

TRANSLATING NURSING HOME OMBUDSMAN SKILLS TO ASSISTED LIVING: SOMETHING OLD, SOMETHING NEW

TEACHING GUIDE

*Developed by Robyn J. Grant and Sara S. Hunt,
Consultants*

**National Long-Term Care
Ombudsman Resource Center**
NCCNHR: The National Consumer Voice
for Quality Long-Term Care
1828 L Street, NW, Suite 801
Washington, DC 20036
Tel: (202)332-2275 Fax: (202)332-2949
E-mail: ombudcenter@nccnhr.org
Web Site: www.ltcombudsman.org

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ABOUT THE AUTHORS

Robyn Grant, MSW, is a consultant with the National Long-Term Care Ombudsman Resource Center and the Long-Term Care Policy Director at United Senior Action of Indiana, a citizens advocacy group that has focused on nursing home reform for 29 years. Robyn served as the Indiana State Long-Term Care Ombudsman for eight years and as the president of the National Association of State Long-Term Care Ombudsman Programs for two terms. She is currently a member of the NCCNHR Board of Directors.

Sara Hunt, MSSW, is a consultant for the National Long-Term Care Ombudsman Resource Center with expertise in the areas of ombudsman training, policy development, program management, care planning, and quality of life. Sara was the State Long-Term Care Ombudsman in Louisiana for five years (1981-1986) and has served as a consultant to the Ombudsman Resource Center since 1987. For more than twenty-five years, Sara has been developing and conducting training programs, most of those for ombudsmen. She is co-author of *Nursing Homes: Getting Good Care There*.

ABOUT THE TRAINING GUIDE

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Translating Nursing Home Ombudsman Skills to Assisted Living: Something Old, Something New TRAINING GUIDE

The paper, “Translating Nursing Home Ombudsman Skills to Assisted Living: Something Old, Something New,”¹ was developed to strengthen long-term care ombudsman (LTCO) assisted living advocacy by building upon the effective strategies already used by ombudsmen in nursing homes. The paper discusses the commonalities and differences between ombudsman practice in assisted living and in nursing homes. It presents a range of ombudsman strategies for assisted living work. Seven important issues are examined: care or service planning, promoting residents’ rights, resident autonomy/choice, transfer/discharge, staffing, resident agreements/contracts, and disclosure. The paper also discusses the type of ethical issues that arise in assisted living and how ombudsman programs can develop internal program guidance for addressing them. Specific examples from various states are used throughout the paper to illustrate the type of ombudsman advocacy that is happening around the country.

PURPOSE

The purpose of this training guide is to assist long-term care ombudsman programs in teaching the content of the paper to LTCO to enable them to be more effective advocates for residents in assisted living.

DEFINITION OF ASSISTED LIVING

The paper and this training guide define assisted living very broadly and simply. The term refers to long-term care facilities that are not licensed as nursing homes. In teaching the paper’s content, use the term(s) that apply to this category of facility in your state. It is typical for a state to have more than one category of facilities that are not licensed as nursing homes and whose residents are covered by the LTCO program.

PREREQUISITE

The content of the paper and of this guide is for individuals who have been working as LTCO in nursing homes. It is for individuals who already are knowledgeable about the LTCO role, basic skills, and the problem-solving process. This training guide is not a basic training to equip individuals to become assisted living ombudsmen without additional training, knowledge, and skills.

METHODOLOGY USED IN THIS GUIDE

The teaching outline suggests interactive ways to introduce and teach sections of the paper’s content. It is not a comprehensive outline of teaching points. Refer to the paper for substantive information, for a discussion of skills, issues, and strategies, and for

¹ March 2003. <http://www.ltcombudsman.org//uploads/TranslatingNHToALAdvocacy0303.pdf>

specific examples from many states. Some of the exercises have optional suggestions for extending the teaching. The page numbers in the outline refer to the page numbers in the paper.

The outline does not track all of the paper's content because the teaching methodology is interactive. You determine the specific issues and strategies that will be covered in the session. The methodology is designed to identify what participants know about nursing homes and assisted living facilities and about ombudsman skills and approaches in nursing homes. Building upon this foundation, participants are engaged in considering what adaptations may be needed when working in an assisted living facility, while recognizing that some of the skills and approaches remain the same. During the discussion, you will use information from the paper to interject key teaching points as needed, including introducing new ideas about strategies and skills.

