

**National Citizens' Coalition for Nursing Home Reform**  
**Family Role in Survey Process**  
**January 8, 2005**

*\*\* Note: Most of the information contained in this document refers to facilities that are Medicare and/or Medicaid certified. If your facility is not, please contact NCCNHR for clarification.*

**A. THE ENFORCEMENT PROCESS**

**The “Survey” Process and Complaint Investigations**

The State Survey Agency licenses nursing homes and conducts inspections annually to monitor and evaluate the care facilities provide. This agency also is required to investigate complaints filed about poor nursing home care. If the survey agency finds problems that constitute a violation of the state or federal regulations, they will cite a “deficiency.” In Maryland, the State Survey Agency is the Office of Health Care Quality (OHCQ) in the Department of Health and Mental Hygiene:

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**Why “Surveys” Are Important**

- State and federal (and, in some cases, county, ex. Prince George’s County<sup>1</sup>) surveyors have the authority to regulate nursing home care. Though other agencies and government representatives play a part in monitoring nursing home care or receiving complaints, the survey agencies alone have the authority to cite, fine, or close a facility providing poor care.
- Surveys are also important because the deficiencies cited as the result of these annual inspections serve as the basis for much of the public information (including web-based information) published about individual facilities. Many family members and prospective residents depend on this information to make informed decisions about long-term care options.
- On a broader scale, survey and complaint information is used by state and federal policy makers in considering the need for government action related to nursing homes.
- Most important, surveys, when done thoroughly and in keeping with the federal standards for quality nursing home care, can also lead to improvements in quality of nursing care and facility services.

**Annual “Surveys”**

Federal law requires that nursing homes be inspected (surveyed) every 9 – 15 months. The law requires that surveys be unannounced and includes provisions for fines of up to \$2,000 for persons found to have given advance notice to a facility about an upcoming inspection.

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<sup>1</sup> The Prince George’s County Health Department (301-324-2982) conducts an annual licensure survey to determine if the facility is in compliance with the Code of Maryland Regulations (COMAR) and the Prince George’s County Code for Comprehensive Care Facilities.

During each inspection, surveyors will collect information by reviewing charts, lab results, other records; observing care; and talking with staff, residents and family members. Surveyors are required to conduct private interviews with selected nursing home residents to discuss their experience with quality of care and quality of life in the facility. Surveyors may talk with family members and friends of residents during these interviews or at another time during the inspection.

Federal regulations require that a sign be posted in an easily observable location in the facility indicating that the inspection is taking place and that surveyors are available to meet with residents in private. The law also requires that the results of the most recent survey (including annual, extended, follow-up, or complaint investigations) be posted in an accessible place in the facility.

In addition to this federally mandated annual survey, Maryland law requires OHCQ to conduct a second annual quality assurance survey.

### **Complaint Investigations**

In addition to annual surveys, OHCQ is responsible for conducting investigations of complaints filed about Maryland nursing homes. Complaints filed with OHCQ in Maryland are investigated bearing in mind the agency's responsibility to be able to prove that the deficiency happened, and the extent to which an event or problem is the result of a violation of a regulation.

If the complaint involves a situation in which the health or safety of a resident is in immediate jeopardy, federal regulations require the agency to investigate within two working days of receipt of the complaint. If the complaint involves a situation that alleges actual harm to a resident, the federal regulations require that the agency investigate within 10 days. In less serious cases, the federal regulations allow the agency to investigate the complaint during the next annual survey if it is scheduled for the near future. OHCQ in Maryland categorizes complaints into four response-time categories depending upon their severity: 2-day, 10-day, 45-day, or next survey. Surveyors will gather information by talking to staff, residents and family members and by reviewing the resident's chart, lab results, or, if indicated, hospital records.

## **B. WHAT THE FEDERAL "GUIDANCE TO SURVEYORS" SAYS ABOUT FAMILY MEMBERS' ROLE IN THE SURVEY PROCESS**

The federal government provides guidance to state survey agencies and surveyors through a document called the "Guidance to Surveyors." This includes both guidance on how to evaluate the quality of care and life in a facility, and instructions on how a survey should be conducted.

