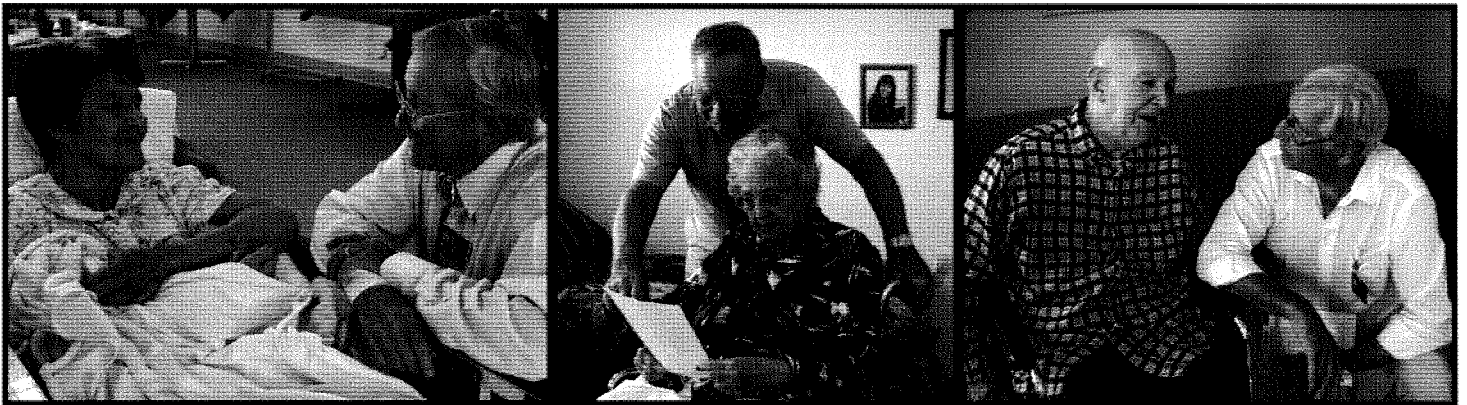
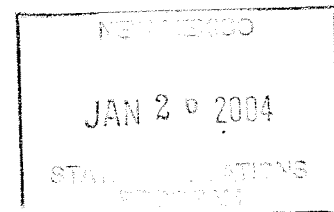


# NEW MEXICO LONG-TERM CARE OMBUDSMAN STATE PROGRAM REPORT



## STATE FISCAL YEARS 2001-2003



New Mexico Aging and Long-Term Care Department  
Katrina Hotrum, State Long-Term Care Ombudsman

Hello,

The New Mexico Aging and Long-Term Care Ombudsman Program has experienced a growth spurt over the past few years.

The need for long-term care support increases as Baby Boomers reach retirement age and more people are living into their 80s and beyond.

As demand grows, so do services. The Ombudsman Program has seen a jump in the number of assisted living facilities, Alzheimer's units and other services for seniors and people with disabilities who cannot or choose not to live in their own homes.

Happily, our authority as an investigative and advocacy agency has also been strengthened over the past year. Legislation and collaborations with like-minded agencies, both described in this report, have given us the ability to better advocate for the dignity and quality of life of long-term care residents.

Thank you for your interest in the work of the Long-Term Care Ombudsman. Feel free to contact any members of my staff if you have further questions. Our contact information appears on the back page of this report.

Respectfully submitted,

*Katrina Hotrum*

Katrina Hotrum  
New Mexico Long-Term Care Ombudsman  
New Mexico Aging & Long-Term Care Department

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# THE NEW MEXICO LONG-TERM CARE OMBUDSMAN PROGRAM

**PHILOSOPHY:** All residents of long-term care facilities are entitled to be treated with dignity, respect and recognition of their individual needs and differences.

**MISSION:** To advocate on an individual, community and systemic level for recognition, respect and enforcement of the civil and human rights of all long-term care consumers.

**VISION:** All long-term care consumers will have the highest possible quality of life. Their individual choices and values will be honored and supported in all care environments.

## The New Mexico Long-Term Care Ombudsman Program

The New Mexico Long-Term Care Ombudsman Program (LTCOP) is dedicated to improving the quality of life and the care of residents in long-term care settings in New Mexico. It is authorized by federal and state statute to maintain a presence in all long-term care facilities to protect the health, safety, welfare and rights of residents. The program's primary goal is to resolve complaints made by or on behalf of residents.

LTCOP provides statewide services through the efforts of trained and certified volunteer ombudsmen. About 130 volunteers spend many hours a week advocating for the residents of long-term care facilities in their communities.

These volunteers are supported by five staff people who serve as regional ombudsman coordinators. An ombudsman employed by the Navajo Nation handles complaints coming from residents of long-term care facilities in the New Mexico portion of the Navajo Nation.

The LTCOP added an attorney to its staff in 2003, making it the only ombudsman program in the country with full-time legal representation. One of the attorney's areas of focus will be to assist in the enforcement of the program's right of access to facilities as specified in the New Mexico Long-Term Care Ombudsman Act. Any person who denies access to the LTCOP or interferes with its investigation of complaints is subject to a civil penalty of up to \$5,000 to \$10,000 per occurrence.

Additional ombudsman staff include a manager of education and outreach, whose primary responsibility is training and public information, an associate state ombudsman, who directs the regional coordinators, and the state ombudsman, who is responsible for all advocacy efforts statewide.

## The State of Long-Term Care in New Mexico

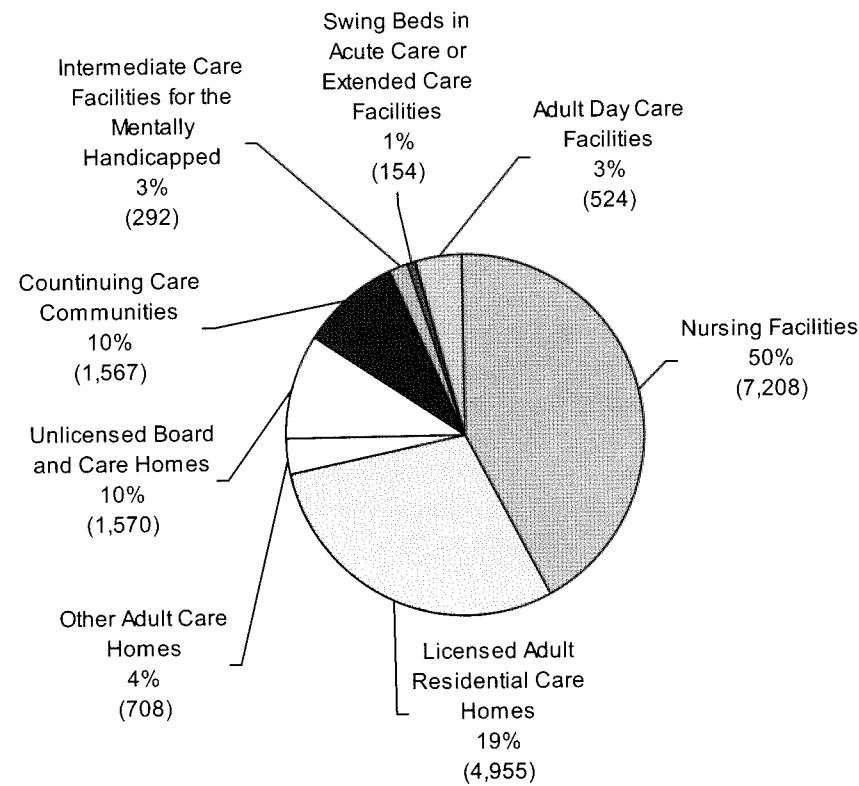
In New Mexico, there are 82 nursing homes that can provide care for up to 7,208 residents. Another 213 licensed residential care facilities can provide care for up to 4,170 residents. An unidentified number of residents live in an unknown number of unlicensed homes.