TEACHING TIME

A suggested agenda is not included because you must decide what content to teach based on your purpose and the needs of the participants. The agenda time also will vary according to the number of categories of non-nursing home facilities that LTCO cover in your state and the extensiveness of applicable regulations. This guide provides flexibility in teaching and ideas for teaching the paper's content in more than one session. It is expected that LTCO programs will begin with different sections of the content to sharpen LTCO skills and to build confidence in their ability to advocate in an assisted living facility.

Tip: It is better to select a few, key points and engage participants in a dialogue about these and then apply the points to cases they discuss than to try to cover more content without sufficient time for individuals to work with the information and participate in a discussion.

For an initial session on this topic, a minimum of two and one half-hours is suggested. The time easily could be six or eight hours, depending upon how much content you cover. Minimum times for sections of the outline are included in parenthesis by each heading to assist with your planning.

PREPARATION TIPS

Read the Paper

While the outline includes potential speaking points, you will need to read the paper in order to have a firm grasp of the material.

Determine the Amount of Time Available for the Session

In deciding on the amount of time needed, keep in mind the tip in the section on "Teaching Time" that "less is more." It is better to cover less in order to ensure that you have sufficient time for participants to discuss, apply and ask questions about what they are learning.

You can hold more than one training session on this topic in order to cover additional skills and strategies.

Define Your Purpose

Establish what you want to achieve in your training session. Possible goals might be:

- to sharpen LTCO skills and build confidence; or
- to develop systems advocacy strategies for situations that are particularly difficult to resolve.

Limit What You Cover

- Select content to achieve your purpose. Choose a few key areas for advocacy and a few key advocacy strategies from the paper to focus on during one training session instead of trying to teach everything at one time. For example, you could decide to focus the session on contract provisions, discharge/transfer rights in assisted living facilities, and the role of the ombudsman.
 - Read the paper and identify topics that are most relevant to your program.
 - Consider using your program's National Ombudsman Reporting System data to identify issues to target.

Decide How to Engage the Participants

- Throughout the training session provide opportunities for dialogue and for LTCO to apply their knowledge to case studies. Include dialogue time in your decision about the total amount of time for the session.
- Highlight successful strategies used by LTCO in your state.

Provide State Specific Information

In the teaching outline, the ► symbol indicates state specific information you must provide.

- Edit the case studies to include the terms for assisted living facilities and other terms that are used in your state.
- Provide applicable state licensure standards, residents' rights, regulations or laws that participants will need for the case studies or for their own reference documents. You may choose to provide an applicable excerpt for use during training.
- If other areas are more common issues in your state than the ones identified in the included case studies, substitute other case facts or use a new case.
- Bring flyers, brochures, or fact sheets about assisted living that your program has developed for consumers to distribute and refer to during the training.

TEACHING OUTLINE

OUTLINE	YOUR NOTES
<p>I. Introduction: Foundation for Advocacy (10 minutes)</p> <p>A. Ask, “Where does the Older Americans Act (OAA) send long-term care ombudsmen (LTCO) to work (represent residents)?” This is your mission, should you choose to accept it! (p.1)</p> <ol style="list-style-type: none">1. Long-term care facilities2. What does this (LTC facilities) mean?<ol style="list-style-type: none">a) <i>Any skilled nursing facility, as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i-3[a]); (B) any nursing facility as defined in section 1919(a) of the Social Security Act (42 U.S.C. 1396r[a]); (C) for purposes of sections 307(a)(9) and 712, a board and care facility; and (D) any other adult care home similar to a facility or institution described in subparagraphs (A) through (C).</i>²3. ► Insert your state’s name for the types of facilities in the following list and write each one on a flip chart as it is mentioned. “The Administration on Aging (AoA) says that the Long-Term Care Ombudsman Program (LTCOP) is to respond to complaints made by or on behalf of residents of:<ol style="list-style-type: none">a) nursing homes;b) board and care homes;c) adult residential care facilities;d) assisted living facilities; ande) any other type of congregate adult care home, the majority of whose residents are age 60 and above.”³	

² Older Americans Act, Section 102(32).

