

Equipping Long-Term Care Ombudsmen for Effective Advocacy: A Basic Curriculum

THE PROBLEM-SOLVING PROCESS RESOLUTION

Curriculum Resource Material for Local Long-Term Care Ombudsmen

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ABOUT THE PAPER

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I. INTRODUCTION

The purpose of this module is to discuss:

- The ombudsman role in resolving problems.
- How to use the information gained during the ombudsman investigation to plan resolution strategies.
- The primary ombudsman approaches in resolving problems.
- The ombudsman responsibilities for follow-up after a resolution strategy has been attempted.

This module is a sequel to “The Problem-Solving Process Investigation” module. It covers Stages 2 and 3 of the problem-solving process. The information gathered during intake and investigation is analyzed and used to plan a resolution strategy. The long-term care ombudsman (LTCO) then acts to resolve the problem. If these actions are skipped, the ombudsman risks being ineffective in resolution.

Table 1: The Problem-Solving Process

<i>Stage 1 Intake and Investigation</i>	
Receive the Complaint	Receive problems, complaints, concerns.
Gather Information	Collect information from interviews, records, observations.
Identify the Underlying Problem	Review information gathered. Assess what seems to be at the root of the problem. The complaint may be only a symptom.
<i>Stage 2 Analysis and Planning</i>	
Analyze the Situation	Once you identify the problem, consider the causes.
Consider Solutions	Generate alternative solutions or approaches. Who should be involved? When? How? Why?
Identify Obstacles	Anticipate obstacles to help select an appropriate approach.
<i>Stage 3 Resolution and Follow Up</i>	
Choose an Approach	From your list of alternative solutions, choose the most efficient way to proceed, keeping any obstacles in mind. Identify alternative strategies in case you need them.
Act	Proceed with the selected plan, but be prepared to use an alternative.
Evaluate Outcome	Check back with the persons involved to evaluate the outcomes. Is the problem solved? Is it partially solved? If not, look for new approaches or information and start again.

II. ANALYSIS AND PLANNING

Once a complaint has been investigated, as a LTCO you are ready to analyze the information you have gathered to determine the reason the problem occurred. The example of Mrs. Bronner's missing purse in the Investigation Module illustrated the importance of identifying the underlying problem of knowing why the problem occurred. This analytical process will enable you to more effectively plan resolution strategies by defining potential solutions and identifying obstacles that may be encountered.

Analysis and Planning is Stage 2 of the problem-solving process for LTCO. There are three steps in this stage of problem solving:

1. Analyze the situation
2. Identify potential solutions.
3. Identify potential obstacles.

Analyze the Situation

Why did the problem occur?

The information gathered during your investigation should give you some idea about the cause of the problem. Your investigation may reveal that the underlying or root problem is not the one that was reported to you. For example, you may have been told that articles of clothing are being stolen. During your investigation, you learn that clothing is simply not being returned from the laundry room. Accurately determining the root problem is essential to finding a lasting solution.

Determining the root problem is essential to finding a lasting solution.

Thinking through the cause of the problem automatically leads to identifying potential solutions. Questions that might be considered 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 communication problems or trust issues between the resident or relatives and staff?
- Is the facility habitually short staffed?
- Does the resident's physical or mental condition make good care extremely difficult to provide?
- Is the quality of care related to the resident's method of payment (e.g., Medicaid vs. private pay)?

What justification or explanation does the facility offer for the problem?

A thorough analysis includes the perspective of the facility. Some possible explanations the facility might give could also indicate obstacles to resolution. Examples of statements you might hear are:

- 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.

Who or what is at fault regarding the problem?

Determining who or what is responsible for the problem is important preparation for moving into the resolution stage. The responsibility may rest with one or more of the following:

- Facility staff failed to perform their duties properly.
- State/federal regulations are lax or confusing regarding the issue(s) raised by the complaint.
- Third-party reimbursement programs may not pay for certain procedures, services or items.
- Independent professionals (e.g., doctor, physical therapist) may not leave clear instructions for residents and staff to follow.
- The resident or family may be causing or contributing to the problem.

Identify Solutions

Use the information from your analysis of the situation to begin planning the next stage of the problem-solving process. Begin by identifying possible solutions to the problem. Keep the complainant’s/resident’s goals in mind.

- What does the resident want as an outcome?
- What might resolve the problem?
- What will it take to keep it from recurring?
- How many possible solutions can be identified?

Identify Obstacles

Once possible solutions are identified, you need to anticipate obstacles that might affect resolution. You do this by examining each potential solution and asking, “What obstacles might be encountered in seeking this outcome?”

Obviously, it does little good to identify potential obstacles without considering possible ways to overcome them. Using your list of potential obstacles, think of other alternatives to keep these obstacles from deterring a resolution. Remember that your list is not exhaustive, nor is it the only approach that will work. Sometimes there are several ways to resolve a problem. Just be prepared with ideas and remain flexible in order to prevent obstacles from ending a resolution discussion.

Table 2: Examples of Potential Obstacles and Solutions

Potential Solution	Potential Obstacles	Suggestions for Overcoming
Permanent assignment of staff	<ul style="list-style-type: none"> • The Director of Nursing resigns and the position is vacant for a long time • The rate of staff turnover is so high that permanent assignment is meaningless. • Staff and residents are not prepared for this change in staffing pattern. Without preparation and guidance, much resistance will be encountered. 	<ul style="list-style-type: none"> • Identify and share resources on this topic, such as other facilities or best practice articles. • Encourage training and transition during change, promoting permanent assignment as a positive, use this in recruiting and retaining staff.
A revision in the resident's care plan	<ul style="list-style-type: none"> • There is no follow through with the changes. • The CNAs are not informed of the changes. • No one checks with the resident to see if the changes have the desired result. • The revision is made without the resident and family understanding the full impact. 	<ul style="list-style-type: none"> • Advocate for a care plan that is clear, specific, and understood by all. • Ask how all pertinent staff will be informed and trained in the changes. • Be sure the resident knows who to contact if concerns arise.
Training staff to use a different approach	<ul style="list-style-type: none"> • The training is too theoretical and staff do not understand what they are to do. • There is no supervision or modeling of the change following the training. • Expectations of supervisors do not change to reflect the new approach. 	<ul style="list-style-type: none"> • During resolution, get agreement on how training will be applied to daily staff routines and addressed in supervision. • Identify changes that can be observed as a result of the training.
A change in menu items and serving techniques	<ul style="list-style-type: none"> • The administrator says the change will cost too much. • The administrator says corporate headquarters will not approve such a change. • A dietary consultant with different expertise will be needed and the facility has an existing contract with someone else. • Staff resist when they are ordered to make changes without receiving an explanation, training, or support. 	<ul style="list-style-type: none"> • Identify and share resources on this topic, such as other facilities, articles, consultants. • Offer to support the administrator's request to the corporation for a change or to directly deal with the corporate office yourself. • Discuss the positive changes that everyone will experience as outcomes.

At this point, you have analyzed the information collected during your investigation, verified that there is a problem you can work on, identified what the root of the problem is—in other words, the problem that must be resolved—and thought of potential solutions, obstacles, and ways to overcome them. The next step is resolving the problem.

Ombudsmen always seek to resolve a problem to the satisfaction of the resident. However, achieving this goal is not always possible. Sometimes obtaining total satisfaction is limited due to factors such as a lack of resources, a change in the resident's condition, or the lack of specific regulatory

language. Despite obstacles, on a national basis LTCO resolve a majority of complaints to the satisfaction or partial satisfaction of the resident or complainant. Ombudsmen take a complaint as far as possible to accomplish the desired outcome, follow-up with other agencies and the resident when a complaint is referred, and check back with the resident later if a complaint was withdrawn.