**1. Family Interviews:** The "Guidance" instructs surveyors to conduct formal and informal interviews with family members and others (including residents, staff, ombudsmen, and family council representatives) during the course of the survey. The purpose of these interviews is to collect information (particularly from families of "non-interviewable" residents) about whether the facility provides individualized daily life activities, care and services to the highest practicable level. Interviews are also used to verify information obtained, and to "provide the opportunity for all interested parties to provide what they believe is pertinent information."

The number of formal interviews scheduled with family members depends upon the number of residents in the facility, but usually 2 or 3 are conducted. Informal interviews are to be “conducted throughout the duration of the information gathering tasks of the survey.” Interviews “may be conducted in person with a family member who was met on tour or by telephone, if necessary.”

**2. Confidentiality:** The “Guidance” instructs surveyors: “If residents or family members have stated during interview that they do not want certain information they have shared in confidence to be shared with the facility, respect their wishes. However, the issue can still be investigated.” And that “information about injuries due to broken equipment, prolonged use of restraints, and opened mail is more likely to be obtained through resident and family interviews. Do not identify residents or family members providing this information without their permission.” The “Guidance” also says, however, that “In general, the individual who provides information during an interview will not be identified as providing that information. However, it is possible that their identity may be revealed if a deficiency is cited in whole or part on their information, and that deficiency citation is appealed.” A representative of OHCQ (in MD) said that they do not reveal the identity of a complainant under any circumstances, and will take steps to obscure the identity of a complainant if necessary (ex. by not singling out one particular patient record but reviewing several including the one that is the subject of the complaint at once.)

**3. Consent:** In most cases surveyors will request family member consent for examination of private parts of a resident’s body (if necessary to investigate a complaint) if the resident is not able to give clear consent.

## **C. HOW FAMILY MEMBERS CAN PLAY A MEANINGFUL ROLE IN THE SURVEY PROCESS**

The suggestions below focus on the role that family members play in the annual survey process; however, many of the suggestions offered also can be applied to successfully file a complaint with the Survey Agency.

Family members have unique and important information about the care that is provided in any facility. Many family members visit their loved ones on a daily or regular basis and, unlike surveyors, have the ability to observe ongoing and “un-scripted” care and interactions at the facility. They are also more familiar with the facility’s regular patterns and practices, and are more aware when those patterns or practices are altered. Because of this unique access and perspective, many family members have important information to share with surveyors.

Surveyors usually base their surveys and investigations on documented information that demonstrates how care is being provided in the facility. The work of the surveyor is to evaluate whether the facility is meeting its obligations to meet the standards outlined in the regulations applying to nursing homes.

**1. Educate Yourself:** NCCNHR encourages family members to become familiar with the federal regulations to understand what is expected of the facility, and to help facilitate recognition of good and bad care. You can access the federal law and regulations applying to nursing homes in the “Family Involvement” section of the NCCNHR website: <http://www.nursinghomeaction.org> or by calling NCCNHR at 202-332-2275.

You can obtain copies of the Maryland state regulations applying to nursing homes at: [http://www.dsd.state.md.us/comar/subtitle\\_chapters/10\\_Chapters.htm#Subtitle07](http://www.dsd.state.md.us/comar/subtitle_chapters/10_Chapters.htm#Subtitle07) and clicking on 10.07.02, “Comprehensive Care Facilities and Extended Care Facilities,” or by calling: 410-402-8015 or 1-877-402-8218.

Family members and family councils should also make a point of becoming familiar with their loved ones’ facility’s most recent survey. Request a copy of the most recent survey from OHCQ (contact information above) including the covering letter sent to the facility with the survey results. This cover letter is also considered public information. You can also access the most recent survey information at the federal government website: [www.medicare.gov/NHCompare/Home.asp](http://www.medicare.gov/NHCompare/Home.asp) or at another private website that posts survey results - Member of the Family.Net: [www.memberofthefamily.net](http://www.memberofthefamily.net).

