

# **LICENSING & CERTIFICATION FOR NURSING FACILITIES And The LONG TERM CARE OMBUDSMAN PROGRAM**

A Paper By The National Association of State Long Term Care Ombudsman Programs  
OCTOBER 1996

The National Association of State Long Term Care Ombudsman Programs developed this paper. Following an extensive review process by State Ombudsmen, the Association of Health Facility Survey Agencies was asked to review a draft. This document incorporates many comments from that Association.

## **Purpose**

The purpose of this paper is to promote a discussion which will result in better understanding, working relationships, and coordination between the Long Term Care Ombudsman Program and the Licensing and Certification Agency.

This paper describes the mission and functions of each of these, potential areas of collaboration, and issues to consider. Understanding areas of mutuality and areas of difference can provide a framework for discussing ways of working together. Although quality of care for residents is a mutual concern, the Ombudsman Program and the Licensing and Certification Agency have distinct ways of assessing and resolving care issues. Because the growth and development of the Licensing and Certification Agency and the Ombudsman Program varies from state to state, not everything listed in this paper will be implemented to the same extent, or in the same way, in all states.

## **Background**

Both the Long Term Care Ombudsman Program and the licensing and certification processes for nursing facilities began because of public concern about the quality of care received by residents in nursing facilities. Both the Ombudsman Program and the certification process have federal mandates delineating their purpose and responsibilities. Licensure is a state process of granting a license to operate as a nursing facility to providers who meet state requirements. Certification is a federal process that determines if a provider meets the requirements to participate in Medicare and/or Medicaid. Some licensed facilities do not participate in Medicare and/or Medicaid; therefore they are not required to meet the federal standards for these programs.

Each state determines what agency or department is responsible for licensing and certifying facilities. In some states one agency is responsible for both of these functions while in other states the functions are carried out by separate agencies. There is also variation among states in the way complaints about facilities and care are addressed. In some cases, the surveyors who determine licensing and certification compliance also handle complaints. In other states, surveyors determine licensing and certification while other individuals address complaints. For the sake of simplicity in this paper the licensing and certification processes and complaint investigations will be discussed together. The individuals carrying out these functions will be called *surveyors*.

## Licensing & Certification Process

### Mission

- To assure that the public receives care from providers that promotes their health and enhances the quality of their lives, their dignity, and their autonomy.

### Functions

Surveyors are expected to:

- Address issues within the scope of state and federal laws and regulations.
- Survey facilities to determine *facility* compliance with requirements. Interviews with residents, family members, and staff occur during the survey process. Observations of resident care delivery and of interactions between staff and residents also occur during the survey.
- Contact the Ombudsman prior to the facility survey to gather additional information pertinent to the facility's performance. Invite the Ombudsman to resident or family meetings and to the exit conference.
- Include non-interviewable residents in the survey sample of residents.
- Survey facilities within the time frame required by law.

## LTC Ombudsman Program

### Mission

- To empower residents and advocate for long-term care residents' health, safety, welfare, and rights.

### Functions

Ombudsmen are expected to:

- Address any issue important to residents.
- Provide a timely response to complaints or requests for assistance made by, or on behalf of, residents. Ombudsmen work one-on-one with residents to see that the *individual's* concerns and needs are addressed.
- Share pertinent Ombudsman information about the facility with surveyors prior to the survey. Attend resident and family meetings when invited and feasible. Attend the exit conference whenever feasible.
- Initiate problem resolution on behalf of residents who lack decision-making capacity and who have no one else to represent them.
- Ensure that residents receive regular and timely access to their services, thus ombudsmen are to be proactive in working with residents, making themselves available, and identifying problems.

- Investigate complaints which are received to identify areas of facility non-compliance and to substantiate the complaints.

