Illinois Department on Aging
Illinois Long-Term Care Ombudsman Program
Supplemental Training Curriculum

Supplemental Module # 14
Understanding Residents' Records During Complaint Investigation

TEACHING TIPS

Pre-publication Edition I

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SUPPLEMENTAL MODULE # 14
Understanding Residents' Records
During Complaint Investigation

TEACHING TIPS

The supplemental modules for ombudsmen have been created to accommodate different learning styles and are based on research about how most people learn. The premise on which this module is based is the idea that new information is learned best when there is an opportunity for discussion and to ask questions.

David Sutterfield, Attorney at Law, originally prepared the information in this module for use in court cases. Ombudsmen most often will not need to review all of the included resident records during complaint resolution. They must select which records are pertinent to each specific case.

This module serves two purposes:

1) A training document; and
2) A prompt—When an ombudsman has a complaint, this module can be taken to the facility for the ombudsman to use as a checklist when reviewing resident records.

For training, it is suggested that the trainer give an overview of the module and then go over each type of resident record to assure all trainees understand each record's purpose. This module can be divided into as many training sessions as needed.

The trainer may also choose to have one or more copies of the Level II *Access Module* by Sarah Hunt available to review the reasons for and the requirements for accessing a resident's record.

Accountability
After the discussion, trainees will be asked to complete the following accountability exercises:

1) Review a prior case from the area and determine what resident records (identify no more than 5 records) needed to be reviewed and why. **This may be a group exercise.**
2) Write at least five questions, but as many questions as they have, about the information in this module.

You may need:

- Copies of the handouts and accountability exercises
- Example of resident records from a facility in the area (all names must be redacted for confidentiality)
- One or more copies of the Level II *Access Module* by Sarah Hunt

Appendices A, B and C are attached and need to be inserted in this document.

ACCOUNTABILITY EXERCISE #1

Review a prior case from the area and determine what resident records (identify no more than 5 records) needed to be reviewed and why.

1

2

3

4

5

ACCOUNTABILITY EXERCISE #2

Write at least five questions you have about the content of this module. You may write as many questions as you would like.

1

2

3

4

5

6

7

8

9

10

EXAMPLE OF COURT ORDERED QUESTIONS REGARDING AN INCIDENT/PROBLEM

1. What were you calling to report to DPH?
2. When did the incident/problem occur?
3. When did you become aware of the incident /problem?
4. What did you personally see with regard to this problem?
5. What were you told with regard to this problem, and who did you talk to?
6. Has the resident had any similar problem/injuries during the last 3 months? (If yes, how often, when, etc.)
7. Do you know if any other residents have had the same problem or similar injury in the last 3 months? (If yes, how many, who, when, etc.)
8. What is the resident's general physical condition? (Is he/she confined to a bed or wheelchair, can he/she communicate, etc.)
9. Have you observed any differences in the resident's condition or behavior since this problem/incident occurred?
10. Was any medical attention given to the resident as a result of the problem/incident? (If so, what, when.)
11. What did the facility do after this injury or problem happened?

RESIDENT ISSUES FROM A LEGAL PERSPECTIVE

By David Sutterfield, Attorney at Law

I. WHAT KIND OF CASE IS IT?

A. Self neglect
1. Determine client's capabilities
2. Determine client's needs

B. Neglect/Abuse by another person
1. Determine client's capabilities
2. Determine client's needs
3. Investigate alleged abuser

C. Self mismanagement of finances
1. Determine client's capabilities
2. Determine client's needs

D. Financial exploitation
1. Determine client's capabilities
2. Determine client's needs
3. Investigate exploiter

II. DETERMINE CLIENT'S CAPABILITIES

A. Is he/she competent?
1. This is the most important fact you are going to determine. If the client is competent, then it is his/her rational decision that is going to govern your actions.
2. Exceptions to this:
   a) Client cannot or will not take steps to protect him/herself because of
      (1) Lack of social skills
      (2) Abuse (physical or verbal)
      (3) Physical frailty
      (4) Psychological dependence of abuser
3. What is a rational decision?
   a) Does the client have a determinable set of values?
   b) Do those values generally make sense?
   c) Can the client apply that set of values to his/her present needs or the issue at hand?
   d) Do the factors listed on 2a above "warp" the client's application of his/her set of values to the extent that the client is not actually applying his/her values, but is in a "survival" mode?