**2. Document Concerns:** If you have a concern about an incident or pattern of care, it is important to **document** (in writing or with photographs) your concerns and actions taken to report them. Be sure to include in your notes:

- the names of those involved;
- the date, time, and details of the event;
- who the concern has been reported to and when;
- what steps are taken to remedy the problem; and
- the outcome.

This written documentation will make it easier for surveyors to substantiate your complaint if you file one. The survey agency will sometimes cite a deficiency in the absence of any kind of documentation that something happened if an outcome (ex. a pressure sore, a condition resulting from failure to provide medication, etc.) demonstrates it. However, any documentation that family members can provide (including photographs, keeping a log of events with times and details, or getting another family member to corroborate a claim) will be very helpful to surveyors in substantiating a complaint.

NCCNHR hears from frustrated consumers nationwide who are frustrated when the complaints they file are found to be “unsubstantiated” because the incident that is the subject of the complaint is not documented in the resident’s medical chart (often the case), and no other documentation exists. If you file a complaint, provide as much specific documentation to surveyors as possible. Surveyors may not seek you out, so be assertive in providing the documentation that you have.

**3. File Complaints:** If you have raised a concern with the facility which has not been addressed, file a complaint with the survey agency about your concern (see address above) or by calling **410-402-8201 or 877-402-8218**. OHCQ requests that you include the following information when filing a complaint:

- 1) the name of the health care facility in question, your name and mailing address so that they can send you a written report of the investigation,
- 2) your daytime phone number in case they have further questions about the complaint, and

- 3) a clear, concise explanation of your concern or the problem, including the dates and times of specific occurrences.

Anonymous complaints are accepted and investigated, but OHCQ will not be able to send you a written report of the outcome. You can access a complaint form at:  
[http://www.dhmh.state.md.us/ohcq/complaint/Complaint\\_form.pdf](http://www.dhmh.state.md.us/ohcq/complaint/Complaint_form.pdf).

If you feel it is important that your complaint be investigated promptly, be persistent in asking for information about the status of the investigation from the survey agency. Ask how your complaint will be processed and how you will receive follow-up regarding the findings. If possible put the complaint in writing and ask for written follow-up.

**4. Notice Changes:** Feedback from consumers across the country indicates that many facilities may be aware in advance of when an inspection is to take place even though the law requires that surveyor visits be unannounced. While it is unlikely that facilities are formally notified by anyone of the impending date of their survey, they often have a good idea of when the surveyors are coming due to survey agency habits or patterns. The 9 -15 month cycle is intended to increase the element of surprise, but is not always effective.

Alert surveyors if you notice the facility makes noticeable changes in care practices (such as adding many additional staff members or sudden availability of supplies when usually they are short on supplies) just before surveyors arrive.

**5. Be Ready, Be Alert:** Federal law requires that each facility be surveyed at least every 9 to 15 months. Investigate when the facility's last survey occurred and be prepared with information for the next survey (probably sometime within that window.) Watch for posted signs indicating that surveyors are in the facility and ask to meet with them if you wish. If you have particular concerns, request to speak with the surveyors during the inspection.

**6. Join with Other Family Members:** If you have a family council, discuss information the council would like to share with the surveyors before their arrival at the facility. If you have particular common concerns which have not been addressed by the facility, consider filing a complaint with the survey agency as a group. If you do, send a copy of the letter to your long-term care ombudsman representative, so that s/he can communicate with the surveyors about the complaint, too. If you're not sure who your local ombudsman is, visit the "Get Help" section of the NCCNHR website: <http://www.nursinghomeaction.org>, or contact the State Long-Term Care Ombudsman for the State of Maryland:

**Patricia Bayliss, State LTC Ombudsman, Maryland Department of Aging, 301 W. Preston Street, Room 1007, Baltimore, MD 21201, Tel: (410)767-1091, website:**<http://www.mdoa.state.md.us/Services/Ombudsman.html>

Family councils may also request to meet with surveyors when they are at the facility. A council can request a meeting by speaking to the surveyors at the facility, or by calling the "Survey Coordinator" at the OHCQ headquarters at tel. 410-402-8201.

