

**MODULE 6**  
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# **I. Introduction To The Complaint Process**

## **A. Why Residents Need Advocacy**

In any group situation, differences of opinion and preference occur. In an institutional setting, certain methods of operation develop for convenience and efficiency which may conflict with the needs of individual residents. Yet residents may be unable to express their particular needs without assistance from others. Barriers to self-advocacy are manifold:

### 1. Physical and Mental Barriers

loss of hearing loss of speech loss of sight

loss of physical strength to persevere

immobility mental impairment effects of medications depression inaccessibility of staff

### 2. Psychological/Psychosocial Barriers

fear of retaliation

sense of isolation

lethargy

disorientation

loss of confidence result of depersonalization

sense of weakness resulting from illness

disdain for the label "complainer"

social pressure to conform

belief that this is the best it can be

sense of hopelessness and/or despair

fear of upsetting the family

inability to question authority

mystique about medical issues

unfamiliarity with staff

lack of experience with assertive behavior, particularly for women

stereotypes, fears about age

### 3. Lack of Information

about rights, entitlement, benefits

about authority within the facility

about legal and administrative remedies  
about alternatives  
about how to improve the situation  
about advocacy skills  
about the right to complain

#### 4. Individual Problems Which May Surface In Nursing Homes

Loneliness - need of someone to talk with  
Boredom - not enough social or personal activities  
Problem with roommate(s)  
Lack of privacy  
Poor food service or quality  
Inability to get services, care or attention because of physical or communication problems  
Physical or drug restraints  
Desire on resident's part to leave facility  
Use, accounting and safe keeping of personal funds and personal possessions  
Desire to go outside the facility for community activities  
Need for assistance to find or purchase services  
Insufficient medical or nursing care  
No rehabilitative care  
Neglect  
Patient abused physically or mentally  
Loss of dignity and feeling of respect based on general treatment in facility  
Additional or high charges for "extra" services  
Transfer from one room to another without notice  
Transfer to another facility because of change from private pay to Medicaid  
Desire to make will or to make arrangements for disposing of personal funds or possessions  
Need for special legal assistance

## **B. Role Of Ombudsman/Advocates**

As an ombudsman, you will be an advocate acting on behalf of residents. In some cases, you will be able to educate, support, and encourage residents to engage in self-advocacy, to represent themselves. In other situations, you will be representing the resident(s). There is a basic complaint process, a problem solving process, that ombudsmen use to analyze and resolve problems. This process, and its prerequisite skills, is the focus of this chapter.

## **II. The Complaint Process**

Responding to and resolving complaints is the primary function of an ombudsman, and one that can at times be difficult. Complaint handling is really nothing more than a process you follow from receipt of a complaint through investigation and resolution. As you handle more and more complaints, you will adapt this process to your own style. Eventually it will become second nature to you.

### **A. What Is a Complaint?**

This basic question is a confusing one for many ombudsmen. Are complaints only those problems you report to the state, only those you refer to a regulatory agency, or anything a resident voices concern about?

In its simplest definition, a complaint is an expression of dissatisfaction or concern. This does not mean, however, that you should launch a full scale investigation every time someone says today's lunch was bad. Many people express dissatisfaction just to let off steam or to have some way of expressing themselves about things over which they have little control. They may not expect or want you to intervene on their behalf. Some residents may be disoriented as to time and express complaints that relate to the past. Your task is to get to know residents individually and to perfect your investigative skills well enough to be able to determine when such expressions are actual requests for assistance.

On the other hand, problems sometime exist in a facility about which no complaints are voiced. An absence of complaints may not mean that all the residents are receiving quality care or experiencing an acceptable quality of life. We have already discussed the many reasons why residents are reluctant to voice complaints.

A lack of reported complaints should be taken as an indication of the need to reach out to the residents. An on-going presence within facilities will make you a familiar figure to the residents. Once you have established trust, nursing home residents and their families may begin to assert their rights and voice complaints. Your ability to detect concerns of residents which are only hinted at and to observe situations which require action is as important as your ability to respond to a direct request for assistance.

Many people who make complaints need help focusing on the actual problem. They may contact you about a complaint that involves several problems. You will need to sort out the problems and determine which are most important. Many people will not complain until a problem has persisted for a long time. When they do complain, there may be a lengthy history of events and circumstances to consider.

Complainants may be highly emotional about a complaint. As a result, problems often are stated in sweeping terms (“the food here is terrible! “). You will need to work with the complainant to pinpoint what it is about the food that makes it unacceptable.

A complaint is an expression of discontentment, a grievance or an accusation on which an ombudsman takes action. A complaint describes an alleged problem concerning the health, safety, welfare, rights, quality of care of a resident or a potential resident. It may be specific to an individual or involve general issues that affect many residents or potential residents.

An **isolated incident** is a complaint voiced by, or a problem affecting, an individual. For example, Ms. Jones complains that there is no soap in her bathroom, or Mr. Williams tells you that he did not receive his personal needs allowance last month.

A **recurrent incident** is a complaint voiced by, or a problem that repeatedly affects, not only the same resident but other residents as well, or reoccurs after the problem apparently was solved. For example, for the last two months, the residents on the second and fourth floors did not get all their clothes back from the laundry, or Ms. Jones again complained this month about the lack of soap in her bathroom, although last month soap was provided.

A **widespread incident** is a complaint voiced, or problems that occur, widely throughout the facility. All or a majority of the residents are affected or a group of residents is experiencing a similar problem or voicing the same complaint. For example, poor sanitation throughout the building or lack of meaningful activities for residents unable to leave their rooms would be widespread incidents.

Keep in mind that one or more of these categories could be selected and may be applicable to the same complaint. For example, a recurrent complaint about cold dinner on Sunday evenings during the last three weeks probably is also a widespread incident.

