



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

MODULE FIVE

Access & Communication

TRAINEE MANUAL

January 2022

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This project was supported, in part, by grant number 90OMRC0001-01-00, 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.

Section 1:

Welcome and Introduction

Welcome

Welcome to Module 5 of certification training ***Access and Communication***. Thank you for being here to learn more about the Long-Term Care Ombudsman program and the certification process.

Module 5 Agenda

- Section 1: Welcome and Introduction
- Section 2: Access
- Section 3: Confidentiality and Disclosure of Ombudsman Program Information
- Section 4: Communication Strategies
- Section 5: Conclusion

Module 5 Learning Objectives

After completion of Module 5 you will understand:

- Ombudsman program authority to access
 - long-term care facilities
 - residents
 - records
- What to do when access is denied
- What information you can and cannot disclose
- Communication strategies

Module 5 Key Words and Terms

The key words and terms are defined relative to Ombudsman program practices and are found throughout this Module. Take a moment to familiarize yourself with this important information.

Auxiliary Aids and Services – Accommodations such as interpreters, items, equipment, or services that assist with effective communication.

Centers for Medicare & Medicaid Services (CMS) – A division within the U.S. Department of Health and Human Services, CMS administers the nation's major healthcare programs including Medicare and Medicaid.

Complainant – An individual who requests Ombudsman program complaint investigation services regarding one or more complaints made by, or on behalf of, residents.¹

Confidentiality – Federal and state laws mandate that the Long-Term Care Ombudsman program keep all identifying information about a resident and a complainant private, within the Ombudsman program.

Disclose – To make known or public; to expose to view.²

Health Insurance Portability and Accountability Act of 1996 (HIPAA, Privacy Rule) – A federal law that required the creation of national standards to protect patient health information from being disclosed without the patient's consent or knowledge. HIPAA sets rules and limits on who can use, review, and disclose individuals' health information.³

Incident Report (Accident Report) – A document that records details when an unexpected event occurs, such as an accident, injury to a resident or staff, or potential abuse.

Informed Consent - The permission from a resident or a resident representative after a full explanation has been given of the facts, options, and possible outcomes of such options in a manner and language in which the resident or resident representative understands.

Office of the State Long-Term Care Ombudsman (Office, OSLTCO) – As used in sections 711 and 712 of the Act, means the organizational unit in a State or territory which is headed by a State Long-Term Care Ombudsman.⁴

Ombudsman – A Swedish word meaning agent, representative, or someone who speaks on behalf of another. For the purposes of this manual, the word "Ombudsman" means the State Long-Term Care Ombudsman.

¹ https://ltombudsman.org/omb_support/nors

² Merriam-Webster <https://www.merriam-webster.com/dictionary/disclose>

³ Centers for Disease Control and Prevention (CDC). Health Insurance Portability and Accountability Act of 1996 (HIPAA). <https://www.cdc.gov/php/publications/topic/hipaa.html>

⁴ 45 CFR Part 1324 Subpart A §1324.1 Definitions Long-Term Care Ombudsman Programs Final Rule

Representatives of the Office of the State Long-Term Care Ombudsman (Representatives) - As used in sections 711 and 712 of the Act, means the employees or volunteers designated by the Ombudsman to fulfill the duties set forth in §1324.19(a), whether personnel supervision is provided by the Ombudsman or his or her designees or by an agency hosting a local Ombudsman entity designated by the Ombudsman pursuant to section 712(a)(5) of the Act.⁵

Residential Care Community (RCC) – A type of long-term care facility as described in the Older Americans Act (Act) that, regardless of setting, provides at a minimum, room and board, around-the-clock on-site supervision, and help with personal care such as bathing and dressing or health-related services such as medication management. Facility types include but are not limited to assisted living; board and care homes; congregate care; enriched housing programs; homes for the aged; personal care homes; adult foster/family homes and shared housing establishments that are licensed, registered, listed, certified, or otherwise regulated by a state.⁶

Skilled Nursing Facility or Nursing Facility – Also known as a “nursing home,” is a certified facility that provides skilled nursing care for residents who require medical or nursing care rehabilitation or provides health-related care and services to individuals who, because of their mental or physical condition, require care and services (above the level of room and board) which can be made available to them only through institutional facilities.⁷ For the purposes of this training and to be consistent with the National Ombudsman Reporting System (NORS), we use the term “nursing facility” for both skilled nursing facilities and nursing facilities.⁸

State Long-Term Care Ombudsman (Ombudsman, State Ombudsman) – As used in sections 711 and 712 of the Act, means the individual who heads the Office and is responsible personally, or through representatives of the Office, to fulfill the functions, responsibilities, and duties set forth in §1324.13 and §1324.19.

