CT Feature

Offender peer educators at the Plane State Jail (Dayton, Texas) in a training session on medication adherence/compliance utilizing the "Somebody Cares" module.

A Health Care Ombudsman Model:
The Texas Department of Criminal Justice,
Office of Professional Standards

By Douglas B. King, Myra Walker and Lannette Linthicum
Due to its experiences with offender litigation, and in particular the U.S. Supreme Court decisions in *Estelle v. Gamble* and *Ruiz v. Estelle*, the Texas Department of Criminal Justice (TDCJ) has taken a serious, proactive position on resolving offender health care complaints. In *Estelle v. Gamble* (429 U.S. 97, 1976), the U.S. Supreme Court stated:

We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain’ proscribed by the eighth amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner’s needs, or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner’s serious illness or injury states a cause of action.

Another landmark Texas case was *Ruiz v. Estelle*. In 1972, a state prison inmate, David Ruiz, filed a 15-page, handwritten petition in U.S. District Court in Tyler, Texas. Judge William Wayne Justice consolidated Ruiz’s petition with filings from other inmates into a class action suit against the Texas Prison System. By the time the case was settled in 2002, the state was forced to make sweeping reforms and prison expansion. Gone were the days of having one doctor for the entire system and overcrowding. The Ruiz case became the most massive prison reform case in the country.
For the TDCJ Health Services Division, an unwavering commitment to quality health care is the driving force behind all health care advocacy.

A prison system must have written health care policies and procedures based on professional standards promulgated by national accrediting organizations like the American Correctional Association. This is integral in establishing the constitutional rights of the offender to access medical care; to allow a professional judgment about his or her health care needs; and to receive medical care that has been ordered. An important component of ensuring these constitutional mandates — such as the right to access care, the right to a professional judgment and the right to receive care that has been ordered — is to establish a professionally-staffed department for investigating and responding to complaints about offender health care. A health care ombudsman office is at the forefront of this effort.

Health care services in TDCJ are contracted to two state university medical schools and two private vendors — Corrections Corporation of America and Management Training Corporation. TDCJ recognized that contracting its health services did not relieve the department of its obligation to ensure offenders’ access to quality health care. The TDCJ Health Services Division’s mission is to ensure that quality health care is provided to incarcerated offenders in the custody of TDCJ as well as to monitor the delivery of all health care services. The Office of Professional Standards is part of the Health Services Division’s monitoring arm. It has two separate programs — the Patient Liaison Program (PLP) and the Step II Offender Medical Grievance Program. PLP investigates and responds to third-party complaints about offender health care. The Step II Offender Medical Grievance Program investigates and responds to offener-initiated health care complaints that have been appealed to the second step of the grievance process. These two programs together are TDCJ’s equivalent of a health care ombudsman.

Departments of correction (DOCs) are not closed systems. They operate in a public arena and are subject to public scrutiny on many levels. The health care ombudsman must have authority to both request and require corrective actions. No bureaucracy is immune to process failure. When failures such as missed appointments, missed medications or failure to diagnose serious illnesses occur, offender staff advocates intervene to ensure adequate health care is being delivered. By advocating for and ensuring access to medically necessary health care, the health care ombudsman staff provide risk management and medical legal protection to the DOC. This reduces unnecessary offender health care litigation. It also mitigates negative publicity and the erosion of public confidence in the prison system.

Complaints about offender health care come from the offender population, offenders’ family members, offender advocacy groups, legislative entities, governmental agencies, lawyers, faith-based communities and other interested third parties. The scope of these complaints can span all disciplines, including: nursing, medical, mental health and dental staff. It should be recognized that in any provider/patient encounter, the expectations of one person do not always match the expectations of another. Communication between professionals and laypersons is not always easy, and misunderstandings can — and do — occur. For a variety of reasons, offenders in general are more limited in their ability to resolve disputes than people in the community. This can be due to a number of factors, including: incarceration/confined itself, limited understanding due to low educational levels, poor communication, lack of interpersonal skills, etc. Therefore, it is of the utmost importance that a prison system gives high priority to establishing procedures to receive, process, investigate and respond to health care complaints.

TDCJ’s PLP receives written complaints via several types of communications — email, U.S. postal services, facsimiles and even telegrams. In addition, PLP operates a Family Hotline. The Family Hotline staff receive and process health care complaints by telephone Monday through Friday, eight hours per day. The complaints are summarized in written form and subsequently assigned to an investigator. The investigation staff is both clinical and nonclinical. The nonclinical investigator job title is “patient liaison investigator.” The clinical investigators include physicians, registered nurses, licensed vocational nurses, dentists and psychologists. The Step II Medical Grievance Program receives written complaints from offenders about their health care that have been investigated and responded to at unit-level, denied and subsequently appealed by the offender to the Step II level. The unit-level grievance investigation (Step I) gives unit-based, contract medical staff the first opportunity to resolve a concern. Every health care complaint — whether it is received by PLP or Step II Grievance — is investigated, and a written response is forwarded to the person (or people) filing the complaint.