• Identify, investigate, and resolve complaints made by, or on behalf of, residents and provide a timely response to complaints and requests for assistance. **Licensing and Certification Process**

- Use state and federal guidelines to determine if a facility is out of compliance; then make determinations of harm and scope.
- Determine compliance based on observations, resident and family interviews, and record review. If potential compliance problems are noted, facility personnel are interviewed for additional information. Other agencies may be involved.
- Approve the facility's plan for correcting deficiencies. Assure that corrections have been made.
- Use a range of enforcement actions if the facility does not comply with state and federal laws and regulations.
- Safeguard the identity of individual residents.

### **LTC Ombudsman Program**

- Promote or support resident councils, family councils, and community groups.
- Represent the interests of residents before governmental agencies.
- Advocate for the best possible resolution of a resident's problem from the resident's perspective, not limited by whether a law or regulation has been met, level of harm, or scope.
- Work with anyone who needs to be involved in problem resolution: facility staff, other residents, family members, community service agencies, or other governmental entities.
- Resolve problems to the satisfaction of the resident.
- Work to identify and resolve the underlying cause of a problem and to prevent the problem from reoccurring. When a problem occurs within a facility, ombudsmen initially work with the facility to try to resolve it without calling for action by other agencies. Ombudsmen, with resident consent, refer problems to appropriate agencies as needed.
- Maintain confidentiality unless the resident or his/her legal representative gives permission to disclose identifying information or a court orders the

disclosure.

- Make public the results of the survey process and give the results to ombudsmen.
- Assist the general public in obtaining and using the results of the survey process.

#### **Licensing and Certification Process**

- Provide training and information to residents, their representatives, facility personnel, surveyors, ombudsmen, and information to the public.
- Develop, promulgate, and implement state regulations to assure that facilities meet appropriate standards.
- Analyze and comment on laws, regulations and policies pertinent to residents.

#### Structure

- All staff are state employees or under contract with the state.
- Staff are multidisciplinary: nurses, physicians, pharmacists, social workers, and other disciplines.
- Surveyors have the legal power to link compliance with the license to stay in business, certification to continue getting paid, and a range of enforcement provisions.
- Surveyors are in most facilities an average of once a year and in response to complaints.

#### **LTC Ombudsman Program**

- Provide training and information to residents, their family members, facility personnel, surveyors, ombudsmen, and the public.
- Participate in the development of regulations responsive to resident needs and interests.
- Analyze, comment on, and monitor laws, regulations, and policies pertinent to residents and recommend appropriate changes.
- Promote the development of citizen organizations to participate in the program.

#### Structure

- Staff are both paid and volunteer.
- Staff are from various backgrounds, not exclusively from health care fields.
- Ombudsmen have the power to represent residents in creative problem-solving and to refer problems to agencies which can bring action against the facility.
- Ombudsmen strive to have an ongoing presence in facilities, visiting on a regular basis.



## **Collaboration Between Surveyors and Ombudsmen**

Working together strengthens the ability of both surveyors and ombudsmen to fulfill their separate roles. An essential aspect of collaboration is remaining clear about the distinct functions of each job. Surveyors and ombudsmen have collaborated in a variety of ways through the years. Changes in the survey process have precipitated new ways of sharing information to address the provision of care in facilities. There are numerous advantages to working together, a few examples are listed below. A necessary element in each of these examples is the exchange of information.

### *Quality of Care and Quality of Life for Residents*

- Ombudsmen can share information about problems in facilities with surveyors prior to the survey, prior to a complaint investigation, or whenever appropriate. The sharing of information must adhere to ombudsman requirements regarding confidentiality. Permission from residents is required before their identity can be revealed. Ombudsman information might be particularly helpful in identifying problem areas, discussing the performance history of a facility throughout the year, and identifying residents and family members who want to be included in the survey.
  
- Ombudsmen may encourage residents and family members to contact the Licensing and Certification Agency, other agencies, or the Attorney General, regarding problems in facilities under each agency's jurisdiction.
  
- When surveyors need corroborating information in a survey to support a deficiency, ombudsmen might be an additional source or may be able to identify additional sources.
  
