

# NASOP

## NATIONAL ASSOCIATION OF STATE LONG TERM CARE OMBUDSMAN PROGRAMS

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## Statement on Abuse and Neglect in Nursing Facilities

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Although this statement is given on behalf of the National Association of State Long Term Care Ombudsman Programs (NASOP), it is not a position paper adopted by this association. This paper is a compendium of ideas from NASOP members due to the timing of the request to participate in this meeting with the Health Care Financing Administration.

### KEY ISSUES IN NURSING HOME NEGLECT AND ABUSE

➤ Lack of accurate statistics on nursing home neglect and abuse: Long-Term Care Ombudsmen find that HCFA survey data do not accurately reflect what is occurring in facilities. Problems resulting from neglect or abuse, if cited, appear as nursing, quality of care, or residents rights, without a cross reference to neglect or abuse. The lack of data on neglect and abuse gives residents, family members, and the public, a false sense of its absence. It makes the headline stories of legal judgments resulting from neglect and abuse seem unusual occurrences instead of the type of situations many residents experience.

*A family member of a resident might never think of looking at areas of the resident's skin that are covered by clothing. The family member assumes that living in a nursing homes means the resident is receiving adequate hygiene care. Therefore violating the resident's privacy and dignity would never occur to the family member until the resident begins crying with pain. Then the family member discovers large areas of raw skin and realizes this resident's hygiene care has been neglected for a long time.*

Lack of adequate hygiene care is a problem. When it continues, it becomes neglect leading to further deterioration in a resident's condition and unnecessary pain, suffering, and expense. Neglect then becomes abuse.

Complaints of resident neglect and abuse from consumers and ombudsmen are frequently referred to the survey agency for investigation. Investigation results often reflect problems with the process including: timeliness, thoroughness, lack of skill in determining what actually happened, and lack of cross referencing problems with neglect and abuse. Complaint investigation reports need to include a detailed investigative narrative including signed statements by witnesses, perpetrators, and victims as appropriate.

Mobilizing resources to address neglect and abuse remains difficult without accurate statistics on its prevalence.

Recommendations and Strategies for Actions:

- Clearly identify situations of neglect and abuse as such via cross referencing on surveys.
- Conduct regulatory investigations quickly enough and with sufficient thoroughness to determine what happened.
- Require investigators to complete training in investigative process including: interviewing alleged perpetrators and victims and the preservation of evidence.
- Address neglect and abuse even if only one resident is affected.

➤ Staff Issues—understaffing, insufficient training and supervision: The most recent national data from Long Term Care Ombudsman Programs, FY 1996, lists the five most frequent nursing home complaints as: (1) accidents, improper handling; (2) requests for assistance unheeded; (3) personal hygiene neglected; (4) lack of respect for residents, poor staff attitudes; and (5) lack of adequate care plan, resident assessment. Insufficient numbers of staff to meet the needs of the residents and lack of staff training and adequate supervision directly contribute to all of these areas. Regardless of the requirements of the Nursing Home Reform Law of '87, quality of care and quality of life for each resident are NOT being maintained, much less enhanced, in many facilities.

Without enough trained staff, it is impossible to avoid neglect and abuse. Ombudsmen know of facilities where staff are hired and then fired within 120 days due to abuse. These individuals then begin working for another nursing home without their names ever appearing on an abuse registry.

Staffing issues also arise due factors such as: the typically very low wages of nursing home employees; the way administrative personnel treat hands-on staff; insufficient supplies to do the work they are required to do; and the environment within which they work.

Recommendations and Strategies for Actions:

- Require facilities to implement effective training programs to prevent neglect and abuse such as the one developed by Karl Pillemer and CARIE.

In Utah, the Ombudsman Program and Adult Protective Services provided training to nursing facility staff on dealing with individuals from the community, including family members, who are abusive to residents inside the facility. This is another dimension of abuse and equipping staff to address it.

- Require facilities to hire only certified staff.
- Put the names of individuals on the abuse registry when they begin training.