³ Email communication from Sue Wheaton, Ombudsman Program Specialist, Administration on Aging, November 25, 2002.

II. Long-Term Care Residents and Facilities (pp. 2-4, 7-9) (40 minutes to cover two different types of assisted living settings using the entire group option)

The following exercise may be done with the entire group or as a small group exercise followed by reporting back to the entire group. Use small groups only if there are several participants who know the information you are seeking. Small groups will take more time than doing this as one group. For each small group, assign a specific type of facility and ask the group to list the characteristics of typical residents and of the facility. Then have reports from each group and capture their responses on a flip chart.

- A. "What are the primary characteristics of individuals living in nursing homes?" Write the responses on a flip chart page and post it on the wall or make a column on the left side of the chart page with the responses.
- B. "What are the primary characteristics of individuals living in assisted living facilities?" Write these responses on a flip chart or on the other side of the chart page from the nursing home list.
- C. If you have more than one type of facility included in assisted living or board and care, repeat this exercise for each one that you will discuss during this session.
- D. Involve the group in pointing out similarities and differences between the lists.
- E. "What are the biggest differences in the types of facilities that LTCO cover?" Use the types of facilities previously listed that are covered by the LTCOP in your state.
 1. Make this a quick overview to provide a visual reference reflecting key differences by type of facility. Include points such as:
 - a) primary regulations/requirements;
 - b) licensure and licensing agency;
 - c) frequency of surveys by regulatory agency;
 - d) number of residents;
 - e) required services;
 - f) staffing;

- g) provider association(s); and
 - h) number of facilities.
2. Clarify via questioning any responses from the group that are not accurate or that need more explanation.
 3. Summarize by pointing out key distinctions in the settings that potentially impact advocacy, such as different staffing requirements, numbers and qualifications of staff, expectation of resident's participation in self-care, and dietary and activity requirements.

III. Advocating for Residents (45 minutes)

Let's focus on how LTCO advocate for the individuals who live in long-term care facilities.

- A. "What are the hallmarks (cornerstones, principles) of advocating on behalf of a resident who lives in a nursing facility?" Quickly generate a list on a flip chart. If the following are not included, add them or ask questions to prompt the group to list these. (pp. 4-5)
1. Resident empowerment: encouraging resident in self-advocacy and checking back with the resident throughout the process;
 2. Resident direction: establishing the outcome the resident wants;
 3. Consent: obtaining resident consent before proceeding, moving forward only with resident permission;
 4. Confidentiality: obtaining resident permission to reveal identity and to talk with others about the problem;
 5. Report back: sharing investigation results with the resident and determining if the resident wants to continue;
 6. Identify possible solutions: discussing possible solutions with the resident and developing a resolution strategy that the resident wants; and
 7. Work to resolve: involving the resident to the greatest extent possible in the resolution process if the resident is uncomfortable with self-advocacy.

B. "How do you achieve what the resident wants?" (pp. 5-6) List responses and point out the following steps or skills based on the list of responses if these are not clearly identified.

1. Self-advocacy;
2. Negotiation;
3. Mediation;
4. Education and promoting best practices;
5. Referral to another agency;
6. Community action;
7. Legal action; and
8. Media.

C. "Looking at the lists of ombudsman principles and of actions to achieve what the resident wants, would any of the principles need to be applied differently? Would any of the actions need to be adapted if you are resolving problems in an assisted living facility?" Focus on a few key principles or actions, depending upon the amount of time you have for this exercise. Teach the other principles and actions in another session. ► Prepare for the following discussion by identifying examples from LTCO work in your state to illustrate points. Use examples from the paper for additional ideas. (pp. 9-32) List the principles that might need to be applied differently or actions that might change that the group identifies and engage the group in a discussion about:

1. what different applications or changes might be needed;
2. why; and
3. how a LTCO might adapt the action or modify how a principle is applied.
4. Note: LTCO principles do not change from nursing homes to assisted living but the application may need to be adapted.
 - a) One example is confidentiality.
 - (1) In a small assisted living facility, the LTCO might need to meet with the residents in another location where many of them go such as in a senior center or a day program.