Ombudsman resolution actions can be classified and reported in one of six ways:

1. Requires policy, regulatory or legislative change to resolve
2. Not resolved.
3. Withdrawn.
4. No action needed or appropriate.
5. Partially resolved.
6. Resolved.¹

¹ The National Ombudsman Reporting System, October 2006, Administration on Aging.

III. RESOLUTION

From the information gained in Stages 1 and 2 (see *Table 1: The Problem Solving Process*), you should be ready to choose an approach to resolve the complaint, act, and evaluate the outcome. Remember the potential obstacles identified in Stage 2, and be flexible enough to use a different approach if your initial choice does not achieve the expected results.

Resolution simply means coming up with a solution. Sometimes you will develop a solution to 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. The important point is that the solution has to “fix” 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 a problem of mishandling of laundry or personal possessions. On another case, you might have a charge nurse who agrees to let a resident stay up late tonight which is the resident’s usual routine. To achieve a lasting solution, the resident’s care plan might need to be revised or a note made on the resident’s records about her preference for a later bed time. All night staff who work with this resident need to be notified about this change. Without these additional steps, a later bed time might be only a one night accomplishment; then you will have to deal with the same problem a second time.

The important point is that the solution has to “fix” the problem.

It is important to recognize when a solution to a problem or an agreement has been reached. Some people become 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 a satisfactory solution has not been reached, and the problem continues to reoccur. When a satisfactory agreement has not been reached, it is time to discuss the problem with your LTCO supervisor or with the State Long-Term Care Ombudsman (SLTCO).

Stage 3 of the problem-solving process involves the following three major steps:

1. Choose an approach for resolution.
2. Act to resolve the complaint.
3. Evaluate the outcome.

Choose an Approach

Complaints may be resolved in many ways. Most are resolved at the facility level by simply bringing the problem to the attention of the staff or administrator in a polite manner. The obvious exception is when the resolution of a problem is beyond the facility’s control, such as Medicaid’s denial of a resident’s application for a customized wheelchair. The Medicaid agency has to be involved in the resolution of this problem. However, there are other, more adversarial approaches that may be required when the complaint cannot be resolved at the facility level. These are discussed later in this chapter. To begin with, LTCO focus on the collaborative methods used for solving the complaint within the facility.

Practice Considerations

Remember to use the care planning process, resident councils, and family councils whenever appropriate to resolve problems. Although they are not all equally effective in all facilities and sometimes may not exist, especially family councils, all three of these can be effective avenues for communication and problem solving. Furthermore, whenever you use one of these, or support a resident in using one, you are modeling a way of working out issues within the facility.

Use care planning as a problem-solving vehicle to focus everyone's attention on the resident's needs, routines and preferences. Advocate for care plans that build on the resident's schedules and strengths.

Clarification of a law or legal advice might be needed in order to choose an approach and offer options to the resident. If you need this type of legal information, contact your LTCO supervisor or the State LTCO.

Ombudsmen are not regulators. A regulator looks for compliance with a standard or rule. A regulator can also demand conformity to a specification and can punish the care provider for any failure to comply.

The LTCO focuses on the residents. A LTCO has a much broader mandate and employs a wider range of options in resolving problems. A LTCO cannot punish to achieve compliance. In most cases, a LTCO brings problems to the caregiver's attention so that they can solve them before they get out of control and before a regulator must get involved.²

LTCO Behavior Style

The appropriate behavior style for LTCO is best characterized by the simple but important "Three F" principle.³ The LTCO must be:

- Fair.
- Firm.
- Friendly.

Strategies for Resolving the Problem in the Facility

As a person working on behalf of residents and their interests, you need to become familiar with a variety of techniques for resolving complaints. Some of these techniques are especially well suited for handling individual problems.

² This paragraph and the preceding one are from the *Oregon Long-Term Care Ombudsman Certification Manual*, Section 7, Investigating Complaints. 2005.

³ From Wayne Nelson, Ph.D., former Deputy State LTCO, Oregon. Currently Assistant Professor, Department of Health Science, Towson University, Towson, Maryland.

As you can see in *Table 3: Resolution Strategies at Facility Level*, there are three primary strategies for resolving complaints at the facility level:

1. Self-advocacy
2. Mediation
3. Negotiation.

Self-advocacy and resident empowerment are discussed more fully in the Residents' Rights module of this curriculum.

Long Term Care Ombudsmen rarely use true mediation because ombudsmen are not usually neutral; ombudsmen are resident advocates. The one situation in which true mediation may be used is with family members or with issues where one resident's rights conflict with that of other residents and the residents are equally able to participate. Resident to resident issues can be difficult. As a LTCO you seek to represent the rights of all residents. To help you think through your role in working with resident to resident issues, refer to "Program Guidance: Working With Residents With Opposing Views," in the appendix.

Of these three, negotiation is the strategy you probably will use most frequently. However, it is important to remember that you can negotiate processes -- the how and when something will be accomplished -- but you cannot "give up" the outcome if it is a matter of law and regulation. As an ombudsman, you can negotiate how a resident's right will be met, not if it will be met.

<i>You can negotiate <u>how</u> a resident's right will be met, not <u>if</u> it will be met.</i>

Table 3: Resolution Strategies At Facility Level

SELF ADVOCACY
<p><i>Urge complainants to take action themselves.</i> When people are able to resolve their own problems, they become more confident and less dependent. This gives power to the complainant. It is an <u>empowerment</u> strategy.</p> <ol style="list-style-type: none">1. An excellent way to encourage self-advocacy is to help residents voice concerns and resolve problems through the resident council. In some facilities, resident councils have been very effective in relating opinions and feelings to administrators, resulting in changes in the facility. In other homes, the resident council may be little more than an alternative activity to bingo. The more independent the council is of staff involvement, the more likely it is to be useful in solving problems. You will have to evaluate each council to determine whether it is an appropriate forum for resolving complaints.2. A resident might agree to directly participate in resolution if you agree to take the lead in the meeting or at least to be present for moral support.3. Families can use family councils to help resolve problems.

Table 3: Resolution Strategies At Facility Level, continued

MEDIATION
<p><i>Try to get the complainant and the appropriate facility personnel to meet and develop a mutually agreeable solution. The role of the mediator can be difficult since both parties sometimes use the mediator as a target for their bad feelings. In some cases, the parties may have different goals. In other cases, both parties may agree on the goals but disagree on how to reach them.</i></p> <ol style="list-style-type: none"> 1. A mediator is essentially a facilitator, trying to encourage open communication and helping both sides find as much common ground as possible. 2. A mediator is neutral, establishing the “ground rules” for the meeting but not taking sides. 3. Mediation is appropriate when the parties involved have <u>equal</u> power.
NEGOTIATION
<p><i>In negotiation, you bargain with another party to arrive at a binding agreement. Negotiation can avoid confrontation with the other party by clarifying the consequences of a continued course of action.</i></p> <ol style="list-style-type: none"> 1. Negotiating in a long-term care facility will generally occur with the administrator or home operator. 2. In negotiations, it is critical for you to know: <ol style="list-style-type: none"> a. Whom you are representing. b. What problems you want to solve. c. What may be acceptable solutions. 3. Negotiations should not be entered into without knowing what can and cannot be done by all parties to achieve the desired results. 4. When you plan to negotiate in a formal session, take the following actions. <ol style="list-style-type: none"> a. Prepare an agenda so that you are not sidetracked from the items you want to discuss. b. Ask for a timetable if the facility spokesperson promises that certain things will be done. c. Ask for a written agreement if the solution to a problem involves a major change in facility policy or is dependent on promises made by the facility. d. Summarize the results following any formal session with a letter. e. Monitor “agreed-to” actions resulting from the session to ensure that changes are made.