## **B. Sources Of Complaints**

An Ombudsman may receive complaints from a variety of sources, including:

- residents;
- relatives or friends of residents;
- local advocacy or friendly visitor groups
- facility staff;
- social work and human service agencies;
- hospital personnel; and
- legislators and political leaders

Depending upon how your local program works, most of your complaints will probably come either from visits in the facility or phone calls to your office. During facility visits, you must be alert to situations that may not be voiced directly as complaints. If you depend heavily on phone calls, be sure your name and number are posted in the facility. If possible, cultivate relationships with staff members or with residents who can contact you on behalf of residents with less ability to communicate.

Few residents will personally make a complaint unless they are visited regularly by an ombudsman. Most residents will not feel comfortable complaining to a stranger due to a fear of reprisal; therefore, they need to know and trust a person before talking openly about their concerns. In addition, many residents do not know that they have the right to complain, or they feel that making a complaint will not do any good.

In some facilities a resident council, grievance committee, or community council (composed of residents, relatives, and community people) may bring problems to you. Complaints made by such groups help to protect and support an individual resident. These organizations do, however, sometimes become mere “rubber stamps” for the facility administration, so you will have to learn how much they really represent the interests of residents.

The relatives of residents are one of the most common sources of complaints, but they too may hesitate to complain for fear of retaliation to their loved ones. Families also fear that once the facility staff has labeled them as “complainers” or “guilty children,” their credibility will decrease. Also, keep in mind that the needs and interests of families are not necessarily the same as the needs and interests of the residents.

Staff complaints may be based on a variety of motives. On the one hand, many staff are concerned about residents and want to provide the best care possible. When conditions in a facility are poor, they may look for outside help in trying to correct the problems. On the other hand, some staff become disgruntled with their employer due to low pay, poor working conditions, or other disputes with management. A person with a grudge against a facility may not be a reliable source of information.

### **C. Ombudsman Role In Complaints**

The Ombudsman is responsible for investigating and resolving complaints that are verified. A complaint is verified if the ombudsman finds that the problem, condition or incident existed or has taken place. Verification of a complaint helps to identify the problem.

There are various ways to investigate and verify complaints. Begin your investigation by asking the complainant the following questions: What is the problem? When did it start? Who is involved? Where did it happen? Why is it happening? How did it happen? Take notes on the responses to your questions that are specific and detailed.

Try to verify the information in the responses you received by personal observation; discussion with and official acknowledgement by the facility administrator or staff; notes in the resident’s chart, in facility records, or survey reports; and reports from witnesses or observations by other residents and family members.

In discussions with facility administrators and staff about a problem, remember that you have a legal right to be in the nursing home to investigate complaints made on or behalf of residents. You should not be belligerent or aggressive, but you should also not be timid or shy.

Some complaints cannot be verified but still must be investigated. In such instances, you cannot get enough information to prove that the condition or incident occurred, but you also cannot determine that it did not occur.

In some cases, your review of information gathered and further investigation about the problem may lead you to conclude that the incident never occurred, the condition never existed, or the complaint was based on misunderstanding or misperception of the complaint. If you reach this conclusion, discuss your findings with the complainant and try to determine if there is an underlying issue that needs resolution.

Resolving a complaint is the ultimate goal of an ombudsman's complaint-handling work. When a complaint is resolved, the circumstances that caused the complaint no longer exist. Keep in mind these factors when resolving complaints:

1. Ombudsman cannot expect to resolve every complaint. Some complaints, by their nature, cannot be resolved. You must be realistic in understanding what changes you can affect. Even if a complaint is verified, sometimes there is no solution that you can bring about.
2. Resolution of a complaint is not always clear cut, decisive or permanent. Many complaints are extremely complex and pass through stages of resolution. Widespread complaints (about poor food or missing clothing) can be resolved for a while, but permanent solutions can be thwarted by chronic reoccurrence. A facility may agree to implement a new procedure but may fail to do so within the specified time frame. However, it is critical that you carefully record and report these situations, as they may eventually be sufficient in severity or repetition for action to be taken.
3. You may have been successful in removing or changing some of the circumstances or conditions which caused the problem, or have done everything in your power to help the resident, but your attempts to resolve the complaint are not totally successful.
4. Failure to resolve a problem does not necessarily reflect shortcomings of an ombudsman, but rather the inadequacies of existing laws and regulations or their enforcement or insufficient advocacy tools or other circumstances. The barriers to resolving the problem may be too complex or too strong to achieve success, although all possible remedies have been sought to get the problem resolved.

Work by an ombudsman on a complaint will stop for one or more of the following reasons:

- the problem or condition that caused the complaint has been resolved or corrected
- the complaint is partially resolved and nothing further can be done
- the resident or complainant asks you to drop the case and desires no further action
- the problem is unresolved
- the complaint is invalid
- the complaint is referred to an outside agency and you are no longer directly involved, except to follow-up.

## D. Confidentiality Of Complaints

Explain the confidentiality policy to the complainant at the outset of the complaint handling process. If people insist on having their names kept secret, they should be told that, while you will do everything possible to protect their identity, there is the possibility that the facility may be able to determine who made a complaint. You should also explain clearly that some complaints are virtually impossible to investigate without revealing the identity of the resident. For example, a complaint regarding a resident's finances may not be properly checked out unless financial records are reviewed, which would immediately indicate who had filed a complaint.

If the use of a complainant's name is initially denied and it is needed to proceed further with a complaint investigation, you should speak with the person again to explain the situation and to request use of the name. You should discuss with the complainant the risks involved in being identified. A guarantee that retaliation will not occur should never be offered to obtain permission to use the complainant's name. In cases where complainants agree to have their names revealed, you should have a consent form signed authorizing the disclosure

Sometimes a resident will insist that nothing be done or said, despite your appeals. In such cases, you have little choice. You can do no more than what the resident gives you approval to do. There is only one exception to this rule: when you observe a condition or incident yourself, you have the right to initiate a complaint investigation on your own.