- (2) Stress that even when such efforts are made, it is still very difficult to protect confidentiality in small homes. LTCO need to be aware of any “unintended consequences” that their involvement may trigger, such as a discharge.
5. Emphasize the importance of the admission agreement/contract in the less regulated assisted living environment. Urge LTCO to obtain and review a copy of the contract from the facilities they cover as part of their advocacy work. If your LTCOP has copies of the contracts on file, share the pertinent ones with the LTCO.
 6. Point out principles and actions that remain the same, regardless of setting.

D. *Option:* Continue the dialogue by focusing on:

1. assisted living issues that are most problematic or of most concern in your state; or
2. areas where the LTCOP needs to develop additional advocacy strategies. (Time will vary depending upon topics covered.)

IV. Assisting Residents (45 minutes per case)

- A. “Let’s apply what we have discussed to a specific situation. It is your turn to apply your knowledge and skills in a facility that may be less structured than a nursing home.” Make the training dialogue more “real” by using one or more case studies, depending upon the amount of time in the session. This can be done as an individual exercise, with partners, or in small groups, followed by a big group discussion. Use the big group discussion for making teaching points and for further clarification as needed.
1. Two case studies are included as handouts. Each case has a “Selected Teaching Points for Instructor” for your reference during the discussion. ► You may develop your own cases to highlight other issues that are more timely in your state.
 2. Provide the applicable reference materials for participants to use in responding to the questions on the handout. ► Option: include a contract, marketing materials/brochures, and disclosure form (if applicable) for an actual assisted living facility in your state to give participants experience in using these materials in their advocacy. If the contract is lengthy,

copy selected pages to use during the session. Plan additional time for the case(s) if you use this option.

3. Use the paper's content to determine your key teaching points, pointing out similarities ("something old") and adaptations or new approaches ("something new") during the dialogue.
 - a) Refer to the "Selected Teaching Points for Instructor" in the appendix to provide guidance.
 - b) ► Since the instructor sheet is not a complete key, you need to add state information and other teaching points to the instructor's information before the training so that it reflects the practice and principles you want to teach.
4. Refer back to information on the flip chart pages as pertinent to connect the discussion to the information previously provided by participants about nursing homes, assisted living facilities, residents, and ombudsman skills and approaches.
5. Use some of the examples in the text of the paper to pose to the group for additional problem-solving and skills application analysis.

B. Following the big group discussion of a case, extend the opportunity for learning by interjecting another variable or two, such as:

1. "Suppose this resident becomes very disoriented and agitated while you are working on this case. Does anything change?"
2. "What if the facility says that it is converting to all private pay by the end of the next month?"
3. "What if the facility says that the resident no longer fits its profile and must move?"

C. *Option:* ► If you are focusing on contract provisions and have one or two contracts from assisted living facilities in your state, use these contracts as handouts. If the contract is very lengthy, excerpt several pertinent sections for this exercise. (One hour)

1. Ask participants to read the contracts.
2. As an individual exercise or working with a partner, ask participants to:
 - a) circle or underline any provisions that they think are questionable; and

- b) explain why a provision is circled.
 - c) Give pertinent assisted living laws or regulations, if any, for participants to refer to as they examine the contracts.
 - 3. As a big group exercise, identify and discuss the provisions noted as questionable.
 - a) What was identified?
 - b) Why?
 - c) “If someone was considering moving into this facility and contacted you, how could you advise them about what to pay attention to before signing a contract?”
 - d) “If someone was a resident in this facility and contacted you because this provision [choose one from the list of identified provisions] was creating a problem, what would you do?”
- D. Ethical issues in ombudsman practice are common in assisted living just as they are in nursing homes. (One hour)
- 1. Use the information in Section VI of the paper to pose a few questions to the group for dialogue and discussion. (pp. 32-35)
 - 2. Refer to ombudsman principles, including ones previously listed on a flip chart page, to ground the dialogue in principles such as resident direction.
 - 3. ►Use the Ombudsman Code of Ethics as a handout or applicable state LTCOP guidance or policies as appropriate.
 - 4. Identify areas where additional guidance or clarification may be needed. Ask participants to let you know if they think of other areas where guidance would be helpful as they continue their advocacy.

V. Summary (10 minutes)

- A. Highlight the key points made during the training.
- B. Address any unanswered questions.
- C. Remind participants that the basic LTCO principles, process, and strategies are applicable in any setting, although the language or terms may change or the situation may require some creativity.

