

# COVID-19



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

## Recovery and Reentry Resources

For Long-Term Care Ombudsman Programs



## Responding to Complaints During the COVID-19 Pandemic

### *State Long-Term Care Ombudsmen*

One of the primary responsibilities of the Ombudsman program is advocating with and for residents of nursing facilities and residential care communities (also known as board and care homes). As advocates, representatives help residents or other complainants on behalf of a resident, resolve problems.<sup>1</sup> During the COVID-19 pandemic, the [Centers for Medicare & Medicaid Services \(CMS\)](#) issued guidance restricting visitors, including the Ombudsman program, from entering certified, skilled nursing facilities. In addition, state emergency declarations advised citizens to stay at home and state requirements excluded the Ombudsman program from in-person visits in residential care communities. Ombudsman programs creatively adapted by receiving and investigating complaints by telephone, video calls, mailed correspondence, and conducting “window visits” (conversations with a resident while standing outside and looking through their window).

Review [NORC’s Recovery and Reentry Resources](#) for program management considerations as Ombudsman programs prepare to resume in-person visits. The resources address conducting in-person visits, ensuring safety during visits, and more. Additionally, the Centers for Disease Control and Prevention (CDC) provides guidance for states and local communities to ensure the safety of residents, staff, and visitors of [nursing homes](#) and [assisted living facilities](#). Offices of State Long-Term Care Ombudsmen (Ombudsmen) may find the CDC guidance helpful as they prepare representatives to receive, investigate, and resolve complaints once states start reopening long-term care facilities to visitors. [CMS](#) has issued revised guidance for visits with residents as of April 27, 2021. This resource has been updated to reflect the most recent guidance.

### Program Management Considerations

The role and responsibilities of the Ombudsman program have not changed. However, the COVID-19 pandemic has temporarily impacted how representatives perform duties since in-person visits with residents in nursing facilities and residential care communities have been restricted. As programs begin to

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<sup>1</sup> 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.

enter facilities and investigate complaints on site, the state Ombudsman can draw upon their existing policies and procedures and the [Emergency Preparedness and Response: Model Policies and Procedures for State Long-Term Care Ombudsman Programs](#) to determine what adjustments are necessary. As specified in the emergency preparedness model policies and procedures regarding complaint processing (below), it is essential that programs maintain key principles of confidentiality and resident-directed advocacy during the pandemic.

#### 600.2 Complaint Processing

- a) The Ombudsman assesses complaint intake, response, investigation, referral, and resolution procedures and standards applicable under normal operating conditions and then determines if adjustments are needed to respond to emergencies. The complaint process during emergencies shall continue to reflect the primacy of the resident's goals, wishes and determination of satisfaction with the resolution, as required by 45 CFR 1324.19(b).
- b) The Ombudsman program maintains complaint processing practices regarding disclosure of resident or complainant identifying information, as required by 45 CFR 1324.19(b). Informed consent is obtained to the greatest extent possible with consideration of the specific circumstances of each emergency.

The following list includes program management considerations for Ombudsmen to use when developing policies and procedures regarding complaint handling as facilities start to reopen and in-person visits resume.

### Determine Triage Approaches

Consistent with Ombudsman program regulation<sup>2</sup>, review and if necessary, revise current complaint response policies and procedures. Determine if the current response priorities need to be adjusted; consider the severity of the risk to the resident, the imminence of the threat of harm to the resident and the opportunity for mitigating harm to the resident through provision of Ombudsman program services.

#### Factors to Consider when Amending Policies and Procedures

- **Severity of complaints to determine an appropriate response time and necessity of an in-person visit. Potential triage may include:**
  - Abuse, neglect, and exploitation complaints when there has not been an opportunity to obtain consent and make a referral to another agency. This may include:
    - Reports of weight loss, pressure ulcers, short staffing, infection control, and COVID-19 concerns, etc.
    - Eviction/inappropriate discharge (e.g., resident ready for discharge from hospital back to home facility that cannot be addressed through technology).
  - Complaints that cannot be conducted by phone, Zoom, Skype, or other means of virtual communication because the resident or facility does not have the necessary equipment to facilitate communication, or the resident wishes for greater privacy.