New Mexico has seen many changes in long-term care. Currently, 44 percent of New Mexico nursing facilities have filed for bankruptcy protection. The two largest chains in New Mexico, Sun Health Care and Integrated Health Services, have been in Chapter 11 bankruptcy (reorganization) since 1999. The effect of bankruptcy proceedings on the quality of care and emotional well-being of residents in facilities owned and operated by these organizations is being monitored regularly by the Ombudsman Program. In some of the bankrupt facilities, a reduction in staff or a greater dependence on agency staff has been noted, which potentially compromises the quality of care.

The largest growth in long-term care facilities is being seen in the "assisted living" industry. This growth has resulted in an increase in complaints regarding care received in assisted living facilities. The LTCOP is working to require licensure of assisted living directors to prevent directors who provide poor quality of care from opening new facilities.

## THE POPULATION SERVED

As of June 2003, the Ombudsman Program served 14,884 New Mexicans living in long-term care facilities. The approximate number of residents by facilities:



### At Their Service



**Betty Benson** personifies dedication to the Ombudsman Program and, more importantly, to the long-term care residents it serves. After serving as coordinator for the Albuquerque area Ombudsman Program, Betty signed up to be a volunteer in 1988. She has spent many years visiting facilities and assisting residents with problems. Currently, she is in charge of weekly case report logging in the main ombudsman office in Albuquerque.

The Ombudsman Program honored Betty at its Certified Nursing Assistants Hands-On Awards Ceremony in July 2000, by naming an award in her honor, the "*Betty Benson Personal Touch Award*." The award is presented annually to CNAs who are recognized for providing superlative care to long-term care residents.

## TOP 10 REPORTED COMPLAINTS

For Federal FY 2002, the Ombudsman Program investigated 4,658 complaints. The 10 most frequently reported complaints and the number of complaints received about them are:

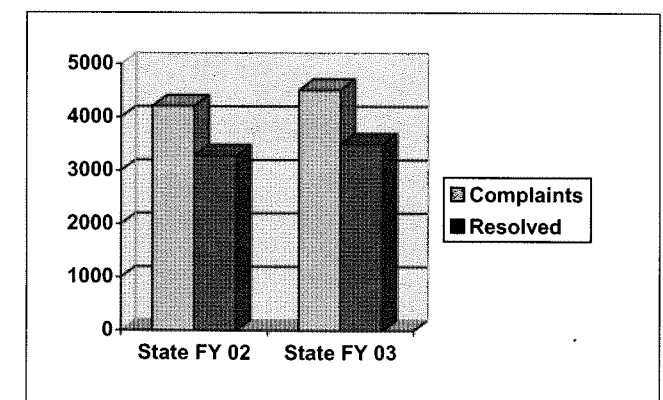
COMPLAINT	COUNT
1. Physical abuse	270
2. Menu – Quality, quantity, variation, choice	238
3. Accidents, improper handling	231
4. Gross neglect	229
5. Call lights – requests for assistance	197
6. Personal hygiene (includes all hygiene)	187
7. Shortage of staff	180
8. Toileting	175
9. Dignity, respect, staff attitudes	161
10. Staff unresponsive, unavailable	140

## COMPLAINTS RECEIVED, COMPLAINTS RESOLVED

In State FY 2002, the Ombudsman Program investigated 4,211 complaints regarding nursing homes, adult residential care homes (including board and care homes and assisted living facilities), adult day care facilities, continuing care communities and unlicensed facilities. Of those, 78 percent, or 3,284, were resolved.

In state FY 2003, the Ombudsman Program investigated 4,512 complaints and resolved 77 percent, or 3,496, of them.

Complaints Received and Resolved  
State Fiscal Years 2002, 2003



## FACILITY RATINGS

This information is based on each facility's most recent Department of Health survey findings and an analysis of the number and severity of citations that directly affect resident care or violated residents' rights.



### No Citations

**Four Corners Good Samaritan VI**  
500 Care Lane  
Aztec, NM 87410

**La Vida Llena Life Care**  
10501 Lagrima De Oro NE  
Albuquerque, NM 87111

**Landsun Homes Inc.**  
1900 Westridge Road  
Carlsbad, NM 88220

**Manor Care Health Services, Heights**  
2216 Lester Drive NE  
Albuquerque, NM 87112

### No resident care or residents' rights citations

**Hobbs Health Care Center**  
5715 Lovington Highway  
Hobbs, NM 88240

**Manor Care Health Services, Camino Vista**  
7900 Constitution Ave. NE  
Albuquerque, NM 87110

**Village at Northrise**  
2880 Northrise  
Las Cruces, NM 88011

### One resident care citation

**Montebello in Academy**  
10500 Road NE  
Albuquerque, NM 87111

**San Juan Manor**  
806 West Maple  
Farmington, NM 87401

### One residents' rights citation

**Laguna Rainbow**  
South State Road 23  
Casa Blanca, NM 87007



Facilities that received the highest number of citations for resident care or violating resident rights are:

### **Country Cottage Care and Rehab**

2101 Bensing Road  
Hobbs, NM 88240  
(25 resident care citations)

### **Vegas Grandes Nursing Home**

813 Fourth Street  
Las Vegas, NM 87701  
(19 resident care citations, including 1 immediate jeopardy to resident's health or safety and 1 causing actual harm)

### **Mission Arch Care Center**

3200 Mission Arch Drive  
Roswell, NM 88201  
(16 resident care citations, including 2 causing actual harm)

### **Santa Fe Care Center**

635 Harkle Road  
Santa Fe, NM 87505  
(15 resident care citations, in-

cluding 1 immediate jeopardy to resident's health or safety and 3 causing actual harm)

### **Lakeview Christian Home**

1300 North Canal  
Carlsbad, NM 88220  
(14 resident care citations, including 3 immediate jeopardy to resident's health or safety and 4 causing actual harm)

### **Las Cruces Nursing Center**

2029 Sagecrest Court  
Las Cruces, NM 88011  
(14 resident care citations, including 2 immediate jeopardy to resident's health or safety and 4 causing actual harm)

### **Mission Manor Health Care Center**

10101 Lagrima De Oro NE  
Albuquerque, NM 87111

(14 resident care citations, including 2 causing actual harm)

### **Betty Dare Good Samaritan**

3101 North Florida Avenue  
Alamogordo, NM 88310  
(12 resident care citations, including 5 causing actual harm)

### **Casa De Oro Care Center**

1005 Lujan Hill Road  
Las Cruces, NM 88005  
(10 resident care citations, including 5 causing actual harm)

### **Manor Care Health Services, Sandia**

5123 Juan Tabo NE  
Albuquerque, NM 87111  
(7 resident care citations, including 5 causing actual harm)

## IDENTIFIED ISSUES AND PATTERNS OF CONCERN

Regular visits by ombudsmen volunteers to residents of nursing homes and residential care facilities provide the Ombudsman Program with an important perspective of widespread issues and patterns of concern. Many of the issues identified by the Ombudsman Program are often verified by the investigations of others.