**7. Spread the Word:** Set up a telephone tree to notify interested family members when surveyors are in the facility so that they can come to the facility to meet with surveyors if they wish.

**8. Share Positives:** If you are happy with care at the facility, let the surveyors know this too. Most of the public information available to consumers comes from the information gathered in these surveys, so if the facility is doing a good job, you want that to be reflected in their survey results. An accurate picture of care provided at the facility will (if it is good) encourage a continued influx of new residents, giving the facility the income it needs to continue to give quality care. Furthermore, if you file a complaint and are happy with the outcome, or see that the surveyors have done a good job of investigating, make a point of thanking them or the agency.

**9. Appeal:** There is no formal right to appeal for complainants in Maryland if they are unhappy with the result of a complaint investigation. In certain, limited cases, if a complainant calls OHCQ to complain about a finding or to offer additional documentation, they will have another staff person review the complaint, but there is no formal process for appeal of findings.

There is, however, an opportunity for the nursing home to appeal findings of certain deficiencies. There are two steps in the appeal process including an Informal Dispute Resolution (IDR) step, and, if the facility is dissatisfied with the result, an opportunity for a formal appeal. If a facility appeals a substantiated complaint related to your loved one and you have knowledge of the situation, OHCQ may offer you the opportunity to testify at the appeal hearing about the complaint and the information you have to support the finding of a deficiency.

**10. Contact the Federal Government:** OHCQ inspects Maryland nursing homes as an agent of the federal government, which provides more than half of the funding for nursing homes. If you are unhappy with the performance of the state survey agency or with the results of a complaint investigation, you can contact the regional office of the Centers for Medicare and Medicaid Services, the federal agency responsible for overseeing the care in nursing homes.

**Centers for Medicare & Medicaid Services (CMS) Region III,** Division of Medicaid and State Operations, Public Ledger Building, Suite 216, 150 South Independence Mall West, Philadelphia, Pennsylvania 19106, Tel: (215) 861-4140, 215-861-4196

**11. Monitor “Plans of Correction”:** When a facility is cited with deficiencies, they are required to respond to the surveyors’ findings by submitting a “plan of correction” to the survey agency indicating how and when they will correct the problems cited. This plan of correction becomes part of the publicly posted survey results. On the public survey report, the regulation that was violated along with explanatory information about the deficient practice is usually in the left-hand column. The actions the facility takes or plans to take to correct the deficiency are displayed in the right-hand column next to the corresponding deficiency.

Federal regulations require that the statement of deficiencies (survey results) be made available to the public within 14 calendar days after it is made available to the facility. This timeframe is required even if the facility’s plan of correction has not yet been approved, or if the facility is appealing a deficiency.

Request a copy of the survey results from OHCQ (see contact information above) including the cover letter sent to the facility with the survey results. This cover letter is also considered public information. Make sure the results of the most recent survey are posted in an accessible place in the facility as required by federal regulations. Family members and family councils should review the survey results, learn what the facility has pledged to do to correct deficient practices, and communicate with the survey agency if the plan of correction is not implemented. Often, the survey agency will not conduct a follow-up inspection to determine if the plan of correction is being followed, so this monitoring and feedback from family members is important.

The survey agency is required to revisit the facility to do a follow-up inspection if a deficiency is found that caused “actual harm” or “immediate jeopardy” to a resident. If this is the case, family members and family councils should try to ascertain when the “revisit” will happen and share information they have gathered while monitoring the plan of correction.

**12. Advocate for an expanded role for family members in the survey process.** A law passed in Minnesota in 2004 requires that “Nursing facility family councils shall be interviewed as part of the survey process and invited to participate in the exit conference.” This recognition of a formal, required role in the survey process for family councils (when there is one) will strengthen the ability of family councils in Minnesota to identify problems and promote improvements. Maryland family members may want to advocate for a similar provision to be added to Maryland state law.