B. Sources of help determine competency
1. MMSE (Mini-Mental State Examination)
2. Medical Provider comments
   a) Physicians

(1) Give doctor the Physician's Guardianship Assessment Tool (see Advance Directive Module Teaching Tips, p. 10)

(2) Make your own assessment of the client using the same tool. If there is a significant discrepancy between your assessment and that of the physician, contact the physician and explain what you observed that you believe is inconsistent with the physician's assessment.

b) Home health workers

c) Social service worker at the hospital and/or nursing home

3. Medical records
   - a) Hospital records
     - (1) History and Physical
     - (2) Discharge report
   - b) Physician's records
   - c) Home health records
   - d) Nursing home records
4. Client interview
5. Information from family
6. Information from friends
7. Information from social contacts
   - a) Senior Centers
   - b) Congregate meal sites
   - c) Meals on Wheels
   - d) Neighbors
   - e) Adult Day Care
   - f) Housekeepers
   - g) The bank utilized by the client
   - h) Mailman

C. Determining Competency

1. Utilizing the sources above:
   - a) Current baseline regarding:
     - (1) Mental functioning,
     - (2) Physical functioning, and
     - (3) Social functioning.
   - b) Former baseline regarding:
     - (1) Mental functioning,
     - (2) Physical functioning, and
     - (3) Social functioning.
   - c) It is common for there to be "good days" and "bad days."
     - (1) What is the pattern? (NOTE: If the client is down to "good moments" and "bad moments," he/she is not competent);

(2) How dramatic is the difference between "good days" and "bad days"?;
(3) Is the client aware of the fluctuation in his/her level of functioning and can he/she accommodate for the changes?

d) Compare (a) and (b):
(1) No change/decline,
(2) Gradual change/decline,
(3) Significant change/decline, or
(4) Dramatic change/decline.

III. DETERMINE CLIENT'S NEEDS
A. Neglect/Abuse
B. Mismanagement/Financial Exploitation

IV. METHODOLOGY
A. Obtain as much information from the client as possible
B. Information to obtain regarding the client
1. Name
2. Date of birth
3. Age (ask as a separate question)
4. Where do you live?
a) Address
b) Home
c) Apartment
d) Other
e) Does he/she know where he/she is now?
5. How long have you lived there?
6. Who lives there with you?
a) Do you get along with everyone who lives in the household?
b) If not
(1) Who is there a conflict with?
(2) What is the nature of the conflict?
(3) Is the conflict resolved or is it ongoing?
(4) If resolved, how was it resolved?
(5) Is the client satisfied with the resolution?
(6) If not, why isn't the client satisfied with the resolution?
7. If recent change, where did you live before?
8. Martial status
9. When and where married?
10. How marriage(s) ended
11. When marriage ended
12. How many kids?
13. What are the kids' names?
14. List them from oldest to youngest

15. Oriented to time?
    a) Day of week
    b) Month
    c) What year is it?
16. Do you have any medical conditions?
    a) Can you tell me what they are?
    b) Can you tell me how they affect you?
    c) When you see your doctor, what do you tell him about your health?
    d) Who is you doctor?
    e) How often do you see your doctor?
    f) How do you get to the doctor?
    g) Do you like your doctor? (i.e., are there any conflicts?)
    h) Do you do what your doctor tells you to do?
    i) What does your doctor tell you to do for __________________(your medical condition)?
17. Medications
    a) Can you tell me if you take any medications?
    b) Can you tell me the names of your medications?
    c) Can you tell me what you take your medications for?
    d) Do you know when to take your medications?
    e) How do you know when to take your medications?
    f) Do you know how much of your medications you are supposed to take?
18. Social conflicts
    a) Family
    b) Friends
    c) Neighbors
    d) Church
    e) Senior Center
    f) Congregate Meal sites
    g) Other
    h) For a-g, obtain the following:
        (1) Who (name, address, phone #)
        (2) When
        (3) Nature of conflict
    i) a-g are additional sources of information
19. Income
    a) Sources
    b) Amounts
    c) Financial investments
    d) Representative payee?
20. Assets
    a) Home
    b) Other real estate
    c) Savings (checking, bank accounts, CD's, stocks. IRA's, etc.)

d) Autos
e) Life insurance and beneficiary information
f) Other
g) With regard to a-f
   (1) Client own exclusively?
   (2) Jointly with right of survivorship?
   (3) Jointly as a tenant in common?
   (4) Is the asset payable on death?