Throughout the time period of this report, patterns of concern identified by the Ombudsman Program common to nursing homes and residential care facilities included theft, abuse and neglect and lack of appropriate activities.

One of the gravest issues in residential care facilities, and one that can have serious or even deadly consequences, is the admission or retention of persons who require nursing home level of care. Other widespread issues identified in nursing homes include poor nutrition, limited dental and therapy services, poor wound care and misuse of authority by surrogate decision makers such as guardians.

The most pervasive patterns, however, are staff shortages and lack of training. These patterns are the underlying cause of many long-term care problems and complaints. The Ombudsman Program's Federal FY 2001 report to the Administration on Aging indicated that the majority of long-term care complaints are directly linked to staff shortages or lack of staff training. A 2002 study prepared by the Department of Health and Human Services found that more than 90 percent of the nation's nursing homes have too few workers to take proper care of residents. The study concluded that residents in understaffed nursing homes were more likely to experience health problems such as bedsores, malnutrition, dehydration, weight loss, pneumonia and serious blood-borne infections. In addition, national statistics indicate that many deaths in nursing homes are a result of malnutrition and dehydration.

The US General Accounting Office conducted an analysis of state inspections of New Mexico nursing homes performed between August 2000 and November 2001. A report on the analysis was made public in February 2002. The general conclusions of the study were:

- More than 80 percent of New Mexico nursing homes violated federal health and safety standards;
- Almost one out of five nursing homes had a violation that caused actual harm to residents or placed them at risk for death or serious injury.

Examples of violations documented by New Mexico inspectors include:

- Failure to provide medical care;
- Failure to provide proper nutrition and hydration;
- Failure to prevent falls and accidents;
- Failure to prevent or properly treat pressure sores;
- Failure to prevent residents from abusing other residents;
- Improper use of restraints;
- Failure to properly clean residents.

Many of these health problems are the same as those documented in the national study conducted by the Health and Human Services Department.



## New Mexico Long-Term Care Ombudsman Initiatives

### **PUBLIC EDUCATION**

During the past year, the program increased the awareness and understanding of long-term care issues among state legislators. Letters were sent to legislators whenever a nursing facility in their district received a citation for actual harm, potential harm or death or when a facility had a survey of unusual concern to the Ombudsman Program. Letters also were sent when a facility received a deficiency-free survey. Ombudsmen accompanied legislators on facility visits, often to follow up on the written survey information provided to them. Through this education campaign, legislators became more aware and supportive of long-term care issues.

Recently, the program has refocused on informing and training consumers regarding long-term care residents' rights and educating the public about the services of the Ombudsman Program and long-term care advocacy. These activities included:

- Educating local senior service providers and consumers about residents' rights and long-term care advocacy;
- Conducting several workshops at the New Mexico Conference on Aging in August 2002;
- Redesigning and distributing residents' rights posters and pamphlets in English and Spanish, with a wider distribution of these materials possible through a partnership with the State Institutional Medicaid Office; and
- Working with the New Mexico Indian Affairs Department to produce a recorded Navajo translation of residents' rights.

### **COLLABORATION**

All of the Ombudsman Program's collaborative initiatives are designed to enhance the quality of resident care in long-term care facilities.

The Ombudsman Program is an active member of the New Mexico Joint Protocol Team, which is dedicated to investigating complaints of abuse, neglect and exploitation in long-term care settings. Joint Protocol members include the Department of Health's Licensing and Certification Bureau, the Attorney General's Medicaid Fraud Control Unit, the Children, Youth Families Department's Adult Protective Services Division and the Aging and Long-Term Care Department's Ombudsman Program. The ombudsmen collaborate with these agencies at the state and local level to ensure prompt and effective complaint resolution for residents in long-term care facilities. During the 2003 Legislature, a law was passed that redefined the roles of Joint Protocol Team members and strengthened the collaborative process.

The New Mexico Long-Term Care Ombudsman Program has developed a strong liaison and working relationship with New Mexicans for Quality Long-Term Care, a grass roots advocacy organization composed of private citizens who work statewide to improve quality of care in long-term care settings.

A fairly recent initiative is the Nursing Home Litigation Task Force, a partnership between the Ombudsman Program, Senior Citizens' Law Office, the Lawyer Referral for the Elderly Program and private attorneys. The Nursing Home Litigation Task Force facilitates speedy referrals to attorneys when asked to by a resident or family member who wishes to pursue lawsuits based on a complaint or injury.

In August 2001, the Ombudsman Program coordinated a statewide Long-Term Care Summit, which included industry leaders, advocates and representatives from government. The summit was designed to bring together all stakeholders to address the issue of staffing in nursing facilities and the development of related legislation and changes in regulation. As a result of the summit, the Department of Health established an ongoing subcommittee in its Quality Cabinet to track staffing and labor issues, Medicaid reimbursement and trends and data.

In the past several years, the Ombudsman Program has identified a need for stronger partnerships with attorneys to provide legal intervention when complaints remain unresolved. The program began work with the New Mexico State Bar Association to develop a survey to educate and recruit attorneys to assist in resolving long-term care legal issues. The survey was finalized in April 2002 and was sent to active attorneys across the state.

During the 2002 Legislature, the Ombudsman Program actively supported a Senate Joint Memorial that addressed staffing issues in nursing facilities. The memorial required the Department of Health's Licensing and Certification Bureau to lead the Acuity-Based Staffing Committee, a group composed of advocates, industry representatives, consumers and government agencies, to determine the best acuity-based staffing model for New Mexico. The State Ombudsman is an active participant in this group.

### **LEGISLATION**

With the support of the state Legislature, LTCOP gained important legal strength during the 2003 session.