You will inevitably find yourself in a number of complaint situations that will pose ethical dilemmas or call for special handling. The key to knowing how to respond to many of these situations is to remember that **you represent the resident**. Some specific suggestions for a few of these situations are discussed below.

1. A family member may complain about a resident's care. When you talk to the resident, however, he/she says everything is fine and/or asks you not to proceed. Your primary responsibility is to the resident. If pursuing the investigation would identify the resident, you must discontinue it unless the resident grants permission to proceed. As an alternative, if you feel there is a problem with the care in the facility, you might be able to pursue a more general investigation, taking care not to do anything which would reveal the resident's identity.

2. The reverse situation may also occur. The resident may complain, but a family member will urge you not to "rock the boat. This case is more clear-cut -- the resident has requested assistance and you should honor that request. You should explain to the family that you are obligated to assist residents in resolving problems.

3. Some complaints will come from relatives who want you to investigate, but do not want the resident to know what you are doing. For example, two relatives may be involved in a dispute over who is to provide for the resident's expenses, or relatives may fear that the resident will be upset or alarmed by a problem. This is a particularly sensitive situation. In such cases, it may be advisable to have a general conversation with the resident to ascertain whether or not he/she is

concerned about the same problem mentioned by the complainant. You will have to judge whether or not there is a problem concerning the resident. If the resident is being victimized, you have a responsibility to correct the problem. However, you should not become involved in family disputes which are not affecting the resident's well-being.

4. Special problems can arise when dealing with a resident who is unable to make decisions for himself/herself, but has not been legally declared incapacitated. If you receive a complaint from a resident who appears to be extremely confused, how should you consider it? Even though the resident may be confused, you should check into the complaint. If it appears to be valid, it cannot be dismissed as invalid just because it comes from someone who is confused. The resident's condition should, however, be considered as one factor in determining whether the complaint is legitimate.

5. Other cases may involve residents for whom a guardian or conservator has been appointed. Generally, when cases arise involving such residents, you should work through the guardian or conservator. Exceptions to this rule would be in cases where the complaint is about the guardian or conservator or some action of the guardian or conservator; the complaint is about the issue of whether a guardian or conservator is needed; the guardianship or conservatorship is a limited one in which the resident retains the right to make some decisions. With these types of cases it may be advisable to seek legal advice from an appropriate agency.

6. In some cases the interest of one resident will run counter to the well-being of a group of residents. For example, a complaint about a resident being denied the right to smoke may reveal that the resident has nearly set the home on fire by smoking in non-smoking areas. In such cases you should try to determine the facts and help the parties arrive at a solution which, as far as possible, protects the rights of the individual and the group.

7. In some cases complainants other than residents will insist on remaining anonymous. As in the case of residents who do not wish their names used, such persons should not be forced to reveal their identity. The complaint, if specific enough, can still be investigated using some of the techniques below:

### **III. Complaint Investigation**

The purpose of investigation is to determine whether the complaint is valid and to gather the information necessary to resolve it. The successful resolution of a complaint often depends upon the quality of the investigation. A poor investigation can lead to a valid complaint being dismissed as invalid or unverifiable.

#### **A. Preparing For The Investigation**

After someone has voiced a complaint, you will need to analyze it in order to determine how to investigate it effectively. Among the questions to consider are:

What is the complaint about? In what general category does it fall (for example, residents' rights, nursing care, family problem);

Who are the persons involved?

What, if any, agencies are, or should be involved?

What steps has the complainant already taken to resolve the matter?

What, if any, law or rules may be relevant?

What result is the complainant seeking?

Before proceeding with an investigation, you should have some idea of the answers to these questions. A complaint about general resident care, for example, may turn out to contain several very specific elements. Care complaints can be about the number of staff, the training of staff, the treatment plan, the manner in which treatment is given, the failure to provide treatment, the development of bedsores, and many other problems. You need to know specifically what the complaint is about before starting to investigate.

In order to determine who is responsible and who has the power to do something about a problem, it may be important to gather names, phone numbers and addresses of all people who have some role in the situation. A complaint about resident care could include the complainant; the resident; the facility nursing staff, the facility administrator; and the resident's physician. Another healthcare facility (hospital, nursing home) where the resident was recently treated may be an important element in determining the cause of the resident's condition.

A problem concerning a serious violation of nursing home care standards, abuse, or neglect would require the involvement of the Health Regulation Administration and, possible, Adult Protective Services and/or the Police Department. A problem involving Medicaid certification or payment would involve the D.C. Department of Health's Medical Assistance Administration (MAA) and, possible, the Social Security Administration. You will need to identify any other agencies that may play a role in the problem.

You also need to determine what the complainant has done about the situation. If the complainant has taken some action, you will need to know so that you do not duplicate unproductive actions or retrace steps. You also need to know the results of the actions already taken to help you anticipate what obstacles there may be to resolving the problem. For example, has the complainant talked with the administrator, director of nursing, or charge nurse? Has the complainant contacted the physician? Have there been any meetings with staff of the nursing home? Have any other agencies been contacted? If the complainant has not taken any actions about the problem, you are then in a position to suggest possible steps he/she can take. Advice of this nature helps the complainant to learn self-advocacy and may also save you time for other problems.

## **B. Gathering Information**

An investigation is, in essence, merely a search for information. You must seek to find information which will either verify or fail to verify the allegations made by the complainant. It is important that you be objective in gathering information. You must not make assumptions about the validity of a given complaint, even though you believe there are problems in a facility. However, being an objective investigator does not mean that

you lessen your efforts to improve the care and quality of life for long term care residents.