State Long-Term Care Ombudsman Program (Long-Term Care Ombudsman program, the program, LTCOP) – As used in sections 711 and 712 of the Act, means the program through which the functions and duties of the Office are carried out, consisting of the Ombudsman, the Office headed by the Ombudsman, and the representatives of the Office.⁹

⁵ 45 CFR Part 1324 Subpart A §1324.1 Definitions Long-Term Care Ombudsman Programs Final Rule

⁶ CA-04 02 Residential Care Community Table 1 Part C Case and Complaint Definitions

https://ltombudsman.org/uploads/files/support/NORS_Table_1_Case_Level_10-31-2024.pdf

⁷ This definition is a combination of Requirements for, and assuring Quality of Care in, Skilled Nursing Facilities, Section 1819(a) of the Social Security Act [42 U.S.C. 1395i-3(a)]

https://www.ssa.gov/OP_Home/ssact/title18/1819.htm and Requirements for Nursing Facilities, Section 1919(a) of the Social Security Act [42 U.S.C. 1396r(a)] https://www.ssa.gov/OP_Home/ssact/title19/1919.htm

⁸ NORS Table 1 https://ltombudsman.org/uploads/files/support/NORS_Table_1_Case_Level_10-31-2024.pdf

⁹ 45 CFR Part 1324 Subpart A §1324.1 Definitions Long-Term Care Ombudsman Programs Final Rule

State Long-Term Care Ombudsman Programs Rule (LTCOP Rule) – The Federal Rule that governs the Long-Term Care Ombudsman program (45 CFR Part 1324).¹⁰

Subsection Symbol (§) – The subsection symbol is used to signify an individual numeric statute or regulation (rule).

Willful Interference – Actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman from performing any of the functions or responsibilities set forth in §1324.13 or the Ombudsman or a representative of the Office from performing any of the duties set forth in §1324.19.¹¹

¹⁰ <https://www.govinfo.gov/content/pkg/CFR-2017-title45-vol4/xml/CFR-2017-title45-vol4-part1324.xml>

¹¹ 45 CFR Part 1324 Subpart A §1324.1 Definitions Long-Term Care Ombudsman Programs Final Rule

Section 2:

Access

What Does Access Mean and Why Is It Important?

In this section, access is described in two different manners. Access applies to both the **residents' rights** to contact the Long-Term Care Ombudsman program (LTCOP) and speak in-person with a representative of the Office (representative) during a facility visit, **and it applies** to the **Ombudsman program's authority** to access residents, facilities, and records.

Residents have the **right** to access. The LTCOP has the **authority** to access.

Access is crucial when conducting the functions and duties of the Ombudsman program, such as complaint investigation and resolution, as discussed in Module 1 and determined in the LTCOP Rule. Access allows representatives to hear from residents about their experiences, to provide information and assistance, and to let residents know they have an advocate if or when needed.

Access may be difficult when the facility lacks communication devices such as cell phones, computers, or other electronic devices to assist residents in communicating with the LTCOP, as well as family and friends.

Regulations Pertaining to Residents' Right to Access the Ombudsman Program

State laws and regulations ensure that residents in nursing facilities and other residential care communities have access to the Ombudsman program. Nursing facility residents' rights to access the LTCOP are addressed in the [federal nursing facilities regulations](#).¹²

Facilities must:

- Provide immediate access to any resident by a representative of the Office of the State Long-Term Care Ombudsman (the Office)
- Allow representatives of the Office to examine a resident's medical, social, and administrative records¹³
- Not prohibit or discourage a resident from communicating with a representative of the Office

¹² CFR 42 Chapter IV Subchapter G Part 483 Requirements for States and Long Term Care Facilities Subpart B – Requirements for Long Term Care Facilities <https://www.ecfr.gov/cgi-bin/text-idx?SID=f64b6edcc2b2ee52bf5de8e19a340569&mc=true&node=sp42.5.483.b&rgn=div6>

¹³ Social records may include information from social services, activities, and non-medical information. Administrative records may include financial records, admissions records, etc.

Authority of the Ombudsman Program to Access Long-Term Care Facilities, Residents, and Records

The authority of the Ombudsman program to access long-term care facilities, residents, and records is defined in the [Older Americans Act](#) (OAA)¹⁴ and the [LTCOP Rule](#).¹⁵ State laws and regulations also ensure the LTCOP has access to residents in long-term care facilities. The OAA clarifies that access to residents and facilities shall be private and unimpeded, provides conditions when access to records is appropriate, and instructs states to have procedures related to access.

The LTCOP Rule expands upon the OAA and states that representatives of the Office have authority to:

- Enter nursing facilities and residential care communities at any time during a facility's regular business hours or regular visiting hours, and at any other time when access may be required by the circumstances to be investigated
- Access all residents
- Access the name and contact information of the resident representative, if any, where needed to perform the Ombudsman representatives' functions and duties
- Review medical, social, administrative, and other records relating to the resident when specific factors apply
- Access long-term care facility administrative records, policies, and documents, to which the residents or the public have access

The State Ombudsman has authority to access, and, upon request, obtain copies of all licensing and certification records maintained by the State with respect to long-term care facilities.