- ◆ The Long-term Care Ombudsman Act was amended to clarify that the Ombudsman Program is a health oversight agency as defined in HIPAA. As a health oversight agency, the LTCOP has access to all the records of long-term care residents, with the exception of internal quality assurance and risk management reports. The Act also protects the confidentiality of the program's files by specifying that the files are not subject to the provisions of the Inspection of Public Records Act.
- ◆ An independent Office of Guardianship was created in the Developmental Disabilities Planning Council to administer and monitor contracts with community providers of public guardianship. The act establishes the office's authority for record review and investigation. The office is required to establish a method for investigating complaints against guardians. Previously, there was no effective mechanism for resolution of the numerous complaints against guardians received by the Ombudsman Program.
- ◆ The Joint Protocol members are required to coordinate investigations of allegations of abuse, neglect and exploitation in health facilities. This will make the investigations more effective because

the Joint Protocol members will accept sister agency findings as potential evidence. Currently the Joint Protocol is working on operational procedures for investigations.

- ◆ The Aging and Long-Term Care Department was allocated funds to establish a pilot project on acuity-based staffing in nursing homes. The funds will be transferred contractually by the department to the Human Services Department to implement an acuity-based staffing reimbursement model in at least one facility. The project will assess the costs of acuity-based staffing. It also will determine if acuity-based staffing affects the quality of care nursing home residents receive by comparing the quality of care in nursing facilities using acuity-based staffing with that of facilities utilizing the current minimum staffing requirement.
- ◆ A memorial was passed that continues the Acuity-Based Staffing Committee in the Department of Health's Quality Cabinet.

Some legislative efforts remain to be achieved.

- ◆ In New Mexico, owners and operators of residential care homes are not required to have education and training in long-term care prior to operating a residential care home. LTCOP worked with nursing home and residential care providers and the New Mexicans for Quality Long-Term Care to amend the Nursing Home Administrator's Act in order to develop testing criteria and professional standards for residential care home operators. The bill passed both the House and the Senate, but was vetoed by the Governor in the 2002 session.
- ◆ The Ombudsman Program has advocated for legislation allowing nursing home residents and their representatives to seek injunctive relief when abuse or neglect occurs in long-term care facilities. The Ombudsman Program has also supported legislation empowering the Department of Health to place long-term care facilities under receivership when such facilities are unable to meet the minimum standards of care that may result in actual harm to residents living in the facilities.
- ◆ The Ombudsman Program provided testimony and advocacy on long-term care receivership legislation initiated by the DOH. This legislation empowers the Department of Health to place long-term care facilities under receivership when such facilities are unable to meet the minimum standards of care, which may result in actual harm to residents living in the long-term facilities.

## **Ombudsman Program Outcomes Project**

In 2001, the New Mexico Aging and Long-term Care Department implemented a \$25,000 grant award for the Long-Term Care Ombudsman Program from the US Administration on Aging. The grant project focused on the development of outcome measures for ombudsman programs throughout the United States. The Ombudsman Program already gathered, analyzed and reported data, but this grant provided an opportunity to expand and coordinate these activities with other ombudsman programs around the country.

The outcomes project included the following components:

- ◆ Consumer satisfaction surveys;
- ◆ Consumer satisfaction focus groups;

- ◆ Implementation of new data collection methods and forms to track facility visits;
- ◆ A legislative education campaign; and
- ◆ Analysis of ombudsman activity in targeted facilities.

These components were designed to measure or collect:

- ◆ Feedback from consumers regarding satisfaction with ombudsman services;
- ◆ Evidence of effectiveness of systemic advocacy; and
- ◆ Changes resulting from ombudsman work in long-term care facilities.

As part of an effort to assess the quality of the complaint resolution process and general conditions in long-term care facilities, the New Mexico Aging and Long-Term Care Department contracted with Southwest Planning & Marketing to conduct research regarding the effectiveness of the New Mexico Long-Term Care Ombudsman Program.

Using a database of persons who have filed complaints with the program, the researchers contacted residents, family members, nursing home staff, service providers and others. The research began with four focus groups, and concluded with a statewide survey. Questions were designed to address local concerns, as well as certain national issues identified by the National Association of State Units on Aging.

One of the most important conclusions of the survey was a need for greater public awareness of the Ombudsman Program. A complete report of the survey is available upon request.

The project also focused on conducting quality initiatives to strengthen services to New Mexico's long-term care residents and improve consumer satisfaction. Major accomplishments were made throughout the grant period.

A simple-to-use form was designed to allow ombudsmen to document when they visited a facility, how long they stayed and the resolution of simple complaints. The form also lists complaints that can only be resolved through legislative or regulatory action, such as staffing shortages, and includes the option of indicating that a complaint was not resolved and may require further intervention. More than 70 percent of the Long-Term Care Ombudsman Program's field ombudsmen are consistently using the form; according to the federal report of FY 2001, ombudsman-reported complaints have increased 30 percent from the previous year. Four other state ombudsman programs have implemented the use of a simplified reporting system, based upon the New Mexico model.

## **VOLUNTEER RECRUITMENT AND PROGRAM EXPANSION**

The Ombudsman Program is actively working to increase the number of volunteer ombudsmen statewide with the goal of having an ombudsman assigned to every long-term facility in New Mexico. Working with AARP, the Ombudsman Program conducts statewide outreach to recruit

persons who are interested in being trained and certified as volunteer ombudsman. The program plans to expand effort to recruit additional volunteers by working with the media and through targeted outreach in partnership with other organizations.

## **INSTITUTIONAL ADVOCACY**

### ***Ruidoso Care Center***

In August 2001, Ruidoso Care Center announced the closure of the entire facility due to financial reasons. Representatives from the Ombudsman Program worked with residents and families throughout the discharge and appeals process, then advocated on their behalf for the Department of Health to assume receivership of the facility. Also during this time, the Ombudsman Program worked with a community group, Lincoln County Care, which was interested in purchasing the facility. On September 11, 2001, the Department of Health petitioned the district court for receivership citing the facility's attempt to transfer residents constituting a danger of death or significant mental or physical harm to residents. In order to avoid receivership, the Ruidoso Care Center agreed to sell the facility to the Lincoln County Care group. Follow-up by the Ombudsman Program found that both the residents and families are satisfied with this outcome.

### ***Trinity House***

Since 1996, the Ombudsman Program has diligently worked to locate unlicensed homes and advocated for these facilities to become licensed. One such facility is Trinity House, a residential care home that serves people with mental illness. The Ombudsman Program has investigated numerous cases of medication errors, poor quality care, food and nutrition services, abuse and environmental hazard issues. The Ombudsman Program has advocated to the Department of Health for the licensure of Trinity House. The Department of Health's position was that Trinity House did not meet the criteria for licensure.

In January 2000, the Ombudsman Program investigated a death at Trinity House caused by medication errors and lack of supervision. The Ombudsman Program's investigation concluded that the residents in Trinity House were subject to neglect and actual harm due to medication errors and lack of supervision. An additional request was made for the Department of Health to license the facility. Once again, the request for licensure was denied.

In 2003, the Department of Health reversed its position and is requiring Trinity House to get licensed. To date, the Ombudsman Program still investigates allegations of neglect at Trinity House and continues to advocate for those with mental illness to have the right to live in a clean and safe environment free from abuse and neglect.

### ***Staffing Regulations***

Based upon the volume and types of complaints received by the Ombudsman Program, the program supports increased staffing in all long-term care facilities.