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<sup>2</sup> 45 CFR 1324 (e ) (1) (v) Standards to assure prompt response to complaints by the Office and/or local Ombudsman entities which prioritize abuse, neglect, exploitation and time-sensitive complaints and which consider the severity of the risk to the resident, the imminence of the threat of harm to the resident, and the opportunity for mitigating harm to the resident through provision of Ombudsman program services.

- Open complaints where a visit was necessary and was delayed or suspended due to COVID-19 restrictions.
- Other factors not previously noted, severity of complaint, facility history, if the complaint may impact several or all residents in the facility.
- **Who is the complainant?**
  - If the complainant is not the resident determine if the complaint can be addressed over the phone.
  - If the complainant (resident) wants to meet, consider an outdoor meeting at the facility or a visit inside the facility's designated area if not the resident's room.
- **Referrals**
  - Clarify or amend protocol for referral of complaints to other entities when appropriate during the pandemic and reopening phases (e.g., are there other entities to involve such as the state and/or local public health authorities).

### **Factors to Consider when Meeting with Resident(s)**

- **Obtaining privacy**
  - Attempt to meet in as private a place as possible.
  - Maintaining physical distance and wearing a mask may make it difficult for a resident to hear. Instruct representatives not to take mask off. Instead speak slower and with short sentences.
  - A voice amplifying device may be necessary.
- **Obtaining consent to disclose resident identifying information**
  - Follow current policies and procedures; state Ombudsmen may want to consider waiving requirement to obtain written consent to maintain physical distance.
  - Consider instructing the representative to leave a copy of the disclosure form with the resident or to follow up and mail or e-mail as appropriate. At a minimum, a disclosure form includes the date and time of consent and to what individual or entity the Ombudsman program will disclose.
- **Complaint Investigation**
  - Determine how much work needs to be done in the facility.
  - Plan ways to get attention of facility staff (e.g., have their cell phone numbers or arrange for other forms to communicate, e-mail).
- **Complaint Resolution**
  - Consistent with current policies and procedures, determine if the complaint was resolved to the satisfaction of the resident/complainant.
- **Ombudsman program as the Complainant**
  - Consider instructing and reminding representatives to document complaints based on their observations at the facility (e.g., observation of inadequate personal protective equipment (PPE), improper handwashing, symptoms unattended, etc.). Determine a course of action

before leaving the facility, such as, if related to PPE/improper infection control attempt to notify management before departure.

### **Inform Representatives of Revisions to Policies and Procedures**

- **Prior to visiting, ensure that all representatives have been trained on the revised policies and procedures and other requirements related to reentry to facilities. Factors to consider:**
  - The COVID-19 self-assessment requirements daily and prior to resuming facility visits.
  - Approved trainings in the use of Personal Protective Equipment (PPE) and basic infection control process.
  - Acknowledgement of revised complaint handling policies and procedures.
  - Awareness of the [CMS revised \(4/27/2021\) visitation guidance](#) to state survey agency directors and any instructions for keeping the Office of the State Ombudsman informed of any concerns related to access to residents.

### **Phased-In Complaint Response Approach**

**You may want to consider a phased-in complaint response approach based on facility information and level of community transmission. This may vary depending on the facility and community transmission that may also vary throughout the state.**

#### **Factors to Consider:**

- State Phase of reopening, including the ability for individuals to visit in long-term care facilities.
- When State Ombudsman approval, or pre-approval, of visits to specific types of facilities or locations is necessary (e.g., small personal care homes with few residents with no known COVID-19 and no community cases compared to a large nursing home in a county with community spread).
- Level of caution, approach complaint investigation with the safety of residents and representatives as paramount factor.
- Limit visits to one facility a day.
- Limit who conducts visits, such as representatives without preexisting health conditions, initially limit to paid representatives, not volunteers.
- Limit the amount of time in a facility, depending on size.