- Clearly identify situations of understaffing that lead to neglect and abuse via cross referencing on surveys.
- Implement a mandatory monetary penalty for understaffing that leads to neglect and abuse whether or not there is a negative outcome from a survey perspective. There must be consistent enforcement of penalties for the existence of this problem; penalties should be withheld from vendor payments subject to later appeal.
- Track problems such as understaffing and neglect and abuse throughout corporate ownership. Hold corporations, in addition to individual facilities, accountable for systemic practices that result in neglect and abuse of residents.

➤ Neglect and abuse are crimes: Assault and battery, theft, robbery, are still the same crime within a nursing facility as they are when committed in the community. If these occur, surveyors need to consider that these are crimes when making determinations about penalties. Surveyors need to look at the perpetrator as well as the outcome for residents. If it is a crime outside of the facility, it is a crime inside as well.

Neglect is fraud—services which are required to be provided and for which payment is made, are not being provided. The False Claims Act is being successfully used as an indicator of this connection between neglect and fraud.

Criminal background checks give a measure of screening but is not the total answer to keeping criminals from working in facilities. There are individuals who are convicted but have suspended sentences and are put on probation. These convictions may not show up in background checks. Criminal background checks need to be required for nurses and other staff as well as for nursing assistants.

Cases of “resident to resident” abuse are rarely criminal. They almost always arise from the lack of attention to individualized care for **both** residents. When such incidents occur, surveyors need to analyze the reasons by considering factors such as: accurate assessments, individualized and meaningful care plans, individualized activities, the residents’ daily routines, medication review, and staff availability and responsiveness. These factors need to be cited by surveyors. For facilities to say they separated the residents and will be monitoring the situation is not addressing the reason the “abuse” happened.

Neglect and abuse can also be extrapolated to instances where a resident’s self-determination is abused. A resident loses the will to offer opinions or to participate in her care and treatment because of the negative response she has repeatedly received from staff. Ombudsmen frequently hear residents and families saying they are not welcome in care planning meetings, their opinions are not respected, nothing changes when they make suggestions. Residents also say this about resident councils in many facilities. The council understands that it is run by facility staff and that there is a limited range of topics that are acceptable for complaints. Some councils also say no changes are made as a result of their discussion. Surveyors need to be very discerning in

interviewing residents, families, and resident groups. Surveyors need to act on what residents and families say or at least give their testimony equal weight with staff responses.

If the survey agency cannot immediately respond to allegations of neglect and abuse, a referral should be made to the local law enforcement agency or department. Neglect and abuse must be taken seriously and have timely follow-up before evidence disappears, perpetrators go to another facility, or other incidents of neglect and abuse occur. The survey agency needs to take an active role in talking with law enforcement about neglect and abuse of residents, respective roles, methods of collaboration and provision of training for law enforcement to equip them to effectively respond to nursing home cases.

#### Recommendations and Strategies for Actions:

- Increase funding for nursing home complaint investigation by states so that these are done in a timely manner, by individuals with investigation skills, and give a detailed investigative narrative including signed statements by witnesses, perpetrators, and victims as appropriate.
- Provide consistent federal oversight for states to follow through with timely and thorough complaint investigations.
- Provide leadership in working with law enforcement pertinent to: immediate follow-up on allegations of neglect and abuse, training on nursing facility issues, and various methods of collaboration.
- Increase funding for Medicaid Fraud Control Units.
- Extend criminal background checks to all nursing facility employees prior to beginning employment. Implement a system for checking for criminal records in other states.
- Look at perpetrators and underlying causes, not just the resident outcome of neglect and abuse and hold perpetrators and facilities accountable.
- Connect neglect with fraud. Issue a money penalty that costs more than the neglect costs the resident who is affected.
- Look at quality of life and residents rights factors that result from neglect and abuse. Do not limit the definition of harm to physical or financial outcomes.
- Connect care practices, or the lack of, with neglect and abuse via cross referencing with deficiency tags.
- PASARR violations need to be addressed as serious problems because they can cause actual harm to other residents and are profit motivated.