¹⁴Older Americans Act <https://acl.gov/sites/default/files/about-acl/2020-04/Older%20Americans%20Act%20Of%201965%20as%20amended%20by%20Public%20Law%20116-131%20on%203-25-2020.pdf>

¹⁵ CFR 45 Part 1324 Allotments for Vulnerable Elder Rights Protection Activities Subpart A – State Long-Term Care Ombudsman Program <https://www.govinfo.gov/content/pkg/CFR-2017-title45-vol4/xml/CFR-2017-title45-vol4-part1324.xml>

The Health Insurance Portability and Accountability Act (HIPAA)

The Health Insurance Portability and Accountability Act (HIPAA) – sometimes referred to as the Privacy Rule - is a federal law that sets rules and limits on who can look at and receive an individual's health information. Under HIPAA, the Ombudsman program is considered a "health oversight agency." As such, nursing facilities and other long-term care facilities may, in response to appropriate Ombudsman program requests, share other information without fear of violating the Privacy Rule. Such information includes, but is not limited to, residents' medical, social, or other records; a list of resident names and room numbers; and the name and contact information of resident representatives. **As noted above, access to records must be consistent with the LTCOP policies and procedures in accordance with the OAA and the LTCOP Rule.**

What if facility staff say they can't share information with me due to HIPAA?

Politely explain that the LTCOP is considered to be a health oversight agency.

If staff still do not provide the requested information, ask to speak to the staff person's supervisor.

If the facility refuses to provide the requested information because they believe they will be in violation of HIPAA, contact your supervisor or the state Office for further direction.

Access to Resident Records

It is not always necessary to review resident records during an investigation. Representatives use other investigatory tools (e.g., interviews and observation) and often find it is not necessary to review records. If you do access resident records, make sure to document the reason (e.g., a care complaint that requires review of the care plan), use your program's consent form, and be prepared to share that information with your supervisor and the Ombudsman.

Authority to access records

The LTCOP's authority to access resident records comes from the OAA Sec 712 (b). Additional clarification on accessing records is included in the LTCOP Rule 1324.11 (e)(2). In addition, all LTCOPs are required to have policies and procedures on accessing records.

The Ombudsman program only accesses records when necessary to investigate a complaint. According to the OAA, representatives must have access to resident records if:

- The representative of the Office has permission of the resident or the resident representative, or
- The resident is unable to communicate consent to the review and has no resident representative, or

- Access is necessary to investigate a complaint and: the resident representative refuses permission to consent to the access; a representative of the Office has reasonable cause to believe that the resident representative is not acting in the best interests of the resident; **and** the representative of the Office obtains the approval of the State Ombudsman.

THE PROCESS TO OBTAIN INFORMED CONSENT TO REVIEW A RESIDENT'S RECORD

Figure 1¹⁶

Informed consent must...	<ul style="list-style-type: none"> • Come from a resident or resident representative and • Be given in writing, orally, visually, or through auxiliary aids and services
Consent is documented...	<ul style="list-style-type: none"> • Per LTCOP policies (e.g., form or case notes) • At the time the consent is given and • In the LTCOP's resident case file.
Access to records is necessary to investigate the complaint and the resident is unable to communicate informed consent and ...	<ul style="list-style-type: none"> • The resident representative refuses to consent and • The LTCOP has reasonable cause to believe the resident representative is not acting in the best interest of the resident and • Approval is obtained from the Ombudsman.
Access to records is necessary to investigate the complaint and ...	<ul style="list-style-type: none"> • The resident is unable to communicate informed consent and has no resident representative then follow your program's policies and procedures

If access is necessary to investigate a complaint and the resident cannot communicate informed consent - what do you do?

What if the resident representative says no?

In summary, you must have informed consent from the resident, or the resident representative when the resident is unable to communicate informed consent, or the approval from the Ombudsman to access the residents' records. If there is no resident representative and the resident cannot communicate informed consent, the program may

¹⁶ 45 CFR Part 1324 Subpart A §1324.11(e)(2) and Older Americans Act, Section 712(b)

access the records in accordance with the program policies and procedures. In all circumstances, follow your state program's policies and procedures.

Access to Other Records

Consent is not required for the Ombudsman program to access facility administrative records and documents that are available to residents and the public, which can include:

- Activity calendar
- Current state survey/inspection results
- Facility admission contract
- Facility policies, especially those related to residents' rights
- Menus
- Number of staff per shift

A list of names and room numbers of residents is a confidential document that the LTCOP has authority to access. Because it contains resident-identifying information it cannot be shared outside of the Ombudsman program. Follow program policies and procedures for keeping resident information confidential.

The LTCOP also has access to the list of resident names and room numbers (i.e., resident roster or resident census).

State Ombudsman Program Policies and Procedures to Access

As per the LTCOP Rule, the State Ombudsman is required to develop policies and procedures that include timeframes for access to facilities, residents, and appropriate records.

Information not Required to be Shared

The LTCOP does not have access to all records and documentation maintained by the facility. Information the facility does not have to share with the Ombudsman program includes but is not limited to:

- Incident reports
- Personnel information on facility staff such as resumes, application information, etc.
- Non-public financial information

When the Facility Interferes with, or Denies, Access Interference

There are several ways in which facility staff may attempt to restrict the Ombudsman program's access to residents and residents' records. Some actions are subtle, and some actions are more obvious.

