, transfer and discharge rights.

(4) *Notice before transfer.* Before a facility transfers or discharges a resident, the facility must— notify the resident... and

(6) *Contents of the notice.* The written notice specified in paragraph (a)(4) of this section must include the following:

(v) The name, address and telephone number of the State long term care **ombudsman**;

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§ 483.12 Admission, transfer and discharge rights.

(8) Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the Secretary, the State LTC **ombudsman**, residents of the facility, and the legal representatives of the residents or other responsible parties, as well as the plan for the transfer and adequate relocation of the residents, as required at §483.75(r).

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Appendix PP Surveyor Guidance - Ask the local **ombudsman** about facility compliance with transfer requirements. The facility's notice must include an explanation of the right to appeal the transfer to the State as well as the name, address, and phone number of the State long-term care **ombudsman**. In the case of a developmentally disabled individual, the notice must include the name, address and phone number of the agency responsible for advocating for the developmentally disabled, and in the case of a mentally ill individual, the name, address and phone number of the agency responsible for advocating for mentally ill individuals.

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Appendix PP Surveyor Guidance Procedures

If the team determines that there are concerns about the facility's transfer and discharge actions, during closed record review, look at notices to determine if the notice requirements are met, including:

- Advance notice (either 30 days or, as soon as practicable, depending on the reason for transfer/discharge);
- Reason for transfer/discharge;
- The effective date of the transfer or discharge;
- The location to which the resident was transferred or discharged;
- Right of appeal;
- How to notify the **ombudsman** (name, address, and telephone number);

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F280 Probes §483.20(k)(2)

Ask the **ombudsman** if he/she has been involved in a care planning meeting as a resident advocate. If yes, ask how the process worked.

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§ 483.30 Nursing services.

(c) Nursing facilities: Waiver of requirement to provide licensed nurses on a 24-hour basis. To the extent that a facility is unable to meet the requirements of paragraphs (a)(2) and (b)(1) of this section, a State may waive such requirements with respect to the facility if—

(6) The State agency granting a waiver of such requirements provides notice of the waiver to the State long term care **ombudsman** (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and mentally retarded;

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§ 483.30 Nursing services. (d) *SNFs: Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week.*
(iv) The Secretary provides notice of the waiver to the State long term care **ombudsman** (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and mentally retarded;

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§ 483.75 Administration

(r) Facility closure-Administrator. Any individual who is the administrator of the facility must:

(1) Submit to the Secretary, the State LTC **ombudsman**, residents of the facility, and the legal representatives of such residents or other responsible parties, written notification of an impending closure:

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§ 488.325 Disclosure of results of surveys and activities.

(f) *Information that must be provided to the State's long-term care **ombudsman**.* The State must provide the State's long-term care **ombudsman** with the following:

- (1) A statement of deficiencies reflecting facility noncompliance, including a separate list of isolated deficiencies that constitute no harm with the potential for minimal harm.
- (2) Reports of adverse actions specified at §488.406 imposed on a facility.
- (3) Written response by the provider.
- (4) A provider's request for an appeal and the results of any appeal.

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§ 488.431 Civil money penalties imposed by CMS and independent informal dispute resolution: for SNFS, dually-participating SNF/NFs, and NF-only facilities.

(3) Include notification to an involved resident or resident representative, as well as the State's long term care **ombudsman**, to provide opportunity for written comment.

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§ 1003.105 Exclusion from participation in Medicare, Medicaid and all Federal health care programs.

(c) When the Inspector General proposes to exclude a nursing facility from the Medicare and Medicaid programs, he or she will, at the same time he or she notifies the respondent, notify the appropriate State licensing authority, the State Office of Aging, the long-term care **ombudsman**, and the State Medicaid agency of the Inspector General's intention to exclude the facility.