Attributes of a Health Care Ombudsman

At a minimum, a health care ombudsman should be a college graduate with a professional work ethic. He or she must be committed to working with all people, irrespective of race, ethnicity, religious preference, sexual orientation or gender. In addition, a health care ombudsman should be able to locate and review medical records, administrative policies and reports. He or she must be diligent in conducting investigations of alleged violations of policy, procedure, laws and regulations. The health care ombudsman also must be able to evaluate, summarize and document investigative findings and communicate those findings verbally and/or in writing to people with varying levels of education.

Continued on page 62
A Health Care Ombudsman Model

Continued from page 60

As a professional, the health care ombudsman must also be able to effectively communicate with clinical staff at all levels. Additional attributes of a health care ombudsman are as follows.

A health care ombudsman is a problem-solver. When a treatment is ordered — but for whatever reason, is not provided — the health care ombudsman investigates at what point the process failed. Situations may occur when an offender submits a request for health services, but that request is not processed. Intervention by a health care ombudsman can resolve the issue to benefit both the offender and the health care provider. Occasionally, processes break down. Moreover, not every health care issue originates in the health services department. A health care ombudsman should be particularly adept at facilitating communication and effecting problem-solving between health services and security staff.

A health care ombudsman is a mediator. The health care ombudsman can intervene to clarify the when, where and why of an offender patient’s care. The health care ombudsman should also assist health care staff by familiarizing them with nonmedical processes that affect the delivery of health care for a particular offender patient. The ramifications are such that there is a greater impact on that provider’s ability to effectively deliver health care to many other patients through the knowledge gained from understanding prison management operations.

A health care ombudsman is an educator. Many times, an offender patient or third-party inquirer will misunderstand the facts surrounding a perceived health care need. The health care ombudsman can educate the offender or third-party on effective ways of negotiating the various levels of the health services organization. The health care ombudsman can also provide strategies to help the offender patient effectively communicate with his or her health care provider. Educating an offender or third-party on health services, policies and procedures is all that is needed to keep the focus on positive health care outcomes. Reassurance from a health care ombudsman can prevent overreaction on the part of an offender and his or her family by helping them understand how and why a process works the way it does.

A health care ombudsman is an investigator. The health care ombudsman must be capable of reviewing health records and all relevant documentation — both medical and nonmedical — pertaining to patient care issues. The health care ombudsman should observe and interview the offender patient in the patient care setting. In addition, the health care ombudsman may also need to interview health services and non-health care staff to resolve a health care complaint. The investigation is then finalized and compiled into a report.

A health care ombudsman is an advocate. The health care ombudsman advocates for the provision of equitable professional health care. This is achieved by advocating for offender patient health care needs when they are not being met, which requires a health care ombudsman to ensure that medically necessary care is given to offenders. This includes care that is essential to life and health and without which rapid deterioration is expected. It also includes care that is not immediately life threatening, but without which the patient cannot be maintained without significant risk of serious deterioration, or where there is a significant reduction and the possibility of repair later without treatment. Similarly, a health care ombudsman should advocate for health care providers when they are confronted by unreasonable demands such as treatments of limited medical value that produce no long-term gains, i.e., cosmetic or plastic surgery, tattoo removal, etc. That advocacy is not a question of taking anyone’s side on an issue; it is about doing the right thing where health care is concerned. For the TDCJ Health Services Division, an unwavering commitment to quality health care is the driving force behind all health care advocacy.

A health care ombudsman is an enforcer. The health care ombudsman is an enforcer of DOC policies and procedures. Strict adherence to agency directives and policies is necessary to ensure safe prison operations and management for offenders and staff.
Allof the above attributes are required of a health care ombudsman in TDCJ. The Health Services Division is one of the smallest divisions in the agency with respect to manpower and budget. Nevertheless, the Health Services Division’s Office of Professional Standards is the designated department to handle and process all offender health care complaints. Timeframes to respond to health care complaints can range from immediately up to 45 days out, depending on the priority assigned to the case. With a prison population of more than 150,000, this is a formidable and challenging task.

Conclusion

A health care ombudsman is someone who is adaptable to change, who thrives on variety and who enjoys interacting with people of all walks of life. A health care ombudsman is a creative thinker and worker. He or she is a highly-motivated individual who is able to exercise extensive independent judgment and who possesses high moral and ethical character. The health care ombudsman is in place to make a difference in the quality of life for the offender population. Each DOC should identify the person who is best suited to be a health care ombudsman in order to deliver effective, quality care to the offender population.

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