After you have received a complaint in which a resident or complainant does not want his/her identity revealed, you have a responsibility not to jeopardize the complainant. However, if the problem is a general one, there are techniques you can use to investigate: 1. personally observe the problem; 2. find other people to voice the same complaint; 3. have the complaint channeled through a group, such as a resident council; or 4. handle as an anonymous complaint.

Information can be gathered in many ways: 1. interviewing, 2. observation, 3. review of documents prepared by the nursing home and administrative agencies.

Interviewing is a primary component of complaint investigation. You should never go into an interview without a specific purpose in mind. In order to discover the facts of a case (the who, what, when, where, why, and how), you might interview a resident, an administrator or operator, or an employee of another agency or institution. Regardless of the position of the person being interviewed and the personal style of the interviewer, there are several principles of which you should be aware.

- the setting—is it comfortable, quiet, private?
- the time allotted—will the interviewer be hurried?
- the timing--will there be interruptions?
- the goals of the interview—these should be listed beforehand. the possible biases of both yourself and the interviewee.

Some of these may be beyond your ability to control. For example, you may not be able to see an administrator at a time and place of your choosing. However, the most important item is one you can control. Have your goals set beforehand. Know what questions you need answered and what specific information you need

One of the important things you must remember is that an interview is a social situation, and the relationship between you and the interviewee will affect what is said. Although you will want to direct the interview in order to achieve its goals, most of your time will be spent listening. You should be alert to more than the spoken words. Facial expressions, voice inflection, eye contact, gestures and general behavior should be noted. More may be learned from an interviewee's body language than from his/her comments. In many cases, more can be learned from what is not said than from what is said. Note when topics have been omitted and try to assess the reason for the omission.

As a general rule, it is best to speak first to the complainant so that you will have the information directly from him/her before securing additional information from other residents, nursing home personnel, family or other parties. At the beginning of the interview, you should inform the complainant of the Ombudsman Program confidentiality policy. In addition, it is extremely important to avoid making promises to the complainant regarding the resolution of the problem. It can be tempting to assure him/her that the problem will be solved. However, this can lead to false expectations which may eventually be turned against you.

Guidelines to follow during interviews:

1. maintain objectivity (don't make assumptions about the validity of the information);
2. try to establish rapport before addressing the problem;
3. explain the purpose of the interview and the function of the Ombudsman;
4. use open-ended questions to encourage responses about the problem area;
5. use closed-ended question to obtain specific details and facts;
6. use language that is easy to understand; explain any technical terms;
7. guide the interview toward the desired goals, yet be flexible enough to adjust the goals according to any new information received;
8. let the resident know when the interview is about to end; summarize what has been accomplished;
9. explain how the information will be used and other steps anticipated in conducting the investigation and resolving the complaint. Secure the resident's consent to the planned action before proceeding

**C. Interviewing Skills**

1. Listening

Active listening is the act of hearing and responding both to the content and to the feeling of what is being said. When you listen, be alert to more than spoken words. Notice inflection of speech, qualities and tone of voice, facial expressions, a glint in the eye, body language, gestures, and general behavior. See if you can detect gaps or omissions in what the person is saying.

Try to determine whether the complainant is glossing over some fact because they think it "detracts from their position." Explain that you are interested in the "bad" facts as well as the "good," and that you can only be of help if you know the whole situation.

The responses of the interviewee may be designed to impress, appease, convince, or even distract you. Try to assess and take into account the interviewee's mood and possible motives. Listen for clues that the resident is unusually disoriented or confused on that particular day. If you detect a good deal of nervousness or apprehension in someone's speech, you will have to address the factors that are causing these feelings before a free flow of information will be possible.

An interviewer should never completely believe or disbelieve everything a person says. You will have to sort out the difference between the "truth" and fiction, and learn to distinguish fact from someone's opinion, hearsay, characterization, or evaluation. If someone labels a resident as "hostile," for example, find out why (i.e., specific behaviors the resident exhibits, how often, with what people, etc.).

Try to identify and logically separate the many different problems a resident may be experiencing; sorting out those that you will be able to handle and those that you

cannot. Be alert to problems that may be unintentionally revealed — the resident may have a very limited notion of what help is available to him/her or may not want to “burden” you with too many problems. You may want to check into these or other common problems that may have been raised further. Listen for “the problem behind the problem.” There is always the possibility that what the client is complaining about is not the thing bothering them at all; but a reflection of a general feeling of hopelessness.

## 2. Note Taking

Your notes will be part of the file that is the central reference point not only for you and the complainant, but also for any referral agencies. In many cases it is necessary for you to take notes during the interview. However, rapport must be maintained despite the note-taking process. Some people will clam up at the sight of a notebook. You can mitigate this reaction somewhat by explaining prior to the interview that you will be taking notes and the reasons why; or you may delay taking notes until you feel that sufficient rapport has been established.

## 3. Tips for Effective Note Taking

It is not possible or even desirable to make a verbatim report of all that is said. You should take an occasional note here and there of responses that are especially significant and/or which you feel are important to remember accurately.

Be open about taking notes. Generally, there is not a good reason for being secretive. Be careful to avoid writing anything that you are not prepared for the interviewee or someone else to see. Judgmental statements such as “Resident is obviously a chronic complainer” or “Administrator can’t be trusted,” should be avoided.

Keep your notes short, factual, and to the point. It is acceptable to include your personal observations and judgments; however, substantiate these with facts. For example, if you indicate that the floor was dirty, state that you noticed coffee and juice stains and that it felt sticky to the touch. In other words, substantiate and document your opinions and observations with as much information as possible.

## 4. The Write-Up

The interview should be written up as quickly as possible after it ends. Include as much verbatim information as possible, as well as a description of the interviewee’s behavior and the general tone of the interview. Some basic elements to include in the write-up are: 1. names and positions of everyone present, whether or not they spoke; the date and time of the interview; 2. the location of the interview; 3. a narrative account of the content of the interview; 4. the goals that were accomplished and those which were not achieved; and 5. any new avenues to explore. The record of the interview should be kept with the case file for any future reference.

