

COVID-19



The National **Long-Term Care Ombudsman** Resource Center

Recovery and Reentry Resources

For Long-Term Care Ombudsman Programs



Complaint Investigation and Resolution During COVID-19: Complaint Scenarios and Documentation

Provisions in the Older Americans Act (OAA) state that the Long-Term Care Ombudsman Program (LTCOP) shall “identify, investigate and resolve complaints” regarding “action, inaction, or decisions that may adversely affect the health, safety, welfare or rights of the residents” made by, or on behalf of, residents.¹ Ombudsman programs are to investigate and resolve complaints, with maximum resident participation in the process, and with a goal to resolve the complaint to the satisfaction of the resident or complainant.

Complaints received by the program are often more complicated than the examples below; however, the purpose of this resource is to provide advocacy strategies and NORS coding examples in response to common complaints during the COVID-19 pandemic. In addition to the advocacy strategies discussed in this section, program representatives are to follow applicable state Ombudsman program requirements regarding safety, visits, communication with your supervisor and/or State Ombudsman, complaint handling, and complaint documentation (e.g., selecting a checkbox to identify that it is COVID-19 related, include COVID-19 in the case notes for future word searches) during the pandemic.²

Refer to the three Administration for Community Living (ACL) NORS tables, NORS training materials, and frequently asked questions (FAQs) available on the NORC [website](#) for additional information regarding coding complaints and activities.

Scenario 1

Ms. Jones calls the Ombudsman program to complain that the Sandy Shore Nursing Home staff will not allow her to visit with her mom during the COVID-19 pandemic. Ms. Jones has attempted to visit with her mom by phone without much success. She says that the staff are too slow in taking a phone to her mom or they never take the phone to her. Once connected her mother often cannot hear her and staff do not assist with the volume. Ms. Jones believes that the staff do not like her and are purposefully not assisting with calls with her mom. Ms. Jones wants to visit her mother in-person since the state is starting to “reopen,” but the facility will not allow her to visit in-person.

¹ Older Americans Act of 1965. Section 712 (a)(3)(A)

² In this resource the term “representative” means paid or volunteer “representatives of the Office of State Long-Term Care Ombudsman” as defined in the State Long-Term Care Ombudsman Program Final Rule, Section 1324.1 Definitions.

Investigation and Resolution Considerations

- Review current federal and state guidance regarding visitation to confirm whether in-person visits are allowed at the time of her complaint. Share information regarding current federal and state guidelines with Ms. Jones.
- Follow your state program policies and procedures for connecting with the resident in-person or by phone, email, or video call. Contact the resident to confirm that she wants to talk with her daughter, wants your assistance with connecting them, and provides informed consent for you to act on the complaint.
- Contact the nursing facility Administrator to ask about their current visitation protocols, ask why in-person visitation was denied for Ms. Jones and her mother, and discuss the issues Ms. Jones said she experienced with phone calls. For future reference, if you do not have the information already, ask the Administrator for the name and contact information for the head of the family council.
- The Administrator says that despite federal and state guidance they have not started in-person visits yet. She explains that they are in the process of creating a safe outdoor space for visits, finalizing their visitation protocol, and will share the process with residents, families, and other visitors once it is final. She assures you that she will speak with the staff about assisting with phone calls in a timely manner, and will work with Ms. Jones and her mother to set a routine schedule where staff will assist with calls, and will make sure the volume is sufficient for Ms. Jones' mother.
- Suggest additional ways that the facility can enhance resident access to their family members and others, such as:
 - Scheduling calls between residents and their family, ensuring the location in the building is suitable for good phone connections.
 - Identifying a staff member or facility volunteer to assist with coordinating communication between residents and families.
 - Setting up an outdoor area where visitation can occur.
 - Scheduling window or glass door visitation.
 - Apply for federal and/or state funds to purchase communicative technology (e.g., tablets, portable phones) and accessories (e.g., headphones for individual use, assistive/adaptive equipment, protective covers that allow for cleaning and disinfection). Refer facilities to this [memo](#) from the Centers of Medicare and Medicaid Services (CMS) for examples of how facilities can assist with connecting residents and how to apply for Civil Monetary Penalty (CMP) funds to purchase communicative technology.
- Follow-up with the resident and her daughter, Ms. Jones, and provide an update based on your conversation with the Administrator. Give Ms. Jones the name and contact information for the family council and explain how joining (or helping start) it can be beneficial to both her and her mother.
- During the update call, Ms. Jones said she is disappointed in-person visits have not resumed but is pleased that they will institute a process soon. She shared that she was pleased that the staff contacted her after you spoke with the Administrator to schedule a time for regular calls with her mother.
- In a follow-up call a week later, Ms. Jones shares that the facility followed through and that she now has calls with her mom on a routine schedule.