For example, facility staff might:

- Come in and out of the room during a visit
- Linger outside of the room during a visit
- Suggest walking around the facility with you and/or ask who you are visiting
- Ask about all concerns brought up during the visit
- Tell residents not to share information with you
- Purposefully schedule conflicts to prevent a resident from visiting with you
- Agree to give you the requested records or information, but never do
- Give you only part of the requested records

On their own, not all actions listed above are always considered interference. For example, staff coming in and out of the room or asking about concerns brought up during the visit may not be intended to interfere. Sometimes facility staff do not understand the authority of the LTCOP, do not know who you are, or are simply attempting to be helpful. However, when those actions are meant to intentionally impede the LTCOP, it becomes **willful interference** (see sidebar).

In whatever form the interference occurs, it is important to take the opportunity to talk to staff and explain to them your role, your authority to visit with the resident privately, and the resident's right to meet with a representative of the Office.

Denied Access

When access to the facility or to a resident is denied, at the time of denial, ask the person for the reasoning behind the decision. There may be a reasonable cause for the denial. For example, during an infectious disease outbreak, the LTCOP may be asked to temporarily refrain from visiting the building. When such situations arise, follow your program's policies and procedures.

If you are denied a visit with a resident because the resident is receiving care, or the resident is bathing, these are reasonable explanations. Plan to come back at a more convenient time for the resident. Be respectful of the resident's schedule and privacy and do not interfere with resident activities or care.

There are times, however, when access to a facility or a resident is denied, and the restriction is not reasonable and is a violation of residents' rights and the Ombudsman program authority.

Willful Interference

Actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman from performing any of the functions or responsibilities, or a representative of the Office from performing any duties.

Examples include but are not limited to:

- A family member denies access to a resident who wants to visit with a representative
- Staff denies access at the direction of the resident's guardian, or staff believe that because the resident has a guardian, that access is limited
- The provider does not answer the door or the phone
- Staff denies access to the building saying the residents get "too worked up" when the representative visits and explains residents' rights



Activity

Role-Play

1. The Ombudsman program receives a phone message from a resident named Brian saying he is being evicted in three days. Brian asks that someone call him back on the facility phone before coming to see him. When the representative tries to contact Brian, the staff refuse to take the phone to him.
 - a. What would you say to the staff person on the phone?
 - b. Who else might you speak to at the facility?
 - c. At what point do you visit the facility?
2. Sonya, the Social Services Director, asks the representative to leave the facility because they are "riling up residents" by explaining their rights.
 - a. How would you respond to Sonya?
 - b. Who else might you speak to at the facility?
 - c. How do you respond to residents?
 - d. At what point do you leave?
 - e. What do you do next?
3. During your visit, you notice a facility staff member following you around. What would you say to the staff member?

Section 3:

Confidentiality and Disclosure of Ombudsman Program Information

Access allows you to gather information through observations, interviews, and record reviews. It is important to have a system to document your initial findings. Most representatives take notes during their visit or phone calls via pen and paper or an electronic device. Others take notes immediately after. The notes taken will be entered into an electronic-based system managed by the Office. Requirements for documentation are discussed in more detail during Module 10.

Confidentiality

It is essential to recognize what information gathered is confidential. All records and information obtained by the LTCOP during conversations with residents and complainants must be held in confidence. It is important to explain to residents and complainants that the information they share with the program is confidential, meaning the information will not be shared (disclosed) with anyone outside of the Ombudsman program without their permission. In addition to federal guidance, always follow the program policies and procedures for confidentiality and disclosure of program information.

As a representative, you must maintain confidentiality by:

- Not identifying residents or complainants without their consent
- Not disclosing any information about a resident or complainant
- Explaining your program's confidentiality and disclosure requirements to facility staff and others who may expect or request confidential program information

The OAA and the LTCOP Rule have strict parameters for protecting the confidentiality of the identity of residents and complainants, resident records, program records, and other information.

Why is confidentiality important?

Confidential conversations with the LTCOP allow residents and complainants a level of comfort when discussing concerns. When the resident and complainant understand that the information cannot be shared with anyone without their approval, it encourages them to be open about details of their complaints. Maintaining confidentiality is the best way for the Ombudsman program to earn and keep the trust of residents and ensure that actions are resident-directed.

When a complainant is not the resident, the Ombudsman program:

- Cannot disclose the identity without their permission
- Must have the resident's permission to report back to the complainant
- Is required to honor both the resident's and the complainant's rights to confidentiality

What information is not confidential?

General observations identified about the facility that do not identify any resident or complainant in any way can be shared with facility staff.

Such observations include but are not limited to:

- Call lights not being answered
- Cleanliness of the facility
- Cluttered hallways that restrict residents and/or staff
- Odors
- Visible safety hazards

***Confidential or Not Confidential?***

Review the following scenarios and indicate if the information gathered is confidential or not and whether the information should or should not be shared.