#### **Phase One**

- Continue to handle most complaints without an in-person visit during the reopening phases.
- Only conduct in-person visits in response to high priority complaints such as allegations of abuse and/or neglect.
- Require representatives to seek approval from their supervisor or State Ombudsman prior to visiting.
- Visit only one long-term care facility a day.
- To minimize exposure, limit the number of representatives that can conduct in-person visits in response to complaints.

#### **Phase Two**

- Respond to no more than half of complaints with an in-person visit during the reopening phases.
- Allow visits to facilities with no current case of COVID-19 regardless of type of complaint.

- Allow visits to multiple facilities in the same day if none of the facilities have known cases of COVID-19.
- Prioritize complaint types that warrant an in-person visit to facilities with known COVID-19 cases. Require supervisor or State Ombudsman approval prior to visiting. Visit only that facility that day.
- Increase the number of representatives that can conduct in-person visits in response to complaints.

### **Phase Three**

- Respond to all complaints with in-person visits to facilities.
- Resume routine access visits.
- Resume in-person visits to all long-term care facilities regardless of COVID-19 status.

## **Tracking Facility Information and Systems Advocacy**

**Consider tracking COVID-19 related information supplied by representatives, public health, and/or the state survey agency in a spreadsheet, your data management software, or another online application.**

- Facilities with COVID-19 positive cases.
- Facilities with COVID-19 suspected deaths of residents.
- Facilities identified by the state as facilities designated for COVID-19 positive only care.
- Facilities identified by licensure and certification as being in “Immediate Jeopardy” citation.
- Facilities that have no reported cases of COVID-19.

## **Use Complaint Data to Identify Systemic Issues**

**To identify systemic issues related to COVID-19, State Ombudsmen may consider adding procedures to:**

- Routinely identify cases related to COVID-19 in the program’s data management software to use in systems-level advocacy. This may include a requirement for representatives to routinely notify the Office of urgent complaints by emailing the case number and facility name for quick tracking.

**Examples include, but are not limited to:**

- Transfer/discharge of residents with COVID-19 and transfer/discharge of residents with no COVID-19 symptoms because of repurposing the use of the facility. [CMS revised guidance regarding emergency waivers](#) granted to facilities during the pandemic. As of April 8, 2021, CMS rescinded these three waiver: 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.
- Facility provides little or no support to facilitate communication between residents and their family, friends, and/or the Ombudsman program.
- Facility reports problems accessing PPE or test equipment and requests LTCOP assistance to contact other entities, public health, FEMA, etc.
- Other information that may not be complaint specific but can negatively impact residents, and lead to complaints, such as:
  - Notice of closures
  - Potential employee strikes