- Inform Ms. Jones that you are closing this case but encourage her or her mother to contact you if issues with phone calls occur again or the facility does not share information about in-person visitation soon.

Complaint Documentation

Complainant: 02 – Resident representative, friend, family
 Complaint Code(s): D07 – Visitors
 Setting: 01 – Nursing Facility
 Verification: 01 – Verified
 Resolution: 01 – Partially or fully resolved to the satisfaction of the resident, resident representative, or complainant
 Referral: 06 – No referral was made

Scenario 2

Based on federal and state guidance, your state has started to allow in-person, indoor visits with residents in long-term care facilities. Following your state policies and procedures you called Amazing Acres Nursing Home to ask about their visitation protocol and staff said visits are permitted. However, when you arrive at the facility to visit with residents the staff do not allow you to enter the facility.

Investigation and Resolution Considerations

- Review state guidance regarding reopening facilities and visitation and relevant CMS guidance to confirm whether in-person visits are allowed before contacting the administrator.
- [CMS revised \(4/27/2021\) guidance letter](#) to state survey agency directors advises the following:
 - o Core Infection Prevention Practices remain the same – screening for symptoms of infection, hand washing, wearing of masks, physical distancing, and cleaning and disinfecting high-frequency touched areas.
 - o Outdoor visitation is preferred.
 - o Facilities should allow indoor visitation at all times and for all residents (regardless of vaccination status), except for a few circumstances when visitation should be limited due to a high risk of COVID-19 transmission (note: compassionate care visits should be permitted at all times). There are recommended exceptions for indoor visits which include:
 - Residents status of being vaccinated or not and the county positivity rate,
 - Residents with confirmed COVID-19 and under transmission-based precautions, and
 - Residents in quarantine.
 - o Facilities may take the following into consideration when deciding on indoor visitation rules:
 - Size of the facility and numbers of people visiting at any time.
 - Scheduled time and length of visits.
 - Limitation of visitor movement within the facility.
 - Designated visitation room/area instead of visits in residents' room especially if rooms are shared.
 - Suspension of indoor visits if there are new cases of COVID-19 among residents and/or staff.

- Offering of visitor testing by the facility and encourage visitors to be tested prior to visits.
- Compassionate care visits should be allowed at all times.
- Indoor visitation by Ombudsmen may not be allowed without reasonable cause.
- Speak with the administrator and explain that staff said in-person visits were permitted when you called before arriving. If the administrator denies access, explore the reasons why (e.g., a current or recent outbreak of COVID-19, a mandate from corporate).
- If the Administrator continues to deny access to visit with residents inside the facility due to current infectious disease protocols in place for COVID-19, contact the local public health authority and/or state survey agency to confirm whether restricting in-person access was appropriate.
- Ask how to set up visits with residents outside the building if visits inside the building are currently restricted.
- Inquire about resident access to electronic devices (e.g., iPads, tablets, smart phones, computers) and staff assistance to facilitate virtual contact.
- Ask about their visitation process (e.g., can family members, friends, religious leaders, and others visit in-person; face coverings and/or personal protective equipment (PPE); scheduling visits; how they inform residents, families, and others of the process).
- After speaking with the administrator, she agreed to scheduled visits with residents in a designated space outside of the facility until visits inside the facility are permitted.
- You work with the facility to coordinate outdoor visits and meet with three residents during your next visit.

Note: Consult your supervisor and/or the State Ombudsman if it appears the facility is denying all access without a valid reason and interfering with the duties of the Ombudsman program to determine next steps.