Since 1999, the Aging and Long-Term Care Department and the Ombudsman Program, along with consumers, providers and other state agencies, have been members of the NM Department of Health's Long-Term Care Quality Cabinet. The cabinet was established to identify and resolve long-term care issues. At the forefront of these issues has been the need to regulate staffing. The Department of Health took the lead in developing staffing regulations based on input from the

Quality Cabinet.

In January 2000, the Department of Health held a hearing on the then-proposed staffing regulations. Although the Ombudsman Program supported the need for staffing regulation and the Department of Health's efforts toward this end, the program did not support the staffing regulation proposed at that time. The proposed ratio only affected 10 of the 87 facilities in New Mexico and the levels were averaged over a seven-day period rather than a 24-hour period.

As mentioned earlier, a bill was passed in the 2003 Legislature that creates a pilot project to determine the effectiveness of acuity-based staffing.

## **CHALLENGES**

The Ombudsman Program has identified several high-priority, related challenges affecting quality of life for long-term care residents:

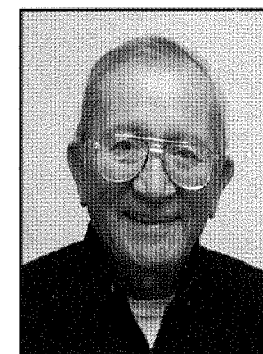
- Advocating for a sufficient number of trained staff in every long-term care facility to ensure quality care.
- Expanding the program to cover the entire health care continuum, including homecare, acute care & emergency room care.
- Partnering with hospitals to obtain forensic data from forensic investigations.

The Ombudsman Program is working to meet these challenges by:

- Supporting legislation that revises the existing staffing ratio for long-term care facilities and establishes professional standards for operators of residential care facilities. The program will continue to advocate for legislation to address these critical issues.
- Working with the long-term care industry and other units of state government to address the problems of recruiting and retaining an adequate workforce of trained long-term care staff.

## **At Their Service**

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**David Amador**, a retired US Postal Service worker, has been an Ombudsman for 12 years. He was in the first group of volunteers to be trained in southern New Mexico in 1989 and, since then, has been making weekly visits to his assigned nursing home and assisted living facilities. David says that some people might find this work depressing, but he enjoys talking with the residents and gaining their trust so he can learn how to help resolve any complaints they may have. The fact that David is bilingual helps him reach the many residents who are most comfortable speaking Spanish. He and his wife, Socorro, cared for his own mother, who lived well into her 90s, and this experience has given him a special sensitivity to the needs of the elderly.



## History of the Long-Term Care Ombudsman Program

The Long-Term Care Ombudsman Program (initially called the Nursing Home Ombudsman Program) was created in 1971. An executive order by then-President Richard Nixon established an eight-point initiative to improve the quality of care in America's nursing homes and to respond to abuse and neglect complaints from nursing home residents. By 1973, seven demonstration ombudsman projects were operating.

The demonstration projects proved successful in complaint resolution and in identifying problems related to long-term care and bringing them to the attention of the public, governmental agencies and providers. The projects introduced the perspective and needs of residents into the deliberations of policymakers. Other accomplishments included the design, organization and implementation of training programs and informational forums for the public and for staff of nursing homes. The original projects placed an emphasis on the use of volunteers, still a strong element of today's ombudsman program. Each state has always had considerable latitude in structuring its program; therefore, states currently vary in the degree to which volunteers are included and the roles they assume.

In May 1975, Commissioner on Aging Arthur S. Flemming invited all state units on aging to submit proposals for grants to "enable the State Agencies to develop the capabilities of the Area Agencies on Aging to promote, coordinate, monitor and assess nursing home ombudsman activities within their service areas." All states, except Nebraska and Oklahoma, received grants the first year and created positions for nursing home ombudsmen frequently working out of the state units on aging.

Congress considerably strengthened the Ombudsman Program in 1978 through amendments to the Older Americans Act. These amendments and subsequent revisions required all state units on aging to establish an ombudsman program to carry out the following activities:

### THE NEW MEXICO OMBUDSMAN PROGRAM: A TIMELINE

1975 The Long-Term Care Ombudsman Program begins in New Mexico with the hiring of an Ombudsman Developmental Specialist.

1975 New Mexico creates the position of State Ombudsman.

1975 The program consists of one State Ombudsman, located in the capitol of Santa Fe, who responds to resident complaints statewide and advocates for systemic changes.

1979 New Mexico's Ombudsman Program begins recruiting and training volunteers.

1983 The Ombudsman Program opens its first regional office in Albuquerque.

1991 The Ombudsman Program expands to encompass one state office and four regional offices. Each regional office was housed in one of the four Area Agencies on Aging.

1993 The Ombudsman Program expands to cover board and care facilities. A board and care specialist position focuses on recruiting and supporting volunteers to serve residents in these facilities, as well as advocating for systemic changes to protect the rights of residents.

1999 An ombudsman field office is opened in Las Cruces.

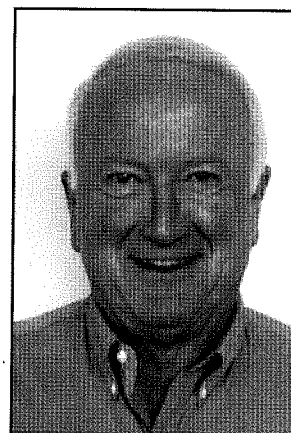
- ◆ Investigate and resolve long-term care facility residents' complaint;
- ◆ Train volunteers and promote the development of citizens' organizations;
- ◆ Identify significant problems by establishing a statewide reporting system for complaints, and work to resolve these problems by bringing them to the attention of appropriate public agencies;
- ◆ Monitor the development and implementation of federal, state and local long-term care laws and policies; and
- ◆ Protect the confidentiality of residents' records, complaints' identities and ombudsmen files.

In 1981, recognizing that there were similar problems in board and care homes, the name of the program was changed to the Long-Term Care Ombudsman Program and responsibility of the program was enlarged to include these facilities (although without a significant increase in funding). The scope of the Ombudsman Program, and of those in some other states, also includes adult day care facilities. Some states also assume responsibility for advocacy for individuals receiving in-home care services.

In addition to mandating that all states have ombudsman programs, the 1987 amendments to the Older Americans Act substantially changed the program to improve the program's ability to advocate on behalf of residents of long-term care facilities. The changes required:

- ◆ Ombudsman access to residents and residents' records;
- ◆ Immunity to ombudsmen for the good faith performance of their duties; and
- ◆ Prohibitions against willful interference with the official duties of an ombudsman and/or retaliation against an ombudsman, resident, or other individual for assisting the ombudsman program in the performance of its duties.