21. Advance Directives
   a) Power of Attorney for Healthcare
      (1) Agent
      (2) Successor agent
      (3) When was it drafted/executed?
      (4) Anything unusual about it?
         (a) Who is the agent?
         (b) When was it drafted?
         (c) Where was it signed? (i.e., client is very ill, in the hospital).
         (d) Is the attorney someone the client has a former relationship with or someone selected by the agent?
         (e) Signature questionable?
      (5) Obtain a copy
   b) Power of Attorney for Property?
      (1) Agent
      (2) Successor agent
      (3) When was it drafted/executed?
      (4) Anything unusual about it? (See 21 (a)(4) above)
      (5) Obtain a copy.
   c) Trust
      (1) Trustee
      (2) Successor trustee
      (3) When was it drafted/executed?
      (4) Anything unusual about it? (See 21 (b)(4) above)
      (5) Obtain a copy

22. Guardian
   a) Who?
   b) When?
   c) Where?
   d) Review the court file and obtain a copy of the
      (1) Court Order
      (2) The letters of office
      (3) Entire court file, including the Record Sheet, if circumstances merit

23. Use Physician's Assessment Tool (see Advance Directive Module Teaching Tips, p. 10)

V. PHYSICAL ABUSE OR NEGLECT (BY OTHERS OR SELF-NEGLECT CLIENT).

A. Obtain information on the client per above

B. Obtain information on the alleged abuser

1. Name/Alias(es)
2. Address
3. Former address, if living with client
4. Duration at client's address, if living with client
5. Check criminal history with the State's Attorney
6. Check criminal history with the Department of Corrections (do a search on the Internet)
7. Check with service providers
8. Check with neighbors
9. Check with family members that don't live with the client
10. What does the alleged abuser know about the client's medical condition?
    a) Physician(s)
    b) How frequently client needs to be seen by physician(s)
    c) Medications
        (1) When to give
        (2) How to give
11. If client has particular care needs, how are they being met?
    a) Turning/repositioning
    b) Assistance with eating
    c) Dietary needs
    d) Bathing
    e) Dressing
    f) Ambulation

C. Photos (video)

1. Client
2. Living conditions
3. Be certain to document the date and time the photos/videotape was taken

D. Investigate living conditions

1. Look in the refrigerator
    a) Amount of food
    b) Type of food
    c) Spoilage
    d) Medications that need to be refrigerated
2. Look in cupboards for food
3. Is there running water?
4. Is there heat?
5. Is the heat safe?
6. For summer, is it overly hot?
7. Does the client have clean clothes and linens?
8. Number and types of people in the residence

a) Numbers and ages of kids
b) If kids, are they unruly or well-behaved and supervised?
c) Number of adults
d) Are they employed?
e) Signs of illegal or illicit activity?
f) Are they clean?
g) Are they competent?
h) What are their behaviors? (Is this someone you would want watching your grandmother?)
i) When are the adults home?
j) Who else comes and goes from the home?
k) Where appropriate, run criminal background check on these individuals.

E. If there are obvious medical needs or other conditions that are not being met, find out why not. For example:

1. Why wasn't the client taken to the doctor?
2. Why didn't the client not get his/her medication?
3. Why is the client filthy?
4. Why isn't there any heat?

F. Assess the reasons the medical need or other conditions are not being met.

1. Ignorance
2. Maliciousness
3. Lack of money
   a) What are the household finances?
   b) Where does the money go?
4. Greed
   a) Is there plenty of money, but alleged abuser doesn't want to spend it?
   b) Alleged abuser concerned about Public Aid lien/cost of nursing home care?