1. You tell the housekeeping supervisor that you noticed the garbage cans in several residents' rooms on Hallway A are overflowing.
2. You observe Mildred's call light has been left unanswered for 20 minutes. Before you talk to Mildred, you see a CNA and tell them what you observed.
3. You tell the charge nurse about a strong feces/urine odor on the 2nd floor.
4. You visit Darla after her son calls you about a family conflict over moving Darla to another facility. Darla tells you her son is causing problems and she is considering moving in with her daughter, not another facility. Darla said her doctor and other family members are against her moving in with her daughter, but she wants to do it regardless of what they say. You forgot to ask her if you can tell her son about her plan. Her son calls you the next day and asks you about your visit with his mother. You are worried about Darla's safety, so you tell him about the plan to move back into the community.

Confidentiality Dos & Don'ts

Confidentiality applies to all records and communications including verbal, non-verbal (includes sign language), observations, and written (e.g., letters, emails, texts, etc.).

Do

Respect the resident as the "client" and take direction from them regardless of who files the complaint.

Follow the direction of the resident representative when the resident cannot communicate informed consent and is acting in the best interest of the resident or if the resident gives you permission to follow the direction of their representative.

Keep the identity of the resident and the complainant confidential.

Don't

Reveal information to anyone without permission from the resident.

Tell facility staff who you are visiting.

Read a resident's chart that is offered to you by a facility staff member without the resident's consent or attempt to access a resident's chart without the consent of the resident or the resident representative.

Reveal the identity of the complainant or the resident without permission.

Show program records to anyone outside of the LTCOP.

Allow staff to follow you on your visits.

Disclosure of Resident and Complainant Information

Disclosure of information simply means the releasing of information either verbally or in writing. Details of when and why to disclose resident or complainant identifying information will be explored further in the complaint-handling Modules. Quite often some kind of disclosure of resident information is required to resolve a complaint.

Regardless of where the Ombudsman program is located, all files, records, and information maintained by representatives of the Office pertaining to program activities and complaints are the property of the Office of the State Long-Term Care Ombudsman. Such information is not the property of the individual representatives nor the local Ombudsman entity (LOE).

Disclosure of such information, including identifying information about a resident or a complainant may only occur under the following circumstances and as determined by the State Ombudsman in their program's policies and procedures:

- Permission from the resident (or a resident's representative when applicable)
- Permission from the complainant
- An order from the court

The OAA and the LTCOP Rule require all disclosure of files, records, and other information maintained by the Ombudsman program to be determined by the Ombudsman and included in LTCOP policies and procedures. These policies and procedures give guidance on how to disclose resident or complainant identifying information.

Court Order

A directive issued by a court, or a judge requiring a person to do or not do something. Instruct trainees to contact the State Ombudsman and follow program policies and procedures if they receive a court order and explain relevant policies and procedures.

Otherwise, disclosure of files, records, and information maintained by the LTCOP pertaining to program activities and complaints is prohibited.

When might the Ombudsman program disclose resident or complainant identifying information, and for what purpose?

Some common reasons for disclosure include:

- To resolve a complaint with facility staff
- To refer a complaint to an outside agency
- To discuss resident concerns with their representative or other family or friends

Disclosure will be further reviewed in Modules 6 and 7 during the complaint processing sections.



Learn more about the disclosure provisions in the [OAA](#)¹⁷ and the [LTCOP Rule](#).¹⁸



Confidentiality and Disclosure of Information: *What Would You Do?*

1. Lisa, a representative of the Office, goes to Mrs. Jones's room to follow up on a complaint, but she is not there. Lisa asks the social worker where to find Mrs. Jones because her daughter called the Office with a concern.

Did Lisa breach confidentiality? If so, how should Lisa have handled this situation?

2. A local law enforcement officer calls the Ombudsman program and asks if the representative knows anything about a resident named Daniel Johnson. Kari, the representative, knows Daniel well. They have had conversations about his family's management of his money, but he has not asked Kari to act on his concerns. Relieved the police are investigating, Kari tells the Officer about her concerns and offers to send her case notes to him.

Did Kari follow program requirements for disclosure of information? If not, what should she have done?

3. Jane is a representative of the Office. A law firm serves her with a subpoena at her home. The subpoena asks for the dates of visits to "Caring Touch" personal care home, the names of the residents and staff that she spoke to, and for her impressions of the home.

What would you do?

¹⁷ <https://acl.gov/sites/default/files/about-acl/2020-04/Older%20Americans%20Act%20Of%201965%20as%20amended%20by%20Public%20Law%20116-131%20on%203-25-2020.pdf>

¹⁸ <https://www.govinfo.gov/content/pkg/CFR-2017-title45-vol4/xml/CFR-2017-title45-vol4-part1324.xml>

Section 4:

Communication Strategies

Communication

Communication is the act of exchanging ideas, knowledge, information, and sharing personal experiences. Regular and timely access to long-term care facilities and residents is essential for Ombudsman program communication with residents, resident representatives, family members, visitors, and facility staff. The way you speak to and listen to an individual builds trust and meaningful connection, which is an important part of complaint intake and investigation, specifically discussed in Module 6.



Watch the video [Residents Speak Out: Resident's Rights](#).¹⁹

- What are your thoughts on the video?
- What are some common themes related to communication?