Principled Negotiation

The strategy of principled negotiation was developed a few years ago by a group called the Harvard Negotiating Project. This strategy is outlined in a book titled *Getting to Yes*. The book is an excellent resource for ombudsmen.

The general principle is to bargain on interests rather than positions. The traditional method of negotiation involves each side taking a position, arguing its merits, and reaching a compromise. Unfortunately, compromises are often difficult to find and may leave both parties less than satisfied.

Following are the key elements of principled negotiation.

1. Define the problem and negotiate on the merits.
 - a. Recognize that the participants are problem solvers.
 - b. Concentrate on achieving a wise outcome reached efficiently and amicably. To do this, you must:
 - i. Focus on solving the problem.
 - ii. Outline how the problem hurts both parties' interests.
 - iii. Refrain from trying to score debate points or outsmart the other party.

Example:

LTCO to Laundry Supervisor: "You do have a huge responsibility and it is difficult to please everyone. However, having residents receive clothes that don't belong to them is a problem. Can we take some time and think about how it might be solved?"

2. Separate the people from the problem.
 - a. Be soft on the people, hard on the problem.
 - b. Proceed independent of trust. Achieving resolution is based on interests and results, not on personal relationships.
 - c. Be aware that the other person probably perceives the situation differently than you do.
 - d. Do not react to emotional outbursts. Let the other side let off steam.
 - e. Phrase your proposals in terms of what you think will solve a problem, not in terms of what they should do.

Example:

LTCO to the Director of Nursing: "I can see that discussing meal trays being served to residents, then removed without the resident being assisted with eating, is upsetting you. Let's focus on ways to avoid this in the future. It might help if the resident assistants were clear about which residents need assistance with eating and drinking, whose responsibility it is to assist with eating, and how to do this."

3. Focus on interests, not positions.
 - a. Explore interests.
 - b. Realize that each side has multiple interests.
 - i. Try to find compatible interests that can form the basis of a solution. Identify any areas where the resident's interests are compatible with the facility's stated interests.
 - ii. Be able to professionally explain how the resident's interests might be in conflict

- with the stated interest of the facility, if necessary.
- iii. Don't blame the facility's interest-orientation as the cause of the problem.
 - c. Avoid having a bottom line.

Example:

LTCO to Administrator: "I know this facility's mission is to be a home-like place where the care is good. Let's discuss what one specific resident, Mrs. Quiet, needs in order to feel at home and be comfortable with her care routine."

4. Invent options for mutual gain.
 - a. Develop multiple options to choose from; decide later.
 - b. Look for solutions that will allow both sides to gain something, in contrast to compromises where both sides lose something.
 - c. Do not be wedded to a single solution. There is almost never a single answer to a problem.
 - d. Try to develop a win-win solution based on shared interest.

Example:

LTCO to Administrator: "Based on our discussion, we both agree that Mr. Dillard needs more opportunities for movement and to be outdoors. Let's brainstorm some ideas about how his needs can be met while complying with the safety and supervision requirements for this facility."

5. Insist on using objective criteria.
 - a. Try to reach a solution based on standards independent of will, such as laws, written rules, and/or outside experts.
 - b. Reason and be open to reason; yield to principle, not pressure.

Example:

LTCO to Director of Nursing: "I understand your concern that Mrs. Evert's health will rapidly decline if she doesn't agree to take the medicine her doctor ordered. You've done an excellent job of fully explaining the consequences of her decision and offering other options. Nevertheless, residents have the legal right to refuse treatment."

Sources of Power in Negotiating

In addition to practicing the techniques of principled negotiation, you should be aware of the sources of power that are available to you as an ombudsman in resolving conflicts in the long term care system. Your base of power in negotiation includes: ⁴

- *The Older Americans Act*: The law requires every state to establish a Long Term Care Ombudsman Program to resolve complaints on behalf of facility residents.
- *Standards of Care*: Federal and state regulations establish a standard of care by which facilities must abide. In your advocacy, you seek adherence to these standards.

⁴ From the Virginia Ombudsman Manual, 1988.

- *Civil Law:* Legal avenues exist by which a facility can be held accountable for violations of civil law. You offer the opportunity for the facility to avoid unpleasant legal conflicts by working out an agreement.
- *The Public Interest:* You represent the concern of the public at large for high-quality nursing facilities and assisted living homes.
- *Facility Reputation:* The facility’s willingness and desire to resolve problems and to cooperate with you can enhance its good name.
- *Resolution:* You can provide assistance in resolving problems of mutual concern.
- *Necessity:* If the problem has persisted to such an extent that you are called into the situation, then that problem is not likely to go away without some type of outside intervention.
- *Persistence:* You are charged by the LTCO statute to work for resolution. In accordance with that mandate, you will stay with the situation until it improves.
- *Best Alternatives:* You offer the opportunity for an “in-house” resolution. If a problem cannot be resolved at this level, you must refer the problem to the SLTCO who will likely seek regulatory action.
- *Brainstorming:* If a problem persists, it is in the best interest of everyone involved that it be resolved. As the saying goes, two heads are better than one. By meeting, you can think of a workable solution.
- *Linkage with Community Resources:* If resolution requires outside assistance, you can play a key role in tapping needed community resources and bringing them into the situation.

Adversarial Strategies

If a complaint cannot be resolved at the facility level, it may be necessary to use adversarial strategies to correct the problem. These strategies include involving regulatory agencies, the community, courts, legislature, and the network of agencies serving the elderly; and in very rare cases, the local media.

As a rule of thumb, remember that the more adversarial your method, the greater your burden of proof. You must have very good quantity and quality of evidence before seeking resolution through one of these strategies.

<p><i>The more adversarial your method, the greater your burden of proof.</i></p>

Also remember that you are no longer working in cooperation with the facility. There will likely be some damage, at least temporarily, to your working relationship when more adversarial methods are used. However, there may be some instances where these methods are the only way to resolve the problem.

Warning and Referral

When LTCO efforts to resolve problems at the facility level fail, the LTCO may offer a warning of intent to refer a problem or make an actual referral. Warning of intent to refer is a second-to-the-last resort in the LTCO bag of tricks and is not a process that LTCO engage in lightly. Sometimes when LTCO try to explain to facility management the consequences of further inattentiveness to an ongoing problem, it is perceived as a threat. It is not. A warning is a form of counsel and is in a very real sense a courtesy insofar as it is a notice offered prior to the actual referral. It is nothing more than a notice of possible consequences.

A warning can get the attention of the offending party. It can differentiate very important from less important issues. It can clarify the extent of one's commitment to a problem. It can help define the power relationship between parties. But a warning can only be productive and constructive if the party to which it is issued believes that it is credible.

To be credible, the receiving party must believe that the LTCO will follow through with the steps described in the warning, that the regulator would be likely to find the facility out of compliance, and that the process and/or outcome is something to avoid.

The bottom line, then, is that a LTCO never expresses a warning unless fully intending to carry it out. LTCO should never issue a warning unless it is absolutely necessary. There is no greater danger than in the overuse of warnings. LTCO who have not fully developed their skills in problem-solving techniques often resort unnecessarily to warnings. In time, this will prevent the LTCO from developing a good working relationship with providers. On the other hand, a judiciously issued fair warning can be a constructive way to develop program credibility. **Until you are an experienced LTCO, check with your LTCO supervisor before concluding that nothing else can be done to resolve the problem with the facility and that a warning of additional steps is required.**

Referral to Another Agency

The most commonly used adversarial strategy is referral to the state's licensing and certification agencies. For this kind of referral, you will need to provide detailed information and have the permission of the resident(s). The more detailed a complaint is, the better the chance that it will be verified by the regulatory agency and eventually resolved. If there is evidence of a trend at the facility, it should be included in the complaint so that the investigators can be alert to more widespread problems in the facility. Follow the policies of your LTCOP in making a referral to one of these agencies. Asking another LTCO to read your referral before it is sent is a good practice to ensure that what you have written is clear to someone who is not familiar with the situation.