Complaint Documentation

Complainant:	03 – Ombudsman program
Complaint Code(s):	B03 – Willful Interference
Setting:	01 – Nursing Facility
Verification:	01 – Verified
Resolution:	01 – Partially or fully resolved to the satisfaction of the resident, resident representative, or complainant
Referral:	06 – No referral was made

Scenario 3

You receive a call from Mr. Ortega, a resident of Lakeside Nursing Home. He says that the facility did not let him spend his COVID-19 stimulus check (federal economic incentive payment). According to Mr. Ortega they kept it for their own use. Mr. Ortega manages his finances and provides consent for you to investigate his concerns.

Investigation and Resolution Considerations

Note: The COVID-19 stimulus checks belong to residents and they can spend them how they choose. Review and share this [CMS press release](#) regarding a resident's rights to retain their stimulus checks. The fact sheets from the National Center on Law and Elder Rights (NCLER) provide additional information about [stimulus check, residents' rights, and Medicaid eligibility](#) and [stimulus checks and representative payees](#).

- Ask Mr. Ortega if he has any written information from the facility about the stimulus check. If he has documentation, ask him if he can take pictures of them and send them to you or show them to you during a video call. If he is unable to send or share copies of the documents, follow your state policies and procedures for an in-person visit to see the documentation or (with his permission) ask for staff assistance to send copies of the documents.
- If he does not have documentation, ask for his informed consent to review applicable records and information from the facility (if necessary). Document his consent according to your program policies and procedures.
- Contact your primary facility staff contact or the Administrator to ask about Mr. Ortega's stimulus check funds.
- The facility explains that the funds are in Mr. Ortega's account and have not been spent, but they acknowledge that they have not shared information with him about his right to access those funds and how he can do so. Remind the facility of their responsibility to provide regular financial statements of any funds the facility is holding for residents.
- You facilitate a call between the facility staff and Mr. Ortega to ensure he understands that his funds are available and how to access the money.
- Share [NCLER's consumer fact sheet](#) with Mr. Ortega and discuss how he may wish to use these funds. Remind him that if the facility denies him access to the funds, spends them without his permission, or requires him to give the money to them he can call you for further assistance, report the complaint to the state survey agency, and/or contact the [State Attorney General](#).
- To see if this is a widespread issue, ask other residents in the facility if they have any concerns regarding their stimulus check and if they are receiving regular financial statements.

Complaint Documentation

Complainant: 01 – Resident
 Complaint Code(s): A04 – Financial exploitation
 Setting: 01 – Nursing Facility
 Verification: 02 – Not Verified
 Resolution: 01 – Partially or fully resolved to the satisfaction of the resident, resident representative, or complainant
 Referral: 06 – No referral was made

Scenario 4

Mrs. Taylor's daughter, Sharon, calls you because her mom was moved from her original nursing facility to another facility about 30 miles away. Both facilities are owned by the same company. Sharon said that the facility told her that moving her mother was necessary for her safety during the pandemic as they were making her nursing home a COVID-19 unit for those residents presumed or testing positive for COVID-19. She would like to have her mom moved back to the original facility that is closer to her.

Investigation and Resolution Considerations

- During the initial discussion with Sharon, share the current federal and state guidance and requirements regarding temporary transfers and cohorting. There are two CMS guidance letters that focus on transfers and discharge notices to residents. The first guidance was in reference to temporary waivers provided during the national pandemic. The second guidance rescinds the waiver of transfers and discharges without proper notice to residents. [CMS revised guidance regarding emergency waivers](#) granted to facilities during the pandemic. As of April 8, 2021, CMS rescinded these three waivers: advance notice requirement prior to discharge or transfer for the

purposes of cohorting; time requirements for baseline and comprehensive care plans; and timeframes for the submission of Minimum Data Set (MDS). The waiver of required CNA training was not rescinded.