Effective communication is a two-way process of how information is provided and received.²⁰ Both verbal and non-verbal communication contributes to how one interprets information. Word choice, tone of voice, and body language all contribute to successful communication.

From a total of 100%, the following is true of how information is communicated.

- *10% is communication through words or speech.*
- *40% is communication through our tone of voice.*
- *50% is communication through body language.*

Words or Speech

The words you choose and how you say them set the stage for building relationships. It is common for family members to contact you because someone has told them, “The Ombudsman program can help.” Most have no idea about LTCOP responsibilities and what representatives can and cannot do, so it is critical to provide them with a clear understanding of your role right from the very beginning. Family members may expect you to share all information gathered and may request your follow-up on their concerns. Take particular care to explain that the resident is your client, not them.

Here are some possible responses you can use:

- “The resident - your mother- is our client and we’re going to do the best we can for her.”

¹⁹ MedSchool Maryland Productions <https://youtu.be/NbpvWaKTD80>

²⁰ <https://theinvestorsbook.com/effective-communication.html>

- “I am a resident advocate. I am here for your mother and what she needs, and hopefully we can all work together on this.”

As opposed to saying:

- “I work for the resident, not the family.”
- “I can’t tell you anything about my visit with the resident.”

Another common situation you may encounter is when the complainant tells you the resident has dementia so there is no point in speaking with them.

Here are some responses you can use:

- “Please understand that I am required to meet with the resident face to face.”
- “I will go and see the resident and talk with them about this. Then, we can see where we’ll go from there.”
- “I understand what you are saying, but my obligation is to go and speak with the resident first. It’s important that I see for myself.”

As opposed to saying:

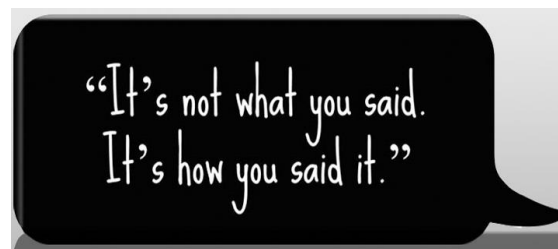
- “Regardless of what you say, I have to talk to the resident.”
- “Thanks for the information, but I need to find out for myself.”

Tone of Voice

Your tone of voice impacts how a message is heard. Emphasizing a specific word in a sentence can result in different interpretations of the intent of your message.

For example, the following statements have different meaning, depending on which word is emphasized.

- “I didn’t say that.”
- “I **didn’t** say that.”
- “I didn’t **say** that.”
- “I didn’t say **that**.”
- “I **didn’t say** that.”



Body Language

Body language speaks volumes. Be aware of the impact your non-verbal cues have on those with whom you are speaking. There are many ways to effectively communicate without using words, such as:

- Positioning yourself at the resident’s eye level
- Leaning forward when listening
- Facing the person
- Nodding your head
- Relaxing and acting natural

- Using positive facial expressions (e.g., smiling as opposed to frowning)
- Waiting through pauses
- Listening without interrupting



Try not to:

- Cross your arms in front of your body
- Check your phone or divide your attention
- Tap your foot or drum your fingers
- Use negative facial expressions

Words Matter: Conveying Your Message

Effective communication is more than just relaying your ideas, knowledge, and experience. There are other factors involved that influence how information is received and understood. In addition, you may use different communication approaches depending on the individual receiving the message (e.g., a resident, family member, staff person, etc.).

Whether you are communicating verbally, in writing, or using another means, there are several elements to consider when communicating your message.

To avoid confusion and misunderstandings, don't:

- Use technical terms, acronyms, vague words, and slang
- Relay conflicting messages
- Use a language that is not understood by the recipient
- Include too much information

To maximize the chance for successful communication, consider the following:

- **Is your message clear?** Use simple and easy-to-understand language.
- **Is your message factually correct?** Ensure information is not vague, subject to interpretation, or false.
- **Is your message complete?** Include all relevant information, particularly if it is the basis for decision-making.
- **Is your message precise?** Provide straightforward and concise information to avoid incorrect interpretations of the message.
- **Are you professional and respectful in your message?** Deliver the message in a manner that is considerate of the person and sensitive to the topic at hand.
- **How do you ensure your message is received?** Consider with whom you are communicating. What is their role, knowledge of the subject, ability to understand,

what mode of communication works best, and what language does the receiver understand?



Example: Rose

Rose recently came to the facility with chronic pain and some minor memory loss. Rose tells you she has been in terrible pain and doesn't know if she gets her pain medication like she did when she was in the hospital. Rose gives you permission to review her chart and speak with anyone in the facility who could help.

You go back to Rose and say:

"I checked your care plan and talked to the care plan coordinator who told me that you should be getting your pain meds every four hours. However, when looking at the med chart, I saw that the pain meds are being distributed PRN. The federal requirements indicate you have a right to be included in the care planning process and in your health decisions. Do you want your medication PRN or every four hours? And who do you want me to talk to about it?"

Were the elements of effective communication used when talking to Rose?