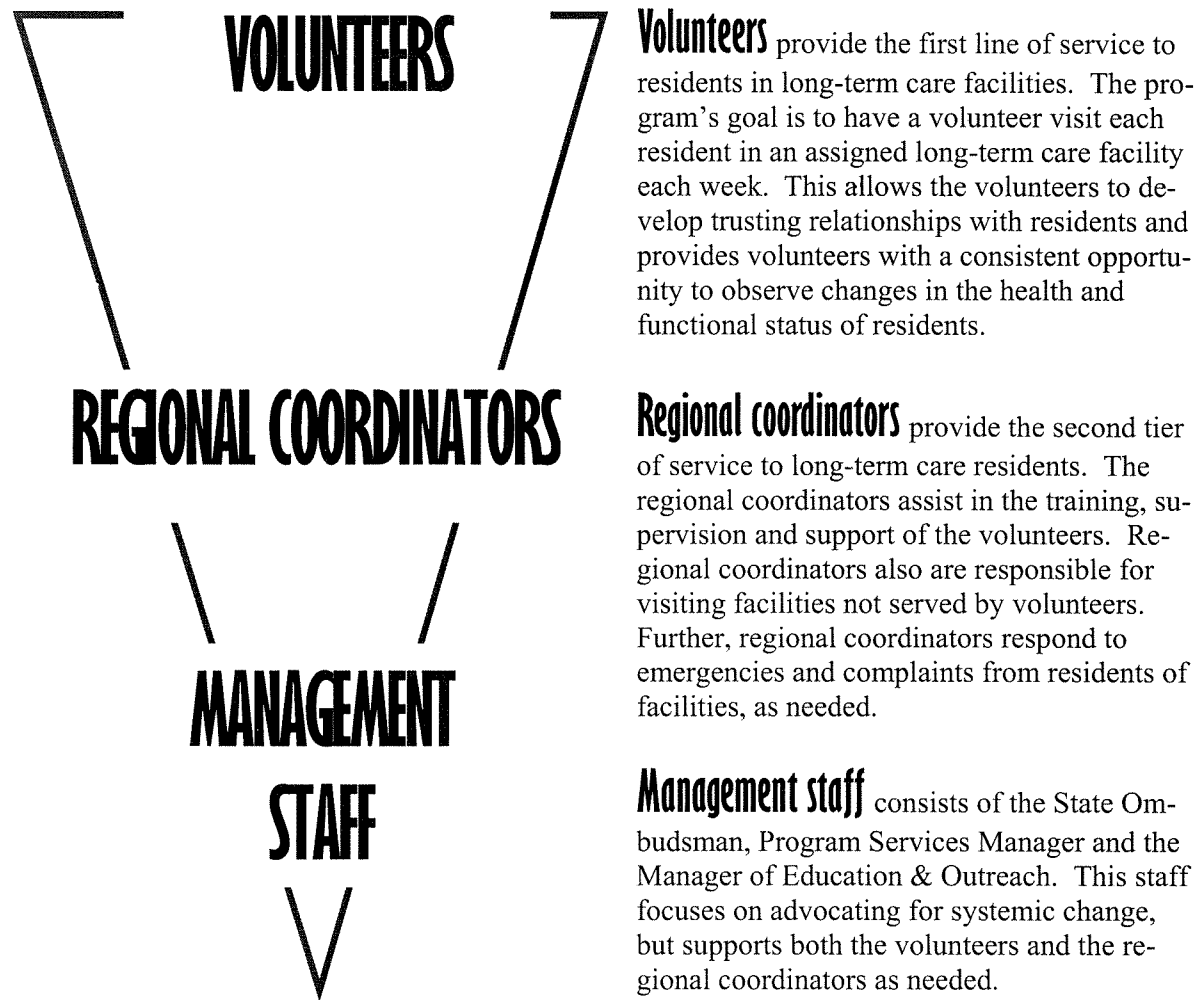
### At Their Service



Sixteen years of ombudsman volunteering is a rarity. And an average of 30 to 40 hours a month of ombudsman volunteering breaks the mold.

This is **Arlyn Vik**, the ombudsman assigned to the Casa Real nursing home in Santa Fe. He began his ombudsman career in Napa Valley, California, working mostly with Vietnam vets in the long-term care unit of a veteran's hospital. When asked what has kept him doing this work for so long, Arlyn remarked, "The work is still necessary; residents need to be cared for." According to Arlyn, a key to his effectiveness as an ombudsman has been establishing a good working relationship with the staff. In addition to ombudsman volunteering, Arlyn finds time to tutor second-grade students, is on the Board of Directors of Fine Arts for Children and is an active supporter of the Santa Fe Desert Chorale.

## Structure of the New Mexico Long-Term Care Ombudsman Program



### At Their Service

In State FY02, **42 volunteers** were trained to join the **88 volunteers** already active in the program, giving the Ombudsman Program a volunteer force of **130 statewide.**

At the end of State FY03, the LTCOP had **150 volunteers.**

## OMBUDSMAN PROGRAM OPERATIONS

Residents, family members, providers, facility staff and others can contact the Ombudsman Program between the hours of 8 a.m.-5 p.m., Monday through Friday, to register complaints. Any individual concerned about the care or services provided to residents in long-term care facilities are encouraged to call or visit one of the program's three offices. A listing of these offices is included on the back page of this report. Ombudsman staff and volunteers are also available to meet with residents or families in long-term care facilities. Information regarding residents' rights and how to contact the Ombudsman Program are posted in all long-term care facilities in New Mexico.

All complaints received are thoroughly investigated. Such investigations may include, but are not limited to, site visits, record reviews and interviews with residents, staff and family members. Investigations are conducted in a manner that minimizes disruption to residents' lives. All efforts are directed toward timely resolution of complaints. Undercover investigations are conducted as warranted.

All services of the Ombudsman Program are provided free of charge.

## JURISDICTION

The Older Americans Act authorizes ombudsman programs to investigate and resolve complaints in skilled nursing facilities, nursing facilities and intermediate care nursing facilities, including facilities for the mentally retarded. This Act also authorizes ombudsman jurisdiction to include all adult care homes or adult residential care facilities, including adult residential shelter care homes, boarding homes, assisted living facilities, continuing care communities and adult day care facilities. The New Mexico Long-Term Care Ombudsman Act provides additional jurisdiction and access to residents of all unlicensed homes.

## THE NEW MEXICO LONG TERM CARE OMBUDSMAN ACT

The Ombudsman Program's enabling legislation, the New Mexico Long Term Care Ombudsman Act, was adopted in 1989 (28-1 to 28-17-19 NMSA 1978). The Act declares that it is the public policy of the State to encourage community contact and involvement with residents of long-term care facilities. The Act directs the Ombudsman Program to:

- ◆ Investigate and resolve complaints made by or on behalf of residents of long-term care facilities;
- ◆ Analyze, monitor and recommend changes in state and federal laws affecting long-term care residents;
- ◆ Work with other state and federal agencies to coordinate and enhance the effectiveness of their services;

- ◆ Train the staff of long-term care facilities and the general public in issues affecting long-term care residents;
- ◆ Promote the development of citizen organizations concerned with improving long-term care;
- ◆ Collect and analyze data regarding the condition of long-term care residents and make recommendations regarding policy, regulatory and legislative solutions to address the problems identified;
- ◆ Provide information to public agencies, legislators and the general public regarding the problems and concerns of people living in long-term care facilities; and
- ◆ Support the development of resident and family councils.