D. Residents (consumers) are always worth the effort and need an advocate on their side.

VI. Teach Additional Content in Another Session

- A. Use different case studies to teach or refine ombudsman skills and strategies in additional areas.
- B. Follow the teaching process outlined in Section IV.
- C. If a LTCO has had some success in one of the areas that will be discussed, ask that individual to share what worked with the group.
- D. Use the paper for ideas and examples.

APPENDIX

CODE OF ETHICS FOR OMBUDSMEN

Regardless of an ombudsman's level(s) of advocacy effort, or the complexity of the issue/problem which is being addressed, there is a basic set of principles which guide an ombudsman's decisions. The National Association of State Long Term Care Ombudsman Programs developed the following Code of Ethics for ombudsmen.

1. The Ombudsman provides services with respect for human dignity and the individuality of the client unrestricted by considerations of age, social or economic status, personal characteristics or lifestyle choices.
2. The Ombudsman respects and promotes the client's right to self-determination.
3. The Ombudsman makes every reasonable effort to ascertain and act in accordance with the client's wishes.
4. The Ombudsman acts to protect vulnerable individuals from abuse and neglect.
5. The Ombudsman safeguards the client's right to privacy by protecting confidential information.
6. The Ombudsman remains knowledgeable in areas relevant to the long term care system, especially regulatory and legislative information, and long term care service options.
7. The Ombudsman acts in accordance with the standards and practices of the Long Term Care Ombudsman Program, and with respect for the policies of the sponsoring (contract) organization.
8. The Ombudsman will provide professional advocacy services unrestricted by his/her personal belief or opinion.
9. The Ombudsman participates in efforts to promote a quality long term care system.
10. The Ombudsman participates in efforts to maintain and promote the integrity of the Long Term Care Ombudsman Program.
11. The Ombudsman supports a strict conflict of interest standard which prohibits any financial interest in the delivery or provision of nursing home, board and care services, or other long term care services which are within their scope of involvement.
12. The Ombudsman shall conduct him/herself in a manner which will strengthen the statewide and national Ombudsman network.

TRANSLATING NURSING HOME OMBUDSMAN SKILLS TO ASSISTED LIVING

Developed by Robyn J. Grant, Consultant, National Ombudsman Resource Center

Case Study #1

When Elizabeth Peters was admitted to the assisted living facility, she was assessed and determined to meet the criteria for the facility's "Level 1" package of services. Eight months later, nursing staff determine that she needs more nursing assistance. Staff particularly note that Mrs. Peters needs help getting in and out of the bathtub as she has already fallen two times (without injury) while bathing. Due to her increased need for care, Mrs. Peters receives a notice informing her that she has been switched to the "Level 2" package of services. The cost for the Level 2 services is higher than it is for the Level 1 package. Mrs. Peters and her family do not believe she needs the care included in the Level 2 package and certainly don't want to be charged a higher rate.

Mrs. Peters asks you, the ombudsman, to help her fight the change to Level 2 services.

Discussion Questions

1. Identify some of the key issues in this case.
 2. What strategy would you use in this case? What assisted living regulations would you use to support your advocacy?
 3. If there are few or no assisted living regulations in your state, what could you use to support your advocacy? How might you adapt your resolution approach?

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Selected Teaching Points for INSTRUCTOR

Case Study #1

When Elizabeth Peters was admitted to the assisted living facility, she was assessed and determined to meet the criteria for the facility's "Level 1" package of services. Eight months later, nursing staff determine that she needs more nursing assistance. Staff particularly note that Mrs. Peters needs help getting in and out of the bathtub as she has already fallen two times (without injury) while bathing. Due to her increased need for care, Mrs. Peters receives a notice informing her that she has been switched to the "Level 2" package of services. The cost for the Level 2 services is higher than it is for the Level 1 package. Mrs. Peters and her family do not believe she needs the care included in the Level 2 package and certainly don't want to be charged a higher rate.

Mrs. Peters asks you, the ombudsman, to help her fight the change to Level 2 services.