It is also useful to become acquainted with employees of these agencies in your area so that problems may be discussed in an informal manner. Creating and maintaining such a relationship offers the possibility of a two-fold benefit. First, frequent contact with the agency may serve as a form of subtle pressure, which can lead to a more responsive bureaucracy and therefore to an improved regulatory system. Second, once such a relationship has been established, you can gain information about the regulatory perspective through informal contact.

If the facility is unyielding, LTCO need to be resourceful in identifying other places to go in order to achieve resolution on behalf of a resident. Other agencies or offices where LTCO sometimes refer complaints include public health departments, the Fire Marshall, Medicaid Fraud and Abuse, public guardianship office, and courts with applicable jurisdiction.

Referral to Media

This is the most rarely used tactic by LTCO to address problems. While LTCO may be approached by the press concerning long-term care issues, the LTCOP rarely initiates a news story focusing on a problem. If you are contacted by the media, you must follow the federal LTCOP confidentiality and release of LTCOP information provisions as well as the policies of your state's LTCOP.

Generally, referring a problem to the media would require that the following criteria be met.

1. All attempts at problem resolution by all levels of program staff (including the SLTCO) have been attempted, documented and have not produced desired results.
2. Taking the problem to the media will not reveal the identity of any resident without the resident's permission.
3. The LTCOP, local and state, has carefully considered the consequences, intended and potentially unintended, to residents, family members, and to the LTCOP.
4. Facility administration is uncooperative or incapable of affecting a resolution.
5. The problem is serious enough to warrant media attention and public concern.
6. The system has generally failed to correct the condition and no alternative steps to solution are available.
7. The SLTCO has been informed of the intent to go to the media and has approved such action or is carrying such action forward.

Litigation

Another possible remedy for residents whose legal rights have been violated is referral to an attorney. Ombudsmen can assist residents to get in touch with locally available legal services for seniors. Going to an attorney is a resident's option and should not be pursued by a LTCO except in accordance with SLTCOP policies or guidance.

Check with the Resident

To recap, you have investigated and verified the complaint, identified the underlying problem, identified potential solutions, obstacles, and appropriate resolution strategies. Before you act to resolve the complaint, check back with the resident!

The reasons for this pause in your resolution work are to:

- Share with the resident what you've learned.
- Be sure the resident wants to resolve the problem.
- Verify the outcome the resident is seeking.
- Discuss ideas regarding how to resolve the problem (your ideas as well as any ideas the resident has).

- Encourage the resident to participate in the resolution process.
- Discuss potential ramifications to the resident, if any.
- Discuss potential outcomes—what might be gained, checking for any flexibility in terms of what will be satisfactory to the resident.

If you by-pass this step, you risk solving the “wrong” problem, proceeding when the resident wants to withdraw the complaint, and taking control and decision-making away from the resident.

Act to Resolve the Complaint

Once you have chosen an approach and checked with the resident, you act to resolve the complaint. You implement your plan, keeping other options in mind if your initial strategy does not achieve the desired results. There are numerous skills that will be helpful in the actual resolution process. Most of these were discussed in previous sections of this module. Two more skills are presented here: earning trust and dealing with authority figures. Remember, a LTCO always seeks to be “fair, firm, and friendly”.

Confronting Authority Figures

Many of us have difficulty confronting authority figures in our daily lives. An authority figure could be any of the following: the head of an agency, an elected or appointed official, a facility administrator or owner, or anyone who is in a position to hurt or help you or your clients. You, too, may be perceived as an authority figure because of your knowledge, experience, status, training, and/or position.

In resolving complaints, you will find yourself in a position where confronting authority figures is essential to achieve the results you seek. You must choose an appropriate approach toward a person who is perceived by others to be an authority figure.

Reactions to Authority Figures

Three common reactions to those who have the power to influence outcomes are: *avoidance*, *awe*, and *anger*.

Avoidance It may take weeks or months for agencies to process complaints or for courts to process cases; yet many persons immediately seek such remedies without first confronting the person directly responsible for the problem. Why? Because they think it will not work, dread failure, and dislike face-to-face confrontation, especially on someone else’s “turf.”

Awe Ironically, many persons may gripe about officials and corrupt politicians in private but cannot always be counted on to put their grievances in writing or to stand up at a public hearing. Many people are easily intimidated by a gavel or even an imposing tone of voice. Ombudsmen, too, can be seduced into a “cozy” relationship with the opposition. Certain professionals, such as doctors, have an aura about them that is difficult to dispel.

Anger It is frustrating to deal with officials or staff who fail to share your viewpoint. Some may even attempt to disguise their self-interest as concern for residents. Having to confront such persons on a regular basis can be quite stressful and may lead to anger or “burnout.” Creative brainstorming and problem-solving sessions are a necessity in such circumstances, not a luxury.

Tips for Dealing with Authority Figures

- Make an objective assessment of the individual to find out if he/she will be an ally or an adversary.
- Size up the prejudices, preferences, and decision-making patterns exhibited by the authority figure, and study his/her overt and covert influence.
- Be aware of the appeal process and the chain of command if a person in authority renders an unfavorable decision.
- Be aware of the policies, guidelines, rules, regulations, and laws that govern the authority figure, as well as those he/she is in charge of or can control.
- Encourage those in positions of responsibility to fulfill their public trust. This is the most powerful approach. If you can show an administrator a resident’s rights in black and white as stated in standards or statutes, there is a good chance that he/she will capitulate or be won over. The law is a very powerful tool that the ombudsman must know and call upon.

Building Trust

You cannot resolve a complaint unless residents, staff, and administrators trust you. This means you must maintain confidence, be respectful, and have a good attitude. Other specific techniques for earning trust are summarized below in *Table 4: Techniques for Building Trust*.

Table 4: Techniques for Building Trust

DO	DO NOT
<ul style="list-style-type: none"> – Start with the assumption that the other person wants to provide good care and make the residents happy. – <i>Be professional in your relationship, words, voice tone, and nonverbal communication such as posture, facial expressions, eye contact, and gestures.</i> – Give providers clear reasons to change their minds—reasons that are important to them. – <i>Show how the changes will benefit the residents as well as the providers.</i> – Be prepared with examples of how other facilities have benefited from similar changes, if applicable. – <i>Hear exactly what is being said.</i> – Allow the provider to contribute to the resolution, 	<ul style="list-style-type: none"> – Make the provider (person with the power to change things) feel defensive. – <i>Evaluate, make value judgments, accuse, or indoctrinate.</i> – Appear judgmental in your posture or facial expressions. – <i>Put the provider in a passive position of having to say, “Yes” or “No,” to the solutions you have identified.</i> – Be demanding, threatening,

DO	DO NOT
<p>identify actions, and make decisions.</p> <ul style="list-style-type: none"> – <i>Restate to clarify and show understanding.</i> – Have a backup plan and other alternatives in mind in case the provider does not identify an appropriate plan for resolution. – <i>Know the applicable laws, regulations, or standards, in case you have to use these to reach a resolution.</i> – Stick to the outcome that the resident wants without being sidetracked on other issues. – <i>Be assertive in seeking resolution.</i> – Be unyielding on points that clearly violate laws or regulations. – <i>Persist in seeking resolution. If the provider refuses to agree to an acceptable resolution, know what your next step will be and inform the provider.</i> – Seek a clear statement of resolution actions that will enable everyone to know when the actions have been completed. – Set a time for follow-up to see if the resolution achieved the desired outcome. 	<p>intimidating, or aggressive.</p> <ul style="list-style-type: none"> – <i>Negotiate away any resident’s rights.</i> – Negotiate about a provider’s responsibilities to maintain compliance with the law or regulations. – <i>Bluff or develop your own interpretation of a law or regulation that will not be supported by a regulatory agency.</i> – Become defensive or take things personally even if they are intended that way. – <i>Lose sight of the goal you are seeking on behalf of the resident.</i>

PEP Method: Point, Evidence, Repeat Point⁵

A proven way to reach resolution that works in many types of situations is the Point, Evidence, repeat Point (PEP) method. This method uses the communication skills and problem-solving approaches that been discussed throughout the curriculum modules. PEP is focused, direct, respectful of the other person, and allows you to be the resident’s advocate.