### **D. Observation**

Observation is another important tool of complaint investigation. Many complaints can only be understood and verified by sharing in the experience of the complainant. Complaints that have to do with items such as staffing, sanitary conditions, and food often can only be fully checked out through observation. When observing

conditions in a facility, it is important to use all your senses to determine what conditions are like. The following guidelines suggest how to use your five senses:

### 1. Sight

Are furnishings institutional, bare, cold? Are they homelike? Does resident have a favorite locker or dresser? Are there enough chairs for visitors?

Are there any pictures, calendars, photographs, or art work? What colors are used for paint? Bright? Cheery? Dull or drab? Is the paint peeling? Are plants real or plastic? Does the facility make maximum use of natural light?

Are residents clean, shaved, hair combed? Are clothes wrinkled or dirty?

Are call lights left unattended?

Is the staff neat? Do they smile at residents? Do they wear identifiable name tags?

### 2. Sound

Is music piped through corridors which is too loud or too soft? Are call bells ringing often and long?

Are there residents with noticeably labored breathing? Are all noisy residents in one area? Do staff talk pleasantly with residents, with one another? Do they call each other by name?

Is an intercom overused and annoying? Are residents involved in activities which promote conversation?

### 3. Smell

Are urine odors strong? or disinfectant odors?

Do residents smell of urine, feces, or other body odors?

Does the food smell inviting?

Is there an odor from dead flowers, medicine, or alcohol?

### 4. Taste

Are smells so strong they can be tasted?

Is the food cooked completely?

Is the coffee cold?

Is the water fresh?

### 5. Feel

Are sheets soft or stiff?

Are blankets scratchy or smooth?

Is the building too hot or too cold?

Are the floors slippery or gritty?

Are the resident's hands cold, skin stiff?

You should approach a situation requiring investigative observation with an open mind and an understanding of what is observed. During an investigative observation, it is crucial that you be as impartial as possible. If you only look for evidence that fits a preconceived notion or theory, other evidence may be missed or much of the evidence may be misinterpreted. Recording observations as soon as possible after they are made will help to eliminate errors due to emotional bias.

Preparation for an observation is equally important. You need to have in mind what observations will help to investigate a particular case. For example, if the complaint is about a resident being fed a regular meal instead of a salt-free dinner, you can investigate by seeing and tasting the food served. By making an unannounced visit to the facility, you can observe a routine mealtime procedure. In addition, familiarity with applicable rules and regulations will allow you to better judge which observations are relevant to the individual case and which are extraneous.

### **E. Role Of Records In Complaint Investigation**

Official documents and administrative agencies are also sources of information. The resident's medical record is a key source of information because it contains physician orders and notes, daily nursing notes, and other information related to the resident's care. Medical records are useful because they provide legal, written documentation for the complaint investigation. Incident reports, the facility's record of accidents like a resident falling or someone being hit, are also useful in certain cases.

There are two problems that may arise regarding medical records. First, they are confidential. The resident, or the guardian or conservator if one has been appointed, must provide written or oral consent authorizing release of the records to an Ombudsman. If the ombudsman cannot get written or oral consent, he/she has the right to see records.

Second, medical records are often not totally complete and/or accurate. Records are sometimes filled out hurriedly or by staff who do not understand the significance of careful record-keeping. If the records are available to review, there may be portions which you do not understand. In these instances it is helpful to consult a specialist about the comments that are unclear. In many cases it is critical that you seek the assistance of specialists in order to protect yourself from accusations of being uninformed or unprofessional.

There may be other documents which a complainant has that you will find useful as evidence during the investigation. If the complaint has to do with financial matters, there may be copies of bills, letters, and/or written agreements (e.g., an admission contract) which would be of use. In matters regarding resident care, some nursing homes post a chart in the resident's room to note when items of routine daily care are performed. A complaint about personal care activities (washing, bathing, brushing hair, oral hygiene) may be checked out at least partially by looking at this chart and discussing a problem area with staff on the unit.

### **F. Identifying And Analyzing The Problem**

As you gather information to answer these questions, you should be able to identify the problem(s) underlying the complaint. Being conscious of our own biases and their effects is of help here. For example, the potential is high for ombudsmen who have

been educators to focus too much on staff training, or for nurses to concentrate excessively on the monitoring of nursing procedures, while minimizing other important problems. Once a problem has been identified, it should be analyzed in order to help you determine if the complaint is valid and choose a strategy for resolution.

Questions to consider in analyzing the problem include:

1. Why did the problem occur? Some factors to consider in attempting to answer this question are: Was there an oversight on the part of the facility staff? Was there deliberate retaliation against the resident? Is the problem related to policies/procedures of the facility? Are there personality clashes between the resident/relatives and staff? Is the facility habitually short-staffed? Does the resident's physical/mental condition make good care extremely difficult to provide? Is the quality of care related to the resident's method of payment (i.e., Medicaid vs. private pay)?

2. What evidence is available to show what happened? Evidence can include: Personal observation, medical records, reports of witnesses, admission by facility representatives of wrongdoing, financial statements/receipts, official survey reports, reports from other parties (agencies or professionals with expertise in the field).

3. What justification or explanation does the nursing home offer for the problem? Some possible positions which the facility might give include: There is no problem. The problem is due to a "difficult resident or family member. The facility's action is based on medical/professional judgment. The care is as good as it can be considering the low rate of reimbursement. The facility meets the regulations and has good inspection reports.

4. Who or what is at fault regarding the problem? The cause may rest with one or more of the following: Facility staff failed to perform their duties properly. State/federal regulations are lax or there is confusion regarding the issue(s) raised by the complaint. Third-party reimbursement programs may not pay for certain procedures. Independent professionals (e.g., doctor, physical therapist) may not leave clear instructions for resident and staff to follow. The resident or family may be causing or contributing to the problem.