Discussion Questions

1. Identify some of the issues in this case.

- Assessment
- Participation in planning care
- Decision making

2. What strategy would you use in this case? What assisted living regulations would you use to support your advocacy?

Strategy

- Negotiation
 - Care planning (p. 13): If state regulations require an assessment and service plan, negotiate for an assessment to be conducted, including seeing Mrs. Peters' doctor, followed by a service plan meeting to discuss options. See if it is possible to determine the cause of the falls and to reach agreement on what could be done to eliminate the cause. If the cause can't be eliminated and Mrs. Peters refuses needed assistance in getting in/out of the tub, negotiate to arrive at a service plan that explores other ways to prevent falls. If Mrs. Peters' resistance is based on having to pay

- for all of the Level 2 package services, negotiate so she only has to pay for the necessary additional help.
- Contract provisions (pp 11-12, 27-30): Review contractual rights in the admission agreement/contract and any additional information provided during admission to support your advocacy on behalf of Mrs. Peters.

Assisted living regulations

- Refer to your state's regulations.

3. If there are few or no assisted living regulations in your state, what could you use to support your advocacy and how might you adapt your resolution approach?

Ways to support advocacy

- Other laws
 - ► Consumer protection laws (based on marketing materials, disclosure form) (pp.31-32)

Adapting resolution

- Negotiation to avoid use of negotiated risk agreements or managed risk agreements (pp.20-22)
- Advocacy by analogy (pp. 10, 13-15)
 - Apply general concept of care planning and/or informed consent and right to refuse treatment to assisted living even if not required by regulations
- Community standard (p.10)
 - “We don’t make people pay for things they don’t need or want in this community – it is unfair.”

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Case Study #2

Mr. William Phillips has lived in an assisted living facility for 18 months. He recently suffered a stroke that has left him paralyzed on his left side. Despite extensive rehabilitation therapy, he is no longer ambulatory and is unable to maneuver a wheelchair on his own. The facility has issued Mr. Phillips a transfer/discharge notice, stating that it can no longer meet his needs.

Mr. Phillips wants to remain in the facility and asks you to help him. He tells you that one reason he chose this facility was because he was told he could “age in place” and not have to move to a nursing home.

Discussion Questions

1. Identify some of the key issues in this case.
 2. What strategy would you use in this case? What assisted living regulations would you use to support your advocacy?
 3. If there are few or no assisted living regulations in your state, what could you use to support your advocacy? How might you adapt your resolution approach?

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Selected Teaching Points for INSTRUCTOR

Case Study #2

Mr. William Phillips has lived in an assisted living facility for 18 months. He recently suffered a stroke that has left him paralyzed on his left side. Despite extensive rehabilitation therapy, he is no longer ambulatory and is unable to maneuver a wheelchair on his own. The facility has issued Mr. Phillips a transfer/discharge notice, stating that it can no longer meet his needs.

Mr. Phillips wants to remain in the facility and asks you to help him. He tells you that one reason he chose this facility was because he was told he could “age in place” and not have to move to a nursing home.

Discussion Questions

1. Identify some of the issues in this case.

- Transfer/discharge
- Accommodation of needs
- Possible discrimination based on disability

2. What strategy would you use in this case? What assisted living regulations would you use to support your advocacy?

Strategy

- Negotiation: Advocate for the facility to agree to allow Mr. Phillips to remain.
 - Use contractual rights in the admission agreement/contract and any additional information provided during admission, such as “house rules,” to support Mr. Phillip’s right to stay. (pp 11-12, 23, 27-30)
 - Use the care planning process to explore options and interventions. (p. 22)
- ► Referral:
 - Refer to legal counsel for representation at a hearing if the situation can’t be resolved. (p. 22)
 - Refer to licensing agency as a complaint.

Assisted living regulations

- ► Refer to your state’s regulations.

3. If there are few or no assisted living regulations in your state, what could you use to support your advocacy and how might you adapt your resolution approach?

Ways to support advocacy

- Other laws:
 - Fair Housing Amendments Act of 1988 (p. 23)
 - Americans with Disabilities Act (p. 23)
 - Landlord/tenant laws (p. 23)
 - ► Consumer protection laws (based on marketing materials, disclosure form) (pp. 31-32)

Adapting resolution

- Referral to legal counsel for violation of laws as outlined above (p. 23)
- Community standard (pp. 10, 30)
 - “We don’t do this in our community – we don’t tell people one thing and then change our minds on them later.”