1. Get Your Message across.
 - a. Give your clear statement of the problem.
 - b. Present the evidence you have gathered during your investigation, starting with the most persuasive evidence.
 - c. Restate your statement of the problem.
2. Receive Feedback
 - a. Listen attentively and reflectively.
 - b. Do not interrupt.
 - c. Do not argue.
 - d. Find areas of agreement to incorporate into your argument.

⁵ This section and the following section are from *The Ombudsman Training Manual*, Oregon LTCOP, developed by Wayne Nelson, April 1992, and revised by Ann Fade, 2005.

- e. If the other person responds with defensiveness, it could mean they did not really hear your message or that it was not clearly presented.
3. Repeat the Process: Persistence is the key. It may take 3 – 10 times through this process to change the other’s behavior. Tips:
 - a. Do not back the other person into a corner.
 - b. Allow the other person to retain his or her dignity.
 - c. Make sure the solutions meet the resident’s needs.
 - d. Do not insist that they be cheerful about addressing the problem. You are asking for changed behavior.
 - e. Arrange a time when you will check back with each other to make sure the solution is working.
 - f. Express appreciation.
4. Formulate an Action Plan: The only way you can be sure that your advocacy has had an effect is if you and the other person can agree on an action plan.
 - a. How will the problem be solved?
 - b. Who is responsible for making sure the plan is implemented?
 - c. When will the plan be implemented?
5. Monitor the Implementation of the Action Plan.
 - a. Make sure the resident is satisfied with the action plan.
 - b. Keep checking with the resident to make sure the changes are being made.
 - c. Make contact with staff responsible for implementation.

Example of PEP Method

Ombudsman

Point Mrs. Rodriguez needs another set of dentures because the ones she had when she was admitted have been lost.

Evidence • The charge nurse, Mrs. Downs, says the staff have looked for the dentures, but cannot find them.
 • Her daughter, Mrs. Lopez, filled out a grievance form two months ago when the dentures were first missing, but so far, nothing has been done to replace them. Mrs. Lopez says the last time she saw the dentures was when a staff person was taking them out of the room to clean them.
 • Mrs. Rodriguez does not have a denture cup in her room.

Repeat Point Therefore, Mrs. Rodrigues needs replacement dentures.

Administrator

Point I resent your implication that we have been neglecting Mrs. Rodrigues in any way. I believe it is her fault the dentures are missing. I think she either

hid the dentures in her sheets or crumpled them in a napkin because she has done that with other items. We cannot be responsible for things that residents intentionally misplace.

Ombudsman

Point

I know you are concerned with providing good resident care, and it is clear that Mrs. Rodrigues needs new dentures.

Evidence

- Your staff has not been able to locate the dentures.
- They've been missing for two months, and the last time they were seen, they were in the possession of a staff person.
- Mrs. Rodrigues could not independently remove them from the area of her bed.

Repeat Point

Mrs. Rodrigues needs new dentures because it is a point of dignity for her and because not having them is affecting her ability to eat what she wants.

Administrator

Listen, I don't want a big fight over this. I don't believe we're legally obligated to get her new dentures. But because so much time has gone by, I'll make an exception this once.

Ombudsman

Thank you. I know Mrs. Rodrigues and her daughter will be pleased with your decision.

Summary of Steps in Preparing for a Resolution Meeting

1. Trust your credibility.
 - a. Advocacy: You are the resident's champion.
 - b. Bottom Line: Your effectiveness depends on persuasiveness.
2. Get ready.
 - a. Investigate first.
 - b. Present facts.
 - c. Rehearse.
 - d. Know what the resident, and you, want.
 - e. Write your case. This diffuses feelings and builds your confidence. Make it to-the-point, brief, non-blameful.
 - f. Practice.
 - g. Anticipate objections and have answers for them.
3. Practice your presentation skills.
 - a. Visualize the meeting and what you will do and say.

- b. Be professional.
- c. Select the time and place.
- d. Be consistent in conveying the message correctly, both verbally and nonverbally. How the message is sent is as important as the words.
 - i. Be aware of your body language: eye contact, facial expression, gestures, voice tone, breath.
 - ii. Use assertive language rather than submissive or aggressive language.

Evaluate the Outcome

Once you have implemented a solution to a problem, you must evaluate the outcome to see whether it was actually resolved. This requires checking back with the persons involved to see whether the problem has been resolved to their satisfaction. The purpose of follow-up is to verify that resolution of the complaint has occurred and evaluate your effectiveness.

Complaints should be followed up at one or two regular intervals. This may range from a few days to 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 investigation. At this point, you should determine what went wrong and take further action. If the complaint resolution has been successful and the case remains closed, you can elicit feedback about the process and outcome from the complainant.

There are two factors you should keep in mind while attempting to resolve a complaint:

1. Some complaints cannot be resolved. This can happen in spite of a thorough investigation, unquestionable verification, and a wise and persistent course of action during the resolution process.
2. Complaint resolution is not always clear cut.
 - a. In some cases, a problem will go away, and then reappear.
 - b. In other situations, some parts of the problem will be taken care of, but not others.
 - c. In some instances, the complainant will not be completely convinced that the situation is as good as it should be. At other times, the complainant will say that everything has been solved, regardless of your desire to pursue the matter further
 - d. Most cases become less “black and white” the more they are examined; so it is possible that you will handle many cases that you can call only partially resolved.

Resolution in Assisted Living and Board and Care Facilities

Although the problem solving skills and approaches that have been discussed are generic to LTCO work in all settings, some adaptations may be necessary when working in assisted living and board and care facilities. Such facilities have fewer regulations and different staff and resident dynamics than nursing facilities. An excellent resource to assist you in adapting the problem-solving process to these types of facilities is, “Translating Nursing Home Ombudsman Skills to Assisted Living: Something Old, Something New,” by Robyn Grant. You can get this resource from the National Long-Term Care Ombudsman Resource Center or download it from the Center’s website: http://ltcombudsman.org/ombpublic/251_1340_8674.cfm.

IV. COMMUNITY RESOURCES AND SUPPORT SYSTEMS

You may frequently encounter problems that require services that you, as an ombudsman, cannot provide, or that require knowledge you do not have. You need to be aware of the state and local community resources and support systems that are available to meet residents' needs in these areas. A few such resources and systems are discussed in this section. Every state has additional resources that are not contained in this module. Consider this information as a beginning point in your list of resources.

Because the names and locations of some of these resources vary from state to state, you need to identify the equivalent resource in your state and any regional or local counterparts in your service area. A few of the key resources in your state are listed on the National Ombudsman Resource Center's website at: http://ltombudsman.org/static_pages/help.cfm. Just click on your state and a list will appear with information about various agencies as well as a list of the regional ombudsman programs in your state. This link is a good reference if you need to contact a LTCO or agency in another state while you are working on a complaint case or need to give a family member contact information for a LTCO in another state.