### **G. Complaint Verification**

A complaint is verified if it is shown that the alleged problem does exist or did occur. Verifying a complaint is part and parcel of the investigatory process. You have been gathering information in order to determine the facts of the case. Formal verification is simply a matter of reviewing those facts, ensuring that you have proper documentation, and then proceeding with resolution or with informing the complainant that you cannot substantiate the problem.

It is important that you carefully construct your own records in gathering information for the investigation. The emphasis should be on facts, and the source of all information should be noted. If personal observations are included, they should be identified as such. If your notes refer to how a person behaved, you should describe the behavior, not attempt to label it. For example, if an administrator is unresponsive to your

questions, say that he/she did not respond rather than that he/she “appeared to be hiding something.”

Verification is especially important if a violation of regulations is alleged and you seek action by a regulatory agency. If a complaint becomes part of litigation, or becomes available to the media during the publicizing of an important issue or event, it is crucial that the complaint be verified before you act on it further. Consequently, you should obtain as much evidence as possible before deciding whether a complaint is verified, either partially or completely. **For each complaint, the key phrase to remember is: Document your case.**

There are a variety of methods which can be used to verify or document a complaint. These include:

1. Asking the nursing home administrator directly if a certain condition exists or if a particular incident occurred. If you receive an admission of wrongdoing on the part of the facility, your objectivity cannot be questioned.
2. Observing the situation personally. This technique offers firsthand information concerning the situation. If anyone asks you how you know that the problem is real, you can reply. “I saw it.”
3. Examining official written documents. State and federal survey forms, state survey agency complaint investigation reports, and license applications can provide documentation in writing. This category also includes other pieces of evidence on paper, such as letters, billings, and legal documents.
4. Reviewing resident records. These records deal with care, dietary matters, activities, social services, and inventories of the resident’s personal property.
5. Talking with other residents. The original complainant may lead to other people experiencing the same problem. If several alert residents give information about the same problem, it very likely exists. Statements by residents, however, are often attacked and easily discredited because institutionalized people are seen as unreliable and incompetent. Although this form of verification is not as solid as those discussed above, it does provide an opportunity to bring a problem to the attention of the facility without endangering an individual resident.
6. Questioning facility staff. In most cases when you talk with non-supervisory level staff (aides/orderlies, housekeepers, ward clerks, dietary helpers), you will have to assure confidentiality before they will provide information. Although an admission of a problem by these staff may not carry the authority of statements by the administrator or other official representatives of the facility, their statements may provide clues of where to find stronger evidence.

Occasionally you will find that a complaint cannot be verified. There may be no corroborating statements, or the facts may even contradict the complaint. Handling these situations will require tact, as the complainant may still be convinced that the problem is valid. The best management of such situations is to include the complainant in the process of attempting to verify the complaint. When that is not possible, and you must present the results of your work to the complainant, be careful to avoid those things which might make the complainant believe you think he/she is foolish, especially if the

complainant is a resident or family member of a resident. A factual, detailed presentation is especially important when telling the resident or family that nothing can be done. You should also explain that not verifying the complaint does not mean that you question the honesty or sincerity of the complainant. Finally, you should discuss any alternative steps that might be available. For example, there may be another agency better suited to deal with the complainant's concern.

In some cases, you may believe that a case has merit despite the fact that you have been unable to verify it. It is also possible that you have been unable to get access to records or materials that might verify the complaint. This problem can be addressed in the following manner:

1. Help the resident or complainant to represent him/herself. Explain that there is little you can do at this time without further proof. Show the person how to document problems as they occur. Explain, if possible, the "chain of command" in the facility so the individual will know who to talk to if the problem comes up again. Leave telephone numbers and addresses of the ombudsman program and other appropriate agencies for future contact.
2. Do whatever can be done to resolve the complaint. Complaints can be resolved without verification in many cases. If the resident complains that the facility is slow to answer her call light, you can always discuss the problem with the director of nursing (provided the resident approves). This may cause the DON to initiate her own investigation, or quietly resolve the problem.

The important point is that you should never represent something as a fact without verification. At the same time, verification should never be used as a tool for limiting attempts to resolve complaints. Rather, it is a self-protective device to keep state and local ombudsmen from too vigorously pursuing unfounded complaints

## **IV. Complaint Resolution**

### **A. Introduction To Ombudsman Role**

It is Ombudsman Program policy that, when possible, you encourage residents and their family members to try to resolve complaints themselves before having the ombudsman step in. Encouraging self-advocacy and working to empower residents is an important duty of ombudsmen.

Once an ombudsman becomes involved in a complaint investigation, s/he must keep the resident informed during the resolution process and allow the resident (or complainant) to withdraw the complaint any time.

When asked to act on behalf of a resident, the ombudsman should first attempt to resolve the complaint within the facility by contacting the administrator or appropriate staff. Referrals to other agencies should be made only after the resident's permission has been obtained. The ombudsman is also responsible for follow-ups on referrals.

Residents have a right to confidential treatment of records and information. All records and information obtained during an investigation or during the resolution process

shall be held in confidence. Information may only be disclosed if the resident (or complainant, or a legal representative of such) consents in writing to the release of such information and specifies to whom the information may be released. Confidential information may also be released under a court order. If you have any doubts about whether a particular piece of information can be disclosed, consult the State Ombudsman.