The Act directs the Ombudsman Program to serve all residents, regardless of age, in:

- ◆ All nursing facilities;
- ◆ Adult residential care homes, whether licensed or not;
- ◆ Boarding homes;
- ◆ Other adult care homes;
- ◆ Continuing care communities; and
- ◆ Intermediate care facilities for the mentally handicapped.

## **VOLUNTEER LONG-TERM CARE OMBUDSMAN DESCRIPTION**

Ombudsman volunteers advocate for the civil and human rights of long-term care consumers. While most of their efforts center on individuals, they also assist in community and systemic advocacy. They commit to serving a minimum of three hours per week.

### ***Duties:***

- ◆ Advocate for residents' civil and human rights;
- ◆ Educate residents, facility staff and the public regarding issues of concern to long-term care residents;
- ◆ Visit assigned facilities regularly and establish relationships with residents;
- ◆ Follow the provisions of the New Mexico Long-Term Care Ombudsman Act;
- ◆ Maintain professional relationships with residents' families and facility staff;
- ◆ Make appropriate referrals to, and work cooperatively with, the Licensing & Certification Bureau, Adult Protective Services and Medicaid Fraud Control Unit;
- ◆ Maintain accurate records and submit reports on a regular basis;
- ◆ Keep information obtained about residents confidential.

## **The Work of Our Ombudsmen**

The initials given the residents are pseudonyms.

### **MRS. M: A RESIDENT'S RIGHT TO STAY**

Mrs. M fell at home and fractured her arm. She was admitted to the nursing home for physical therapy, a skilled nursing service covered by Medicare payment.

Mrs. M's grandson called the ombudsman office for assistance when the nursing home told him they would have to discharge the resident within three days because she had made as much progress as possible in her physical therapy. Medicare will pay for only a limited number of skilled nursing days and only when a doctor verifies that a resident is benefiting from the therapy.

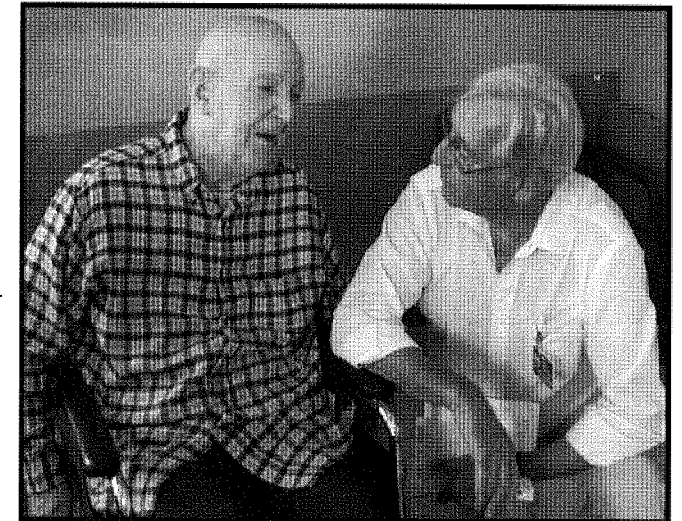
The resident's grandson and other family members thought she should stay in the nursing home because she needed continued therapy services to regain full use of her arm. They also wanted her to stay even after she no longer required therapy because she could no longer take care of herself at home, which is the reason she fell. They had applied for Medicaid coverage for her continued stay in the nursing home, but were not yet approved.

In keeping with the Ombudsman Program's focus of following the wishes of the resident, an ombudsman visited Mrs. M and verified that she did want to stay at the nursing home. The ombudsman then worked with the nursing home administrator to gain more time. The administrator was persuaded to have the doctor review her case and, as a result, the doctor determined that Mrs. M could benefit from additional physical therapy. At the same time, the ombudsman worked with the grandson to get all needed documentation to the Medicaid caseworker. The Medicaid supervisor was alerted to the emergency and agreed to give the application priority. The result was that Medicaid funding was approved before Mrs. M's Medicare-covered skilled nursing days expired, and she was allowed to remain in the facility.

### **MS. B: RESOLVING FINANCIAL EXPLOITATION**

An ombudsman volunteer was helping Ms. B, who lived in an assisted living facility for 1½ years. The work of the ombudsman became critical when Ms. B, who was competent to handle her own affairs, faced discharge for lack of payment.

Her grandson had obtained power-of-attorney to handle her financial affairs, including the sale of her house, with the understanding that proceeds would be used to pay her expenses at the fa-



cility. Upon the sale of Ms. B's home, it was discovered that the grandson had earlier taken a \$30,000 loan on the equity in the home, which had grown to \$32,000 with interest. Upon the sale of the house, the title company delivered the check for the proceeds to the facility. The grandson picked up the check at the facility and went to Buffalo, NY.

The facility received two checks from the grandson to pay for his grandmother's care, both of which bounced. The grandson eventually followed up with partial payment. Upon the advice of the ombudsman, the facility was able to redeposit and collect on the bad checks. No payments were received after that time.

Since Ms. B had lost access to her only financial resource, and there were no other family options, application was made to Medicaid for placement in a nursing home. Eligibility was denied because the check from the sale of the house had been delivered to Ms. B. The Medicaid eligibility worker assumed Ms. B had the check in her possession or had access to the funds. Through the efforts of the ombudsman, it was proved that Ms. B's signature was forged, and eligibility was approved, allowing her to enter a nursing home. This case is ongoing and is presently in the hands of the attorneys general of both New York and New Mexico.

### **MR. G: STRIVING TOWARD INDEPENDENCE**

Mr. G had been living alone, but his daughter spent hours a week helping him. After a hospitalization, Mr. G was admitted to a nursing home with multiple health problems and some confusion. His daughter, who had power of attorney, was relieved to have him in a nursing home and was convinced that it was where he belonged.

Mr. G's health eventually improved and his confusion disappeared. He repeatedly told the ombudsman that he wanted to leave the facility and live independently. His daughter had given up his apartment and sold his furniture when he went into the nursing home and, as a result, Mr. G had no home to which he could return.

In the 18 months that he had been at the facility, three different administrators and four different social workers worked in the facility. Because of the high turnover, no one followed through on his desire to live independently.

The ombudsman consistently pursued this issue with the various administrators and social workers. She was eventually successful in having Mr. G's physician review his condition and determine that he could live independently with supportive services. The ombudsman obtained information about the Medicaid Disabled & Elderly Waiver Program and senior housing. The daughter fought her father's decision and claimed that, as his attorney-in-fact, she had the right to make these decisions for her father. The ombudsman supplied Mr. G with information on changing his power of attorney, and he did. The facility staff eventually began to support Mr. G's desire to live independently. He was accepted to receive services from the Disabled & Elderly Waiver Program and approved for senior housing. To date, Mr. G lives in the community and is satisfied with his more independent life.