The State Agencies on Aging

The State Agency on Aging provides various services to the elderly. As an ombudsman, you should make a point to familiarize yourself with the programs provided by this agency. It is charged with planning, advocacy, grant making and administration, and inter-agency coordination on elders' issues

Adult Protective Services (APS)

Adult protective services programs respond to reports of abuse or neglect of persons aged 19+ who cannot protect themselves because of physical or mental impairment. APS acts to prevent, remedy, or halt abuse or neglect while helping the adult maintain the maximum possible degree of personal freedom, dignity and self-determination. In some states, APS serves elders regardless of the setting. In other states, APS serves only elders who are not living in nursing facilities. You need to know who is served by the program in your state and when and how to make referrals to APS as a LTCO.

Insurance Counseling Program

The Insurance Counseling Program is located in different structures and has different names from state to state. In all states, this program answers questions about health and long term care insurance, Medigap policies, and Medicaid and Medicare benefits.

Legal Services

Legal assistance for the elderly may be provided by a number of sources: private attorneys, legal services programs, and the agency for protection and advocacy, whose name differs from state to state. Eligibility may be based on the type of problem, income, or other factors. The type of help available will also vary ranging from legal advice to actual representation in a suit against a facility.

Community Mental Health Centers

These centers may provide a variety of services to residents and their families. The level of services appears to vary greatly from place to place. Some centers have regular programs to provide counseling or treatment to residents. In other areas, assistance may come only on the basis of a

direct request from a resident or family member; or the center may not serve individuals living in nursing facilities. You should contact the local mental health center in your area to find out what services they provide.

Civic Groups

Virtually all the popular civic and business organizations have community service programs that include some type of assistance to elders. Some have specific projects that work to purchase wheelchairs, eyeglasses, or other items needed by nursing homes residents but not always covered by Medicare or Medicaid.

Church and Religious Groups

These groups may provide assistance in two important ways. First, many such groups visit facilities on a regular basis, assist with activities, and generally provide a positive presence in the home. Second, they often can provide spiritual counseling for residents. As a LTCO, you should take care not to impose your own religious beliefs on a resident; however, it is always appropriate for you to refer someone who expresses concerns in this area.

Other Organizations

The American Dental Association encourages its members to provide free engraving of dentures for the elderly. Your local dental association can tell you if this service is available in your area.

Support groups exist for individuals and families affected by a variety of diseases. For example, the Alzheimer's Association has local chapters in many areas. These groups may be valuable sources of information or assistance. In recent years, this association has developed a series of practice recommendations and training programs applicable to nursing facilities and assisted living facilities. For more information about this disease or these resources, go to their website, www.alz.org or to http://alz.org/qualitycare/dementia_care_pract.asp for the care resources.

Resource for Mentally and Developmentally Disabled Residents

You will encounter a number of residents with mental or physical disabilities. Although some residents will be older, many will be younger, disabled persons. Protection and advocacy services provide legal counsel on voluntary and involuntary admission and/or commitment to treatment facilities, legal capacity, change of status, transfer, discharge, and enforcement and protection of the rights of developmentally disabled and mentally ill persons. This agency can be called on when problems arise dealing with these issues. Because the name of this agency varies from state to state, you will need to identify the agency that serves your state.

Alternatives to Nursing Homes

You will encounter residents who want to leave the nursing home. Although many of these persons will need nursing home services and have no other place to receive such care, many residents do improve to the point that they are capable of living in alternative housing for elders. States are rapidly increasing home and community based services in order to keep individuals in the community longer. You should be familiar with the alternatives that are available in your community. These may include: adult day care, independent living apartments, congregate housing, assisted living facilities, and continuing-care retirement centers. Knowing the general eligibility requirements for these alternative services is important.

V. WHAT AN ADVOCATE SHOULD KNOW⁶

A good advocate must be knowledgeable about long-term care facilities, conditions, and issues. There is no substitute for current, factual information to support your advocacy efforts. A good advocate knows the following information.

Facilities in the Immediate Community

- What kind of facilities are they? What level of care do they provide? Do they participate in Medicaid or Medicare programs?
- Who lives there? The very old and very ill? Young people? Mentally ill? Disabled? How many beds does each facility have?
- What kinds of special programs does the facility offer? Rehabilitation? Community interaction? Physical therapy? Mental health services? Resident council? Family council? Does the facility provide the services that it advertises in brochures, telephone books, and the newspaper?
- Does the facility have a dementia special care unit? If so, what makes the unit “special”?
- What is the general atmosphere of the facility? Warm, friendly, active? Cold, quiet, sterile?
- Which facilities offer special model programs that could be duplicated by others?
- Which facilities encourage the public to visit and help?
- What kind of training is provided for the nursing assistants? How are the working conditions for workers?
- How does the facility measure up in meeting standards? What do inspection reports say about conditions?

Regulations for Facilities

- What are the regulations and state licensure standards for nursing homes and assisted living facilities?

Regulatory Agencies

- What state agencies have jurisdiction over facilities, e.g., Licensing and Certification and the Assisted Living Homes Licensing?

⁶Adapted from materials produced by the National Citizens’ Coalition for Nursing Home Reform.

The Difference Between Medicare and Medicaid programs

- What benefits do they offer?
- What types of facilities do they certify?

Who Makes Decisions about Facilities in Your Community

- Who owns the nursing homes and the assisted living homes? Are doctors, legislators, or others involved in ownership?
- Are there “chain” facilities in your community? Where is the “home” office of the chain?
- Who is on the governing board of the nursing home? This information should be available from the Health Facilities Licensing and Certification.
- Is the administrator the owner or part owner? Does the owner own several nursing homes?
- Are there any independent citizens’ groups working on nursing home or assisted living issues in your community? Can they provide volunteer services or support?

Your Community Resources

- Who provides mental health services to residents in long term care facilities?
- What alternatives to institutionalization exist in your area? Are there waiting lists for such programs or services?

VI. WORKING TO CHANGE THE SYSTEM: The Larger LTCO Role

Although the major day-to-day job of the LTCO is to resolve individual problems, it is important that you have some knowledge of the broader issues that affect facilities and the long term care system in general.

Achieving Long Range Goals

An important part of your work as an ombudsman is to achieve long-range goals for improving the system. There are several reasons that efforts directed toward long-range changes in the system are important.

- Improved care for all residents is a major reason why the ombudsman program was created. Issue work is work that allows an ombudsman the opportunity to work for all residents, not just the relatively small number of people who register complaints.
- Solving individual problems, while important, is often a “band-aid approach” to dealing with the inadequacies of the long term care system. An ombudsman can become so busy putting out brush fires that there is never enough time to plan how to fight the big battles.
- Working on issues can at times be more satisfying. This is not to say that the individual’s problem should be put aside in favor of a “fun project,” or that resolving an individual case is not satisfying. Working exclusively on individual cases can be frustrating, however, because it often does not allow time to step back and take a look at the larger picture. When too many individual cases are piled on top of one another, an ombudsman can feel weighed down and be more susceptible to “burnout.”

As discussed earlier, you will encounter repeat complaints in some facilities as well as similar complaints that recur in many different homes. Such system-wide or repetitive problems may indicate a need to seek improved state legislation or enforcement of existing legislation, or to pursue other remedies that appear likely to protect the rights of all residents. It is important that you identify issues that are affecting all residents and consider steps that can be taken to change the system for the benefit of all residents.