The answer is **no**. The information provided does not take into consideration Rose's ability to understand acronyms and terms used in long-term care. The message delivered was accurate, but not concise and not delivered in a manner to allow Rose to make a good decision. PRN means "as needed."

How would you deliver this message?

Possible response, "I checked on your concern about your pain medication and found out you are supposed to get your pain medication every four hours. The facility had the wrong information and thought you were only supposed to get your pain medication when you asked for it. I talked to the nurse, Michael, and straightened it all out. He said he will come by within the hour to talk to you and set up a schedule. I'll follow up with Michael and will stop by again in a few days to see how you are doing."

Listening Skills

There are techniques to use when verbally communicating with someone to indicate you are listening. Those methods include demonstrating interest, active listening, affirmation, and validation.

Demonstrate Interest

- Use minimal responses such as, "oh," "so," and "I see."
- Encourage additional information such as, "Is there more you would like to share..." and, "I'm happy to listen..."

Active Listening

- Paraphrase what is heard. For example, the resident says that he keeps telling the Certified Nursing Assistant (CNA) not to put his clothes on the floor; she just doesn't listen. You paraphrase by saying, "Sounds like you are not feeling heard by the CNA regarding your clothing."
- Ask open-ended questions for more details instead of closed-ended questions. Open-ended questions are questions that cannot be answered with just a "yes" or "no" response. To allow for more detailed responses, open-ended questions often start with "how," "tell me about...," and "why." Closed-ended questions lead to answers of just, "Yes," "No," or a brief piece of specific information.

Affirmation

- Restate what is heard in sentence form, such as:
 - "I hear you saying..."
 - "It sounds like..."
 - "It appears as though..."

Validation

- Acknowledge the resident's feelings, such as:
 - "It's okay to feel sad..."
 - "There is nothing wrong with being angry right now about..."

Observation

- Look for non-verbal forms of communication, such as:
 - Facial expressions
 - Eye contact, or lack thereof
 - Posture
 - Gestures

Based on your observation, what is going on in the picture? Does the medical person look as though she is listening to the individual? What would you do in this situation if you were this individual's advocate?



Example: Barry, Situation 1

During a visit with a resident named Barry, you ask him if staff treat him well. Barry tells you that most staff are nice to him. You ask him how the food is, and Barry says it's okay if you eat it in the dining room. You then ask Barry about the activities, and he replies, "What activities?" and then laughs. A CNA walks into the room and Barry immediately says to you that everything is wonderful and thanks you for stopping by. You continue asking Barry about life in the facility.

Did the representative listen to Barry?

How would you have handled the conversation differently?



Example: Barry, Situation 2

- During a visit with a resident named Barry, you ask him if staff treat him well. Barry tells you most staff are nice to him. You ask Barry, “Most staff? Tell me more about the staff who aren’t nice.”
- You ask Barry how the food is, and he says, “It’s okay if you eat in the dining room.” You ask Barry, “Where do you prefer to eat? What do you mean, ‘if you eat in the dining room’?”
- You ask Barry about the activities, and he replies, “What activities?” and then laughs. You say, “Yes, I noticed there are just a few activities on the calendar. How do you like to spend your time (or, what are your interests)? Are there activities that you would like to see happen in the facility?”
- A CNA walks into the room and Barry immediately says to you that everything is wonderful and thanks you for stopping by. Take the cue from Barry and let him know you appreciate talking to him and end the visit. Revisit Barry at another time to address the concerns brought up during your conversation and ask Barry about his response when the CNA entered the room. Make sure there are no staff around when you meet with him the second time.

If they want your assistance, remind them how you will support them and the next steps. If they do not want to pursue the complaint immediately, reassure them that they have your support, and you will follow-up with them. Before leaving any resident that shared concerns, continue the conversation for a few more minutes that way the conversation didn’t end on a negative note potentially adding to their sense of helplessness or stress.

Communication Tips

Many of the communication tips below apply to communicating with anyone, particularly residents. However, certain tips are even more helpful when communicating with residents who have a disability or a diagnosis that may affect their ability to provide and receive information. To effectively communicate, consider the best way to communicate with each individual resident.

Individuals Living with Memory Loss

Memory loss does not always affect one's ability to communicate. Therefore, it is important not to make assumptions based on a diagnosis related to dementia or memory loss.²¹

- Approach the resident from the front and identify yourself
- Speak to the resident and not about the resident when others are in the room
- Talk to the resident face to face in a quiet space with minimal distractions
- Look at the resident and speak slowly and clearly
- Ask one question at a time
- Ask yes or no questions
- Give the resident ample time to respond to your questions
- Consider the feelings behind words or sounds
- Be respectful

There are also specific communication actions to avoid when talking to individuals who have memory loss.