- Contact Mrs. Taylor to determine if she agrees with her daughter, can communicate her wishes, and provide consent to act on the complaint. If Mrs. Taylor can communicate her wishes, follow her direction.
- If Mrs. Taylor is not able to give permission or communicate her wishes, determine the daughter's status as an agent under a power of attorney, legal guardian, or other authority to act on behalf of her mother.
- Investigate the circumstances of the move and what notification and assurances, if any, the facility made to residents and families about returning to the original facility. Determine whether the original facility can safely receive the resident back at this time or sometime in the future (e.g., will facility allow her to return to her room, will she have the same roommate). Address any other concerns raised by the resident and her daughter. Ensure that the facility staff shares their plans regarding the temporary transfer and return to the original facility with Mrs. Taylor and her daughter.
- Provide information on resident and family councils as another way to stay informed on issues related to the transfer.
- Both Mrs. Taylor and her daughter appreciated the information regarding the facility's plans and despite wanting to move back as quickly as possible they understand why the move occurred and will wait to return.
- Remind Mrs. Taylor and Sharon to contact you if they feel the facility is not providing adequate information, the return to her original facility does not happen as planned, or if they have any other concerns.

Complaint Documentation

Complainant:	02 – Resident representative, friend, family
Complaint Code(s):	C03 – Discharge or eviction
Setting:	01 – Nursing Facility
Verification:	01 – Verified
Resolution:	01 – Partially or fully resolved to the satisfaction of the resident, resident representative, or complainant
Referral:	06 – No referral was made

Scenario 5

You receive a complaint from a resident of a residential care community (RCC). The caller identifies herself as a resident of Harmony Street Assisted Living, but says she wants to remain anonymous. The complainant states that the facility is not providing enough personal protective equipment (PPE) for staff to use while caring for residents. She said staff are using and reusing disposable face coverings since PPE is not available. She shares that there have been confirmed cases of COVID-19 among residents and staff.

Investigation and Resolution Considerations

- Inform her that she could contact the state survey agency to file a complaint about infection control and that she could do so anonymously. Provide her with the contact information.
- Consider facility requirements and any specific PPE support that the state is providing to residential care communities.

- Offer to investigate the complaint without revealing her name or any identifying information and inform her of the investigative steps you would like to pursue (including filing a complaint with the state survey agency). Assure her that if she gives informed consent you will investigate it from the perspective of the issue potentially impacting the safety and health of all residents.
- After receiving informed consent, consult with your supervisor and/or State Ombudsman to see if your current state policies and procedures allows for an in-person visit to verify the lack of adequate PPE for staff.
 - o If not, attempt to contact other residents or family members to ask about PPE. If another resident, family member, or staff member also shares that staff lack adequate PPE speak with the Administrator/Manager about the concerns you've received from multiple individuals (without sharing their names or any identifying information) and ask about how and when adequate PPE will be provided.
 - o If you can visit in-person, observe staff, and speak with residents about PPE. If you verify a lack of PPE, speak with the Administrator/Manager about your observations and ask about how and when adequate PPE will be provided.
 - o Ask the Administrator/Manager if they are having difficulty obtaining PPE and if you can help to facilitate communications with public health or other resources.
- Contact the state survey agency to file an infection prevention and control complaint as this complaint potentially impacts all residents and the complainant was anonymous.
- In following up with the resident she said that staff now have appropriate PPE and she feels safer.

Complaint Documentation

Complainant:	01 – Resident
Complaint Code(s):	103 – Supplies, storage, and furnishing
Setting:	02 – Residential Care Community (RCC)
Verification:	01 – Verified
Resolution:	01 – Partially or fully resolved to the satisfaction of the resident, resident representative, or complainant
Referral:	01 - Licensing, regulatory, or certification agency

Resources

Administration for Community Living (ACL)

<https://acl.gov/COVID-19>

Centers for Medicare and Medicaid Services (CMS)

<https://www.cms.gov/outreach-education/partner-resources/coronavirus-covid-19-partner-toolkit>

Centers for Disease Control and Prevention (CDC)

<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

NORC Resources

https://tcombudsman.org/omb_support/COVID-19

National Consumer Voice for Quality Long-Term Care (Consumer Voice)

- COVID-19 in Long-Term Care Facilities
<https://theconsumervoice.org/issues/other-issues-and-resources/covid-19>

This project was supported, in part, by grant number 900MRC0001-01-00, from the U.S. Administration for Community Living, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of view or opinions do not, therefore, necessarily represent official Administration for Community Living policy.