Advocacy

Your roles in solving individual problems include those of investigator, mediator, and negotiator. In working on system issues, you are fulfilling the role of ombudsman as advocate. It is a process by which you seek to influence those who make decisions to do so in ways that improve the quality of life and care for all residents.

Advocacy means using your voice on behalf of some person(s) in favor of some cause.

The skills you use as an issues advocate are much like those you use to solve complaints. You must be able to gather facts and information and to plan and carry out actions.

You will need to think of creative ways to involve social services agencies, assembly or council representatives, state and federal legislators, the medical community, the legal community, and the business community.

Once other individuals and groups are involved, their interest in solving problems in long term care facilities should increase. With this interest developed, powerful individuals can be called upon to intervene when problems arise. Furthermore, the very fact of this interest will tend to keep facilities on “good behavior.”

A law is only as good as its enforcement.

Legislation is sometimes the most effective way of addressing problems in long term care facilities. Although effective laws can occasionally be adopted quickly and quietly, major reform legislation requires a great deal of organizing. Much effort is required and several months or years will pass, from the first steps of drafting major legislation until it is signed into law and then fully implemented by promulgating rules. Remember that any law is only as good as its enforcement.

Ombudsmen cannot get legislation adopted by working alone. Coalitions need to be formed to bring together as much support as possible. Organization in the community among senior citizen groups, unions, churches, social service providers, and consumer organizations will help demonstrate to the legislature that there is citizen support for a legislative initiative. Nursing home operators and their associations have a great deal of political influence. This power must be understood and sometimes countered before laws that benefit nursing home residents become reality.

Such groups and coalitions have helped to enact the state laws on ombudsman access and residents’ rights. Organizations such as the AARP are involved in working for improvements in the quality of nursing home care.

On the national level, the National Citizens’ Coalition for Nursing Home Reform, located in Washington, D.C., is an extremely effective voice for residents. NCCNHR (nick-ner), as it is commonly known, is made up of residents, advocates, concerned citizens, LTCO, and others who share a desire to improve nursing homes. This organization is primarily responsible for organizing the coalition including nursing home associations, health care professionals, unions, consumer groups, and many others that lobbied Congress to enact the Nursing Home Reform Amendments of 1987. This piece of legislation is perhaps the most sweeping change in nursing home regulation in history.

The Nursing Home Reform Amendments of 1987 is perhaps the most sweeping change in nursing home regulation history.

Ombudsmen should be aware that they are part of a network of advocates and should stay informed about state and national issues that affect long-term care residents.

Appendix

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The Problem-Solving Process: Resolution Guidelines for Practice

Developed by Sara S. Hunt, Consultant

A Quick Reference for Problem Solving

The following list of questions is a “ready-reference” to use in thinking through issues and how to proceed. This list is a continuation of “The Problem-Solving Process: Investigation Guidelines for Practice,” contained in the Investigation module of this curriculum. It is not a comprehensive list nor is it rigid in its order of steps. It’s a guide to help clarify thinking and to ensure that you haven’t overlooked a key part of the problem-solving process. As previously mentioned, there will be times when problems can be quickly addressed. Resolving problems will not always require such a detailed analysis and resolution process as the following includes.

You can also use this reference to guide your conversations with residents and family members who turn to you for advice regarding working through issues on their own.

Stage 2: Analysis and Planning

Analysis

A. Why did the problem occur?

- Was there an oversight on the part of the facility staff?
- Was there deliberate retaliation against the resident?
- Is the problem related to policies or procedures of the facility?
- Are there communication problems or trust issues 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, e.g., Medicaid vs. private pay?

B. What justification or explanation does the facility offer for the problem?

- There is no problem.
- The problem is the resident or the resident’s family member.
- We are doing all that the regulations require.
- What the resident wants is beyond the terms of our contract or licensure requirements.
- We aren’t paid enough to offer that type of service.

C. Who or what is responsible for the problem?

- Facility staff failed to perform their duties properly.
- State/federal regulations are lax or confusing regarding the issue(s) raised by the complaint.
- Third-party reimbursement programs may not pay for certain procedures, services or items.
- Independent professionals, e.g. doctor, physical therapist, may not leave clear instructions for resident and staff to follow.
- The resident or family may be contributing to the problem.

Consider possible solutions, keeping the outcome the resident wants as your focus.

- What might resolve the problem?
- What will it take to keep it from recurring?
- How many possible solutions can be identified?

Identify potential obstacles to resolution

- What are potential barriers to achieving the outcome the resident wants?
- How might each barrier be avoided or overcome?

Stage 3: Resolution And Follow-Up

Choose an approach

- What strategies might be effective in getting the outcome the resident wants?
- Who will need to be involved in determining and agreeing to the outcome?
- What information needs to be provided?
- Seek feedback and assistance from the resident before proceeding with resolution.
 - Discuss your thoughts about approaching resolution with the resident.
 - Make adjustments based upon what the resident says.

Pursue resolution: act to resolve the problem

- Move forward with the plan you and the resident have developed.
- Be flexible with alternatives as long as they are acceptable to the resident.
- Obtain a resolution that is clear regarding what will happen, when, and who will be involved.
- Be sure the resident understands and agrees with the resolution.
- Know who to contact if the resolution is not adequately implemented.

Evaluate the outcome

- Check back with the resident to evaluate the outcome.
- Is the problem solved? Is it partially solved?
- If not, look for new approaches or information, etc., and start again.
- If the problem cannot be resolved within the facility, consider other avenues for resolution.

Program Guidance: Working with Residents with Opposing Views

Developed for the West Virginia LTCOP by Sara S. Hunt, Consultant

I. BACKGROUND

Ombudsman Responsibilities

Long term care ombudsmen (LTCO) are mandated to resolve complaints on behalf of residents and to represent the interests of residents before governmental officials. Federal and state laws are clear that the ombudsman's responsibility is to *residents*. Dilemmas sometimes arise in situations where the needs and rights of one resident seem to infringe upon those of other residents. This paper offers guidance for ombudsmen in working through some of these situations.

WV LTCOP Policy Manual Outline

- A. Where representing one resident puts other residents in jeopardy or where representing one resident whose interests are adverse to another resident(s).
1. When it appears that the ombudsman is being asked to represent one resident whose interests are potentially adverse to those of other residents, the ombudsman shall engage in preliminary fact-finding before deciding to investigate the complaint. The ombudsman may review resident assessment, care plan and any intervention on the part of the facility before reaching a decision. The ombudsman shall document such facts in the record and shall notify the State Long Term Care Ombudsman, as required by the Code, if he or she decides not to investigate the case.

Code of Ethics for LTCO⁷

This code contains the following provisions directly relevant to resident issues.

1. The Ombudsman provides services with respect for human dignity and the individuality of the client unrestricted by considerations of age, social or economic status, personal characteristics or lifestyle choices.
2. The Ombudsman respects and promotes the client's right to self-determination.
3. The Ombudsman makes every reasonable effort to ascertain and act in accordance with the client's wishes.
4. The Ombudsman acts to protect vulnerable individuals from abuse and neglect.

⁷Developed and adopted by the National Association of State Long Term Care Ombudsman Programs.

Facility Responsibility

Certified nursing facilities are required to meet the needs of *each* resident. While there are many provisions of the law and regulations that list specific areas that must be addressed for *each* resident, there are two primary provisions that encompass all of the detailed ones. They are known as quality of life and quality of care.

Quality of Life

*A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.*⁸

Quality of Care

*A nursing facility must provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with a written plan of care which...*⁹

II. OMBUDSMAN ROLE IN ISSUES OF RESIDENTS WITH OPPOSING VIEWS

The focus of this paper is dilemmas between, or among, residents with opposing needs or desires. Situations which can be dealt with by engaging both residents in a problem-solving discussion are not included because they are typically more straightforward to resolve.