VI. FINANCIAL MISMANAGEMENT OR EXPLOITATION

A. Establish a baseline of assets

1. Home
2. Other real estate
3. Savings (checking, bank accounts, CD'S, stocks, IRA's, etc.)
4. Autos
5. Life Insurance and beneficiary information
6. Other
7. With regard to 1-6
   a) Client own exclusively?
   b) Jointly with right of survivorship?
   c) Jointly as a tenant on common?
   d) Is the asset payable on death?

B. Establish a baseline income

1. Sources

    2. Amounts
    3. Financial institutions
    4. Representative Payee?

C. What changed?
    1. When did it change?
    2. What was the client's ability to make competent decisions regarding the transaction(s)?

D. Advance Directives
    1. Power of Attorney for Healthcare
        a) Agent
        b) Successor agent
        c) When was it drafted/executed?
        d) Anything unusual about it?
            (1) Who the agent is?
            (2) When it was drafted?
            (3) Where it was signed? (i.e., client is very ill, in the hospital).
            (4) Is the attorney someone the client has a former relationship with or someone selected by the agent?
            (5) Signature questionable?
        e) Obtain a copy
    2. Power of Attorney for Property
        a) Agent
        b) Successor agent
        c) When was it drafted/executed?
        d) Anything unusual about it?
        e) Obtain a copy
    3. Trust
        a) Trustee
        b) Successor trustee
        c) When was it drafted/executed?
        d) Anything unusual about it?
        e) Obtain a copy
    4. Guardian
        a) Who?
        b) When?
        c) Where?
        d) Review the court file and obtain a copy of the
            (1) Court Order
            (2) The letters of office
            (3) Entire court file, including the Record Sheet, if circumstances merit

E. Last Will and Testament
    1. When was the last one drafted?
    2. Did it replace a prior will?
    3. Is the alleged exploiter a beneficiary?

        4. Anything unusual about the circumstances in which it was executed?
    F. Obtain information on the client per above
    G. Obtain information on the alleged abuser per above
    H. Documentary evidence
        1. What to obtain depends upon the asset or income at issue
            a) Copy of deed(s)
            b) Copy of bank records
            c) Copy of cancelled checks
    I. Identify how the client is affected by the exploitation/mismanagement
    J. Assess the reasons for the exploitation/mismanagement
        1. Ignorance
        2. Maliciousness
        3. Lack of money
            a) What are the household finances?
            b) Where does the money go?
        4. Greed
            a) There is plenty of money, but the alleged abuser doesn't want to spend it.
            b) Alleged abuser concerned about Public Aid lien/cost of nursing home care.

VII. RESOLUTION

A. Determine a reasonable resolution
B. Document discussions with parties involved to reach a reasonable resolution
C. Document reasons that discussion of a reasonable resolution
    1. Did not work;
    2. Was never initiated

VIII. GUARDIANSHIP PROCEEDINGS

A. Information regarding the client
    1. Name
    2. Address
    3. Date of birth
    4. Current residence
    5. Reason he/she needs a guardian
    6. Assets and approximate value
    7. Amounts and sources of income
B. Information regarding others
    1. Names, addresses and relationship of client's nearest adult relatives
        a) NOTE: Failure to notify the nearest adult relatives denies the court of jurisdiction. **An order entered by the court is void if all the nearest adult relatives are not notified.**
        b) "Nearest Adult Relatives" defined:
            (1) Spouse and adult children, parents, and adult brothers and sisters, if any; if none

(2) Nearest adult kindred known to the petitioner

2. Is there an agent named pursuant to a Durable Power of Attorney?
3. Why the Power of Attorney should be voided by the court
4. Proposed guardian(s)

C. Completed Physician's Guardianship Assessment Tool

1. Physician must have examined the client within 3 months of the date of filing the guardianship petition.

D. If the proceeding is without notice, the burden is on the petitioner to show the necessity for proceeding without notice for the "immediate welfare and protection of the alleged disabled person's

1. Person; and/or
2. Estate

IX. ORDERS OF PROTECTION

May be brought

1. As part of the guardianship proceedings;
2. As an independent proceeding under the Illinois Domestic Violence Act.

The burden is on the petitioner to demonstrate why the order should be entered.

Appendix A: Comprehensive Assessment Regulations and Guidelines

Appendix B: Copy of MDS (Minimum Data Set –Version 2.0)

Appendix C: State Regulations on Notification of Incidents and Accidents