## **How to Choose a Long-Term Care Facility**

Several types of long-term care facilities are available in New Mexico. Nursing facilities, commonly referred to as nursing homes, provide 24-hour nursing supervision, meals, personal care, activities and social services. Nursing and therapy sessions are also provided as needed by individual residents.

Residential care facilities include board and care homes and assisted living facilities. Board and care homes are generally small facilities, often located in private homes that provide a room, meals, personal care and 24-hour oversight. Assisted living facilities are generally larger facilities that provide housing, meals, personal care, medication management and 24-hour oversight.

Selecting a long-term care facility is an important and difficult decision. Finding a long-term care facility that provides the right services in a pleasant, comfortable environment requires research.

A personal visit is probably the most important step in selecting the right facility. A visit provides the opportunity to talk with staff and, more importantly, with the people who live and receive care in the facility.

When visiting the nursing home, expect to be given a formal tour. While this may be a useful introduction to the facility, it is important to not be overly influenced by a guided tour. When the tour is over, return to some of the places where staff is caring for residents. Make sure to check with staff before entering resident care areas. Respect resident privacy while walking around. The checklist on the next page provides ideas on what to look for. Be sure to spend some time examining the facility's most recent survey report.

In most cases, it is a mistake to select a facility that is difficult to visit on a regular basis. Frequent visits are the best way to make sure that someone is doing well in a facility. Visitors are important advocates for chronically ill residents. Frequent visits often make the transition easier for new residents and their families. If helping to select a facility for relative, make every effort to involve the relative in the selection process. If the relative is mentally alert, it is especially important that his or her wishes be respected. People who are involved in the selection process are better prepared when the time comes to move into the facility.



# Long-Term Care Facility Checklist

This checklist is designed to help you evaluate and compare facilities.

## PART I- Basic Information

Name of Facility \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Cultural/ Religious Affiliation (if any) \_\_\_\_\_

Name of Administrator or Admissions Director \_\_\_\_\_

Mark the appropriate box to answer these questions:

NO		YES
	Is the facility Medicaid certified?	
	Is the facility Medicare certified?	
	Is the facility admitting new residents?	
	Is it in a convenient location?	
	Is the facility capable of meeting your special care needs?	

## PART II- Quality of Life

NO		YES
	Are residents treated respectfully by staff at all times?	
	Are residents dressed appropriately and well groomed?	
	Does staff make an effort to meet the needs of each resident?	
	Is there a variety of activities to meet the needs of individual resi-	
	Is the food attractive and tasty? (Sample a meal if possible.)	
	Are resident rooms decorated with personal articles?	
	Is the facility's environment homelike?	
	Do common areas and resident rooms contain comfortable furniture?	
	Does the facility have a family and resident's council?	
	Does the facility have contact with outside groups of volunteers?	

## PART III-Quality of Care

NO		YES
	Does staff encourage residents to act independently?	
	Does facility staff respond quickly to calls for assistance?	
	Are residents and family involved in resident care planning?	
	Are appropriate therapies offered (physical, speech, etc)?	

## PART IV- Safety

NO		YES
	Are there enough staff to appropriately provide care to residents?	
	Are there handrails in the hallways and grab bars in bathrooms?	
	Is the inside of the facility in good repair and exits clearly marked?	
	Are spills and other accidents cleaned up quickly?	
	Are the hallways free of clutter and well lighted?	

## PART V- Other Concerns

NO		YES
	Does the facility have outdoor areas (patios, etc.) for resident care?	
	Does the facility provide an updated list of references?	
	Are the latest survey reports and lists of resident rights posted?	

Your Concerns \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## Paying for Long-Term Care

There are several ways that long-term care is financed.

**Long-term care insurance** pays for long-term care services, which are not covered by Medicare, Medicare Plus Choice Plans (HMOs) or Medicare supplemental insurance plans. Different types of plans are available. The two main types are indemnity and service coverage. Both types require an assessment to determine long-term care needs at the time a policyholder begins collecting benefits. Indemnity policies pay daily cash benefits, which a policyholder spends as he or she wishes. Service coverage policies pay for the actual cost (or a percent of the cost) of a variety of long-term care services that may be used by a policyholder. Such services typically include home care, adult day care and long term care facilities.

**Medicaid** is a state and federal program that will pay most nursing home costs for people with limited income and assets. Medicaid only pays for care provided in Medicaid-certified facilities.

Under certain limited conditions, **Medicare** will pay for some nursing home costs for Medicare beneficiaries who require skilled nursing or rehabilitation services. To be covered, a beneficiary must (after a qualifying hospital stay) receive the services from a Medicare-certified skilled nursing home.

**Medicare supplemental insurance** is private insurance (often called Medigap) that pays Medicare's deductible and co-insurances and may cover services not covered by Medicare. Most Medigap plans will help pay for skilled nursing care, but only when that care is covered by Medicare. In addition, some people have nursing home costs covered in full or in part by managed care plans or employer benefit packages.

**Personal resources** are used to pay for almost all residential care. About half of all nursing home residents pay nursing home costs out of personal resources. When most people first enter nursing homes, they usually pay out of their own savings. As the length of stay extends and personal resources dwindle, many people who live in nursing homes become eligible for Medicaid.

The Aging and Long-Term Care Department's Health Insurance Benefits Assistance Corps (HIBAC) program can provide more detailed information on paying for long-term care and guidance in selecting an appropriate long-term care policy or qualifying for Medicare or Medicaid benefits. HIBAC can be reached toll free statewide at 800-432-2080 (505-827-7640).

## ISSUING AUTHORITY

1. The Older Americans Act of 1965 requires the State Ombudsman to prepare an annual report:

- (A) Describing the activities carried out by the Office [of the Ombudsman] in the year for which the report is prepared;
- (B) Containing and analyzing the data collected under subsection (c);
- (C) Evaluating the problems experienced by, and complaints made by or on behalf of, residents;
- (D) Containing recommendations for—
  - (i) Improving quality of the care and life of the residents; and
  - (ii) protecting the health, safety, welfare, and rights of the resident;
- (E)
  - (i) analyzing the success of the program including success in providing services to residents of board and care facilities and other similar adult care facilities; and
  - (ii) Identifying barriers that prevent the optimal operation of the program; and
- (F) Providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers.

The Older Americans Act directs the State Ombudsman to submit the report to the Governor, the State Legislature, the Agency on Aging Director, the Licensing and Certification Director, other appropriate governmental agencies, and to make the report available to the public.

2. The New Mexico Long Term Care Ombudsman Act (28-17-1 et seq. NMSA 1978) requires the State Ombudsman to prepare an annual report:

Containing data and findings regarding the types of problems experienced and complaints received by or on behalf of individuals residing in long-term care facilities and [to] provide policy, regulatory and legislative recommendations to solve such problems, resolve such complaints and improve the quality of care and life in long-term care facilities; [and to] provide information to public agencies, legislators and others, as deemed necessary by the office, regarding the problems and concerns, including recommendations related to such problems and concerns, of older individuals residing in long-term care facilities.



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