Working on Behalf of All Residents

Obviously LTCO represent the resident's perspective. To maintain credibility in the ombudsman role, LTCO must avoid *taking sides*, being viewed as playing favorites. The LTCO goal is to work things out for the benefit of all residents to the greatest extent possible.

Safety Issues

In working to achieve what residents want, LTCO must remember that facilities have to comply with the Life Safety Code and other safety requirements for the benefit of everyone. Ombudsmen also know that residents, like everyone else, have the right to take informed risks and to make decisions others might view as unsafe. Dilemmas arise when one resident's actions threaten the health and safety of other residents.

Legal Issues

Ombudsmen do not represent residents in seeking to pursue illegal activities.

⁸USC Vol. 42, §1395i-3(b)(1)(A), §1396r(b)(1)(A).

⁹USC Vol. 42, §1395i-3(b)(2), §1396r(b)(2).

III. GUIDANCE

Core Principles

The following LTCOP principles are understood as always applicable and will not be repeated for each situation discussed throughout this paper.

- Empower others: LTCO initially provides information and encourages resident or complainant to act on their own behalf with minimal LTCO involvement
- Confidentiality: LTCO does not reveal the identity of resident without permission
- Begin with the resident: LTCO works on behalf of the resident. When a complaint is referred by someone else, the LTCO determines, to the extent possible, what the resident wants before intervening.

Avoid

Long Term Care Ombudsmen need to avoid the following in deciding how to proceed in cases where there are opposing views between residents.

- Taking a position that is, or may be perceived as, saying one resident's rights are more important than those of another resident.
- Letting the LTCO's values and biases influence the resident's ability to access LTCOP services.
- Deciding that what one resident wants is "out of bounds" without pursuing possibilities.
- Having a LTCO represent each resident in a dispute, i.e. two ombudsmen and two residents. The LTCOP works on behalf of all residents seeking solutions which satisfy both, or all, residents.

Application

If there is an immediate, life threatening crisis, the facility needs to respond to protect all residents. This guidance applies to other types of situations where a resident wants ombudsman assistance.

Typical LTCO Process in Cases Where Residents Have Opposing Views

The following steps apply to all cases. They are not repeated in the specific situations that follow. This outline represents typical questions LTCO might ask, or try to determine, in order to fully understand the dynamics underlying the opposing perspectives.

- LTCO thoroughly investigates the entire situation to gain facts including the perspective of residents involved in the dispute (or residents whom someone alleges are suffering or will potentially be harmed by another resident) as well as the facility staff's perspective. As appropriate, include an examination of:
 - The perspective of each *resident*. What does each resident *really* want? Is the stated issue, the *real* one or does the resident really want or need something else and the behavior or demand is a signal for attention to an unmet need? Get to the bottom line: what is most important about this situation to each resident? Can outside resources be utilized to help facility staff identify and meet the needs of the residents?
 - What has the *facility* done to understand and accommodate the needs of all affected residents? Has more than one attempt at resolution occurred? Does the facility understand the underlying dynamics?
 - How has *facility staff* communicated with residents who are affected by one resident's

needs or desires?¹

- Been respectful of resident's confidentiality?
 - Listened to and understood the concerns of other residents?
 - Explained what the facility is doing to accommodate everyone?
 - Asked other residents for ideas regarding resolution?
- Work to resolve the issue in a way that upholds, to the greatest extent possible, individual choice and preference as well as other rights for *all* residents.
- This might entail some short term, interim solutions, until other factors can be analyzed or put in place.
 - Promote a dialogue with all affected residents regarding residents needs and rights and facility responsibility.
 - Consider the perception of the LTCOP that may occur as a result of the resolution of this issue. If necessary, take steps to assure other residents, family, or staff, that the LTCOP serves all residents, no one individual's rights are more important than those of another person. Education about rights, good care practices, or facility responsibility, might be necessary. This might also be a preventive step to avoid future conflicts and misunderstandings.
 - Consult with the Regional Ombudsman Supervisor, the State LTC Ombudsman, and/or the Ombudsman Support Attorney, as appropriate in working through these issues.
- In ALL cases, clearly document your ombudsman activities.

¹Any issues discussed at a resident council meeting or with other residents need to protect the confidentiality of affected residents. LTCO avoid specific reference(s) to a resident at the council meeting but encourage staff to meet with concerned residents away from the meeting in a one-on-one setting.

Situational Dilemmas

Situation	Considerations for ombudsman
<p>Competent resident insists on violating facility policies or state or federal regulations regarding safety or payment of facility bills</p>	<ul style="list-style-type: none"> • Has the policy/reg been explained to resident in a way that the resident understands? • Has the facility tried to understand the resident's desire? Has more than one staff person talked with and/or observed the resident? Example: Is it really an issue of smoking in his own room or is it an issue of having no control over basic, daily patterns and routines? Is it a need to have some recognition and respect as an <i>individual</i>? • Has the facility tried several alternate ways to accommodate the resident's desire while protecting other residents? • Has the ombudsman determined that the resident is deliberately breaking the policies and/or regulations? • Does the resident understand the consequences of continuing to violate these policies and/or regulations, e.g. involuntary discharge? • Are there other approaches or resources that the ombudsman can identify to bring into this situation? <p>⇒ At some point, the ombudsman might need to tell the resident that no further ombudsman action can be taken. In the future, if the resident has a different issue, or changes his mind, the ombudsman will be responsive.</p>
<p>One resident's practices are offensive or intimidating to other residents. These practices do not violate policies, regulations, or laws. Such practices might include music, videos, language, visiting with friends in the facility.</p>	<ul style="list-style-type: none"> • What has the facility done to address this issue? • Why is the resident engaging in this behavior? Past patterns? For enjoyment? For control over basic, daily patterns and routines? A need to have some recognition as an <i>individual</i>? Sees nothing wrong, offensive, or intimidating in it? Expressing anger with her life situation? • Determine specifics regarding what other residents find intimidating or offensive about this resident's practices. <ul style="list-style-type: none"> • Is it a cultural difference? • Is it a values difference? • Is it a stereotype? • Is it the noise level? Time of day? Size of the group? • Is it fear for personal safety? • Does the resident understand how her practices affect other residents? • Seek to resolve: <ul style="list-style-type: none"> • Inform resident that ombudsmen serve <i>all</i> residents;

Situation	Considerations for ombudsman
	<ul style="list-style-type: none"> • Discuss creative solutions. • Bridge the gap in understanding by promoting a dialogue between, or activities with, this resident and others if appropriate. OR support the social worker or activities professional in doing this. <ul style="list-style-type: none"> • if another facility could better accommodate this resident, inform the resident that options are available. • try to find solutions that meet the needs of all residents to the greatest degree possible. • Systems advocacy: <ul style="list-style-type: none"> • If this type of situation occurs several times, analyze to determine if a regional or statewide intervention is needed. • If so, consider establishing a coalition to develop and implement strategies to address the issue. • Inform and involve the State LTCO in this.
<p>Interaction between residents is viewed as inappropriate by staff, other residents, or family members.</p>	<ul style="list-style-type: none"> • How do the involved residents view the situation? • Determine <i>who</i> has a problem. • Why is the interaction deemed inappropriate? • Cultural difference? • Values difference? • Stereotypes? • Noise level? Time of day? Location? • Safety? • Resident consent or decision-making capacity is questioned? • Marital status? • Difference in decision-making capacity? Cognitive ability? • What are the underlying needs of these residents? • How are their needs being met? How might their needs be met? • How does this interaction affect each resident's family relationships?