## **B. Building Trust**

You cannot help to resolve a complaint unless you are trusted by residents, staff and administrators. There are some specific things you can do to help convince people that you are trustworthy:

1. Let the parties explain their problem even when you have prior knowledge. Put yourself in the position of being educated. People want to state their positions and grievances. You can learn a great deal by letting the complainant or staff person do the talking and listening attentively.
2. Listen appreciatively and with understanding. Good listening communicates your acceptance of the speaker. Try to understand the events and experiences of the other individual and appreciate his/her point of view. Train yourself to be alert, interested and to hear exactly what the party is saying. Encourage the speaker to elaborate. Demonstrate your attention through eye contact, leaning forward, etc.
3. Be comfortable with silence. Unless a silence is so awkward that the speaker is uncomfortable, do not rush to fill the gap. Use silence to organize what you have heard and to gather more information. The speaker will usually try to fill the gap by elaborating on what has been said.
4. Use note-taking positively. Explain that you take notes so that you can remember everything that is said. You can write down key works to jog your memory and expand on your notes afterward.
5. Reduce defensive communication. Ask questions in a way that actively supports open communication and reduces defensive responses.
  - a) Describe, don't evaluate. Avoid value judgments. Be careful not to judge the person by verbal or non-verbal expressions. Be descriptive without using value-loaded words.
  - b) Problem resolution, not control. If you attempt to take control, you can intimidate the resident and antagonize the staff. Be open, convincing the parties that you are there to aid them in resolving problems and have no hidden agenda.
  - c) Empathy, not neutrality. Neutrality does not mean being disinterested. You should exhibit concern for all parties, even if you do not agree with what they say. You may understand the administrator's problems but are primarily interested in resolving the resident's complaints. Over-identification with either the resident or staff may result in ineffectiveness as an Ombudsman.

### C. The Resolution Process

Once a complaint has been investigated and verified, the next step in the complaint handling process is resolution of the problem. This simply means coming up with a solution. Sometimes you will develop a solution which you can try to “sell” to the respective parties; at other times you may have to bring people together and help them work out the solutions that are meaningful to them. The important point is that the solution has to resolve the problem. For example, helping a resident search for lost clothing may be a nice thing to do, but it does not provide a lasting solution to the problem of mishandling laundry or personal possessions.

The resolution process may require you to adopt a variety of roles, depending on the type of solution that seems appropriate. The major roles are broker, mediator, educator, planner, and advocate.

1. Broker: Refers the complaint to an outside agency. Referrals may be made before or after your investigation, depending on the nature of the problem.
2. Mediator: Works with two opposing sides to bring them together for resolving a dispute. In this position you do not take sides, but facilitate discussion and the exchange of information to settle the complaint.
3. Educator: Provides information about the law and applicable policies. For example, you can point out to people how the nursing home regulations relate to a specific condition.
4. Planner: Identifies the people (e.g., operator, facility administrator, the complainant) who will be responsible for carrying out a plan of action. You can discuss with people what steps need to be taken to accomplish a desired change.
5. Advocate: Works on behalf of the complainant to argue his/her cause. The advocate differs from the mediator in that the advocate takes a partisan stance on behalf of the resident.

It is not unusual for an Ombudsman to receive several complaints against different facilities which are related to the same problem. For example, you may discover that many residents are being illegally evicted from facilities after voicing complaints about their facilities’ conditions or policies. Such cases may require action on a system wide basis and should be discussed with the local ombudsman or State Ombudsman. Resolution of such problems may require action at the state level.

The resolution strategies that follow are listed in order of increasing formality and difficulty. As you work to resolve problems at the facility level, it is generally a good idea to attempt the less formal remedies before trying the more formal ones.

#### 1. Self-advocacy

Self-advocacy is an important potential remedy that complainants should be urged to perform when possible. This approach fits the ombudsman roles of educator and planner. When people are able to resolve their own

problems, they become more confident and less dependent. Giving power to the complainant is an empowerment strategy.

A good way to encourage self-advocacy is to help residents and family voice concerns and resolve problems through use of the resident and family councils. In some nursing homes, resident and family councils have been very effective in relating opinions and feelings to administrators, resulting in changes in the facility. In other homes, the councils may be little more than an alternative activity to bingo. The more independent the councils are of staff involvement, the more likely they can be useful in solving problems. You will have to evaluate each council to determine whether it is an appropriate forum for resolving complaints.

## 2. Mediation

Mediation is a process by which you attempt to get the complainant and the appropriate facility personnel to meet together and develop a mutually agreeable compromise. This can be a difficult role, since both parties sometimes use the mediator as a target for their bad feelings. In some cases the parties may have different goals they want to achieve, while in other cases both parties may agree on the goals but disagree on how to reach them. A mediator is essentially a facilitator who encourages open communication to help both sides find as much common ground as possible.

## 3. Negotiation

Negotiation is bargaining with another party in an effort to arrive at a binding agreement. It is a strategy you will probably use often, as you will negotiate with the facility staff.

It is important to recognize when a solution to a problem, or an agreement, has been reached. Some people get so involved in investigation or negotiation that they fail to realize that they have won their point or solved the problem.

On the other hand, you should also recognize when no satisfactory solution is forthcoming within a specific time frame. Discuss with your local ombudsman or the State Ombudsman the next steps to be taken. You should have a set of procedures with time frames for resolution within the facility, for intervention by the State Ombudsman, for contacting the regulatory agencies, etc., when such action is necessary. You should agree on what constitutes an emergency or life threatening situation and how to handle it if it occurs. When the same grievance continually recurs, it is time to discuss this with your local ombudsman or the State Ombudsman, rather than handling the same complaint again and again.

### **D. Complaint Resolution Strategies**

As a person working on behalf of nursing home residents and their interests, you will need to become familiar with a variety of techniques for resolving complaints. Some of these techniques are especially suited for handling individual problems. Since resolving the complaints of individual residents is your fundamental job, you should be as familiar as possible with such techniques.

You are likely to discover, however, that similar complaints will recur time and again. The same complaint(s) may be repeatedly voiced against a particular nursing home. For example, you may discover that over several months there may be twelve complaints registered about shortage of staff at a given nursing home. In such cases, you will be able to work more effectively by treating these complaints as a single issue. You will be able to make a better case against the nursing home by combining the complaints, and time can be saved by not dealing with each problem individually on behalf of one resident or one group of residents.