- Surveyors can clarify for ombudsmen how the Licensing and Certification Agency would view a particular practice or policy. Ombudsmen can use written policy interpretations in problem resolution at the facility level when a provider thinks his actions are within the law or regulations despite a resident's complaint about a situation.
  
- The credibility of both surveyors and ombudsmen is strengthened by interpreting policies the same way so that a consistent message is given to providers.
  
- In emergency situations such as a facility closure or evacuation, surveyors and ombudsmen can work together to provide information to residents, address their concerns, and achieve as smooth a transition as possible.
  
- The Licensing and Certification Agency and the Ombudsman Program can work together to develop training sessions for the public and/or for providers. Printed materials can also be jointly developed and disseminated.

### *Routine Communication*

- Frequent, regular contact between surveyors and ombudsmen is beneficial in maintaining communication. In several states, State Ombudsmen and Licensing and Certification Agency personnel frequently exchange information and/or have face-to-face meetings on a regular basis. Ombudsmen need to know when severe sanctions are levied against a facility and when a facility is closing before the public knows. In a number of states, local ombudsmen and surveyors talk with each other on an *as needed* basis, sometimes at least monthly.
  
- Joint training provides the basis for ongoing understanding of each other's roles, responsibilities, and limitations. Joint events can build a consistent understanding of laws, regulations, and process, so there is a core of shared knowledge. Better understanding of one another's functions results in an increase in appropriate referrals and better utilization of the strengths of each.

### *Changes in Policies, Regulations and Laws*

- Ombudsmen are involved in analyzing and commenting on drafts of new policies or proposed regulatory changes initiated by the Licensing and Certification Agency so the resident perspective is considered prior to changes occurring. The Licensing and Certification Agency considers the resident perspective in the development of changes initiated by the agency. Therefore, the Ombudsman Program serves as outside voice taking another look at policies or changes.
  
- The Licensing and Certification Agency and ombudsmen jointly work together to promote system changes: advocating for appropriate, effective legislation.

### **Issues For Consideration in Collaboration**

In order for the Licensing and Certification Agency and the Ombudsman Program to fully collaborate there are some issues which must be addressed. Many states which have a memorandum of understanding between these two have agreed on ways to handle the issues. In other states, the discussion is ongoing or there are issues which need to be re-assessed.

- Sharing of Information: The Licensing and Certification Agency is responsible for sharing information with the Ombudsman Program.* Specific types of information to be shared are listed in federal law, regulations, the HCFA State Operations Manual.

The Ombudsman Program is responsible for sharing information with the survey team. Ombudsmen need to determine the type of information to be shared and develop a way to convey this to survey teams in a timely manner.

- Data: Access to each other's data base and deciding what information is meaningful to the other*

- *Resident Focus:* Maintaining a mutual focus on residents and the way each one does this  
There might be a tendency to focus on agency needs or on effecting systems change instead of advocating for residents. The Ombudsman Program must also be sensitive to the public perception of the program as clearly representing residents and not being seen as too closely aligned with, or an extension of, the Licensing and Certification Agency.
- *Interpretation of Laws, Regulations, and Policies:* Disagreement about the way laws, regulations, and policies, are to be interpreted and implemented due to differences in mission and function. This is especially true regarding residents rights.
- *Ombudsman Role:* The Ombudsman Program's role of working with the Licensing and Certification Agency and offering constructive criticism
- *Inherent Structural Challenges:* The organizational placements of the Licensing and Certification Agency and the Ombudsman Program can present challenges to cooperating and developing new ways of interacting. The utilization of volunteers and/or part-time employees as ombudsmen and the nature of the work of surveyors can pose barriers to convenient and timely communication.

## **Conclusion**

Separate and important missions exist for Licensing and Certification Agencies and the Ombudsman Program. These need to be acknowledged and used as a foundation for creative collaboration in order to ensure that nursing facility residents receive the care and services to which they are entitled. In spite of differences, both entities can support and strengthen each other's work if there is a commitment to mutual cooperation and continual dialogue.