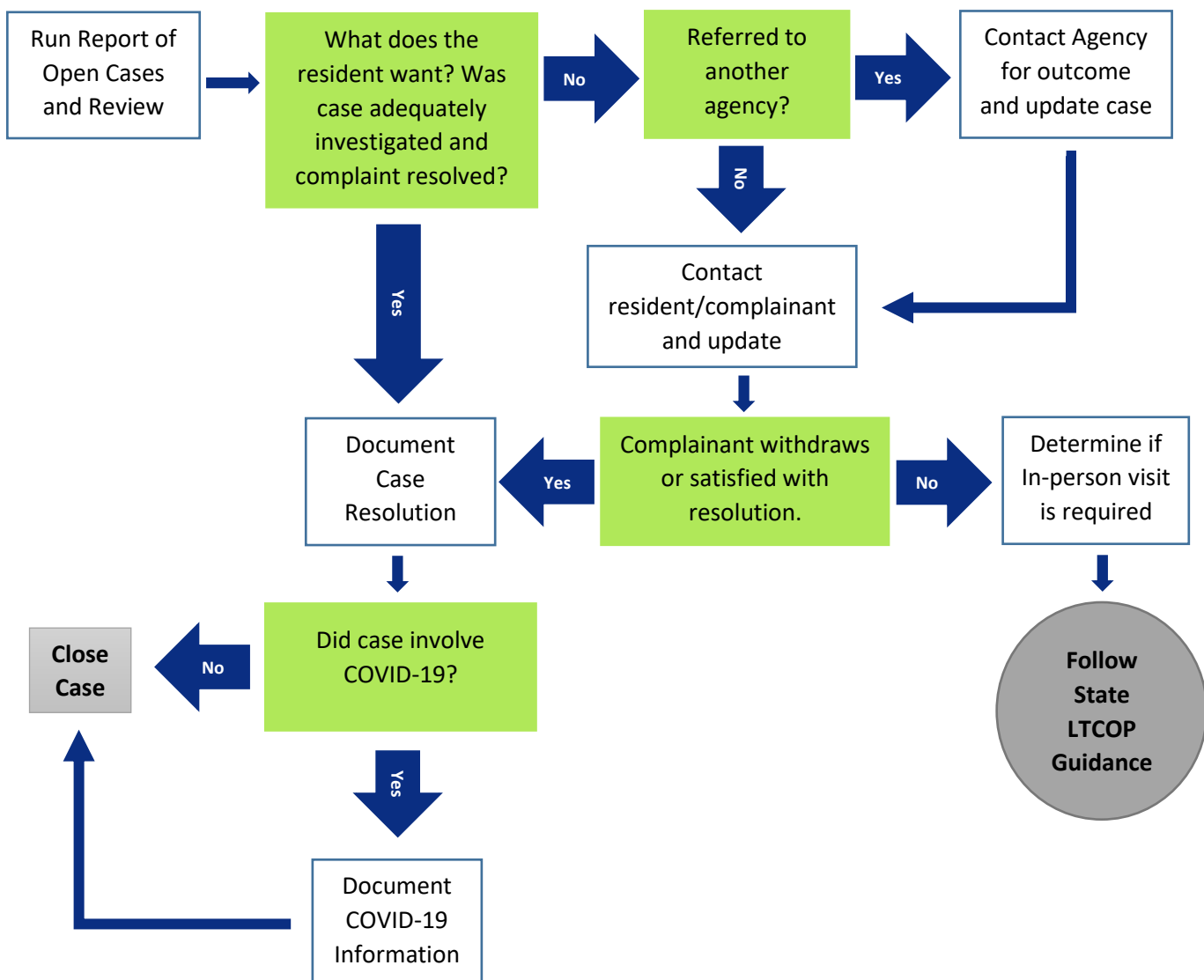
Collecting and analyzing COVID-19 specific information and complaints will assist State Ombudsmen in a variety of ways, such as:

- Developing program policies and procedures regarding the safety of representatives and residents during in-person visits.
- Determining how to prioritize in-person visits and respond to complaints.
- Identify individual complaint trends and systemic issues for program advocacy.

Additionally, tracking the following information will help identify Ombudsman program staffing needs and may assist public health authorities in contact tracing and spread of COVID-19.

- A daily list of long-term care facilities that representatives visit in-person.
- A confidential list of representatives that are out ill, tested positive for COVID-19, or were potentially exposed and need to quarantine for 14 days. Include a note whether the representative believes that they may have contracted the disease while conducting in-person visits and which long-term care facilities were visited.

### Complaint Process Overview





## Backlog Report

- Run reports for all open cases (or the date of no access to facilities) through the present.
- Representative and supervisor review open cases.
- Determine if any cases may be closed because the complaint was withdrawn/no action needed, resident died, or the resident and/or complainant were satisfied with the resolution.
- Document any COVID-19 related information pertinent to the case (per [Program Management Considerations](#) above).

## Remaining Open Cases

- Attempt to contact the complainant and the resident if the resident is not the complainant by phone, email, virtual meeting, or mail.
- Update the case with information provided by the complainant and resident (if resident is not the complainant and resident is able to communicate).
- Update the case with latest information provided by the referral agency (if the complaint was referred and after receiving informed consent for the referral and/or following program policies).
- Based on guidance from the Office of the State Long-Term Care Ombudsman determine if an in-person visit is necessary for complaint investigation.
- Document any COVID-19 related information pertinent to the case (per [Program Management Considerations](#) above).