To many people, negotiation implies an adversarial relationship. However, it need not be a tactic of confrontation. Negotiation can actually avoid confrontation with the other party by clarifying the consequences of a continued course of action. Negotiating in a long term care facility will generally occur with the administrator or operator. In negotiations, it is critical for you to know whom you are representing, what problems you want to solve, and what may be acceptable solutions. Negotiations should not be entered into without knowing what can and cannot be done by all parties to achieve the desired results.

Before a formal negotiating session, you should prepare an agenda so that you do not get sidetracked from the items you want to discuss. If the facility spokesperson promises that certain things will be done, you should ask for a timetable by which they will be carried out. If the solution to a problem involves a major change in facility policy or is dependent on promises made by the facility, you may want to ask for a written agreement. It is always a good idea to follow any formal session with a letter summarizing the results. Any actions agreed to should be monitored to determine if, in fact, the changes are made.

In order to negotiate successfully, you should not bargain over positions. The traditional method of negotiation involves each side taking a position, arguing its merits, and compromises being reached. Unfortunately, compromises are often difficult to find and may leave both parties less than satisfied. Positional bargaining, as this type of negotiation is called, is often done from a “hard” or adversarial standpoint. In other cases, such as when the parties know they must maintain an ongoing relationship, the bargaining may be “soft.” Both of these approaches cause problems because arguing over positions produces unwise agreements, is inefficient, and endangers on-going relationships.

The alternative, referred to as principled negotiation or negotiating on the merits, assumes that the participants are problem solvers whose goal is a wise outcome reached efficiently and amicably. This method involves focusing on interests rather than positions, developing multiple options to choose from for mutual gain, trying to reach a result based on standards independent of will, being open to reason, and yielding to principle, not pressure.

The single most important concept of this negotiating method is keeping in mind that your goal is to solve the problem not to score debate points or outsmart the other party. Separating the people from the problem is a key part of this concept. Be aware that the other person probably perceives the situation differently than you do. Recognize and understand the emotions both of you feel about the situation. Don't react to emotional

outbursts. Let the other side let off steam. Use active listening. Phrase your proposals in terms of what you think will solve a problem, not in terms of what they should do. These techniques should be helpful in allowing you to build a working relationship wherein you can discuss problems frankly without bringing personalities into the dispute.

Another major part of this method is focusing on interests, not positions. Try to get beyond positions to the underlying interests. Ask why or why not? Realize that each side has multiple interests. Some are likely to be compatible, others conflicting. The compatible ones can form the basis of a solution.

A third part of the process, and one that is often overlooked in problem-solving, is the invention of a wide range of options. Look for solutions which allow both sides to gain something (as opposed to compromises where both sides lose something). Don't be wedded to a single solution. Try to develop a win-win solution based on shared interests.

A final important point is the use of objective criteria. The search for a solution can begin with a search for an objective or fair standard by which to judge the problem. Written rules, laws, outside experts, etc., can form the basis for a solution.

### **E. Other Complaint Handling Strategies**

The Health Regulation Administration can be called upon to investigate complaints. Since this agency has the power to enforce State and Federal regulations, you must understand and follow the Ombudsman Program's complaint referral procedures. The more detailed a complaint is, the better the chance that it will be substantiated by the regulatory agency. If there is evidence of a trend at the facility, it should be included in the complaint and communicated to your local and State Ombudsman so that they and the investigators can be alert to more widespread problems in the facility. Depending on the nature of the complaint or problem, other agencies that may be contacted are Adult Protective Services, the Medicaid Fraud Control Unit, the Income Maintenance Administration, and the Police Department.

Community intervention, while not generally a tool for resolving individual complaints, can be an effective tool for resolving problems and keeping others from occurring. The community intervention strategy is based on the assumption that a nursing home, because it is a service to the community and because it is funded largely with public money, operates with the tacit approval of the community power structure. Since this approval will sometimes allow a facility to provide low quality care, the idea behind this strategy is to build a consensus within the power structure that high quality long term care facilities are a necessity.

Ombudsmen should be aware of social services agencies, area agencies on aging, city council people, the medical community, the legal community, and other community resources which can be called upon to assist with both individual complaints and with broader issues. In addition, if other attempts to resolve a problem have failed, and the case involves a violation of a resident's legal rights, referral to an attorney may be appropriate. You should be aware of what legal services are available to older people in your community. Referring a complainant to an attorney should be done only after discussion with your State Ombudsman and should be clearly stated as an option the complainant may choose to exercise.

Finally, there are two factors you should keep in mind while attempting to resolve a complaint: First, some complaints cannot be solved in spite of a thorough investigation, unquestionable verification, and a wise and persistent course of action during the resolution process. Second, complaint resolution is not always clear-cut. A problem may go away, but then reappear, or some parts of the problem will be taken care of, but not others. In some instances the complainant will not be completely convinced that the situation is as good as it should be, while at other times the complainant will say that everything has been resolved regardless of your desire to pursue the matter further. Most cases become less “black and white” the more they are examined, so it is possible that you will handle many cases which you can only call partially resolved.

#### **F. Monitoring Complaint Resolution**

You must have a program to follow-up on complaint resolution. The purpose of follow-up is to:

1. verify that resolution of the complaint has occurred;
2. assure the complainant that everything possible has been done;
3. monitor the performance of the program; and
4. detect any deficiencies in long term care standards.

Complaints should be followed up at one or two regular intervals: thirty days after resolution and then several months after resolution, depending on the nature of the complaint. If the problem is recurring or the agreed upon solution was not put into effect, it may be necessary to reopen the case. At this point you should determine what went wrong and take further action. If the complaint-resolution has been implemented and the case remains closed, you can elicit feedback from the complainant.