Don't:

- Ask the resident if they remember you
- Argue or try to convince
- Explain reality or try to reason
- Get too physically close to the resident, invading their personal space
- Raise your voice, frown, or scold
- Use confusing language, language that could be misinterpreted as romantic (e.g., sweetie, honey), or idioms (e.g., "it's raining cats and dogs", or "are you pulling my leg?") as residents may take the words in literal form
- Take it personally if the resident doesn't remember you, doesn't want to talk, or uses offensive language

Individuals Who are Blind or Visually Impaired²²

- Speak to the resident when you approach them
- Face and address the resident directly
- Identify who you are and introduce anyone else with you
- Be descriptive about what you are doing
- Speak in a normal volume and natural tone
- It is okay to use words such as "blind", "visually impaired", "seeing", "looking" and "watching" when speaking with someone who is visually impaired

²¹ Alzheimer's Association *Communication and Alzheimer's* <https://www.alz.org/help-support/caregiving/daily-care/communications>

²² Caring for Patients Who Are Blind or Visually Impaired: A Fact Sheet for the Outpatient Care Team. Vision Center of Excellence. Walter Reed National Military Medical Center https://www.disabilityrightstn.org/documents/vce-inpatient-care-team-fact-sheet_v16_16jan15_508.pdf

- Don't touch or distract their service animal (if applicable)
- If documents must be read or signed, ask the resident what would be most helpful for them to see better (e.g., increased lighting, magnification, etc.)
- Ask in what format they would like to receive information (e.g., Braille, large print, audio, etc.)
- Let the resident know when you enter and leave the area and/or room

Individuals with Speech Impairments²³

- Concentrate on what the resident is saying
- Be patient – take as much time as necessary
- Don't speak for the resident or attempt to finish their sentence
- Use your regular voice tone and volume
- Ask questions which require only short answers or a nod. Consider using yes or no questions. Avoid insulting the person's intelligence with oversimplification
- If you don't understand what the resident has said, ask them to repeat themselves, or repeat back what you heard to confirm it is correct
- Don't pretend to understand when you don't
- If you have difficulty understanding the resident, consider writing or another means of communicating, but first ask the resident if this is acceptable

Individuals Who are Deaf, Hearing Impaired, or Hard of Hearing²⁴

- Gain the resident's attention before starting a conversation
- Look directly at the individual, face the light, speak clearly in a normal tone of voice, and keep your hands away from your face
- Use short, simple sentences
- Avoid eating or chewing gum
- If the resident uses a sign language interpreter, speak directly to the resident, not the interpreter
- If you are talking to a resident by phone, speak clearly and be prepared to repeat your questions and comments
- If you do not have access to a Text Telephone (TTY), dial 711 to reach the national telecommunications relay service, which facilitates the call between you and an individual who uses a TTY

²³ National League for Nursing. Communicating with People with Disabilities. <http://www.nln.org/professional-development-programs/teaching-resources/ace-d/additional-resources/communicating-with-people-with-disabilities>

²⁴ Communicating with Deaf Individuals. National Deaf Center. <http://www.nln.org/professional-development-programs/teaching-resources/ace-d/additional-resources/communicating-with-people-with-disabilities>

- If you are having difficulty communicating with the resident – whether in their presence or not - ask the resident if it is acceptable to communicate via written word
- Ask the resident for their preferred form of communication (texting, email, etc.)

Individuals Who Speak Another Language

- Have program information available in other languages to provide to residents
- When using gestures and nonverbal cues to help the person understand, be sensitive to their reaction. Some American mannerisms – such as pointing directly at a person – may be interpreted differently in other cultures
- Use a communication board or a free application on your phone
- Ask the resident if there is someone they trust to interpret
- Following your program policies and procedures, ask the facility how they communicate with the resident
- Ask if the facility has a handheld translation device, and request to use it
- Know your local resources for in-person and telephone language services
- If the options above are not sufficient, use an interpreter. When using an interpreter:
 - Explain LTCOP rules of confidentiality
 - Explain the need to translate word for word (ask them not to put statements into their own words)
 - Ask them to be neutral
 - Direct questions to the resident
 - Look at the resident, not at the interpreter, when talking



Learn more about Residents' Rights and find [Residents' Rights fact sheets](#) in other languages on the National Consumer Voice for Quality Long-Term Care website.²⁵

Every resident is unique and may have different ways in which they communicate with others. As a representative, the key to successful communication with residents, family members, facility staff, and others is the ability to actively listen, identify the best way to connect with the individual, and clearly convey your message in a way the individual understands.

²⁵ The National Consumer Voice for Quality Long-Term Care *Residents' Rights in Other Languages*
<https://theconsumervoice.org/issues/recipients/nursing-home-residents/residents-rights#Other-Languages>

Section 5:

Conclusion

Module 5 Questions

1. What information does the Ombudsman program require be kept confidential (unless given permission by the resident or complainant)?
2. Name something federal law authorizes the Ombudsman program to access.
3. Describe what you would do if you were denied access to a resident.
4. True or False? The representative may show their notes to the nurse if they promise not to share the information with anyone else.
5. When a representative receives a complaint from a family member which of the following statement(s) are true?

The representative:

- Must have the complainant's permission to be identified, whether it is identified to the resident or a staff member or someone else
 - Must have the resident's permission to report back to the complainant
 - Is required to honor both the resident's and the complainant's confidentiality
6. How do you show someone you are listening to them?
 7. Name tips to use when talking to an individual with a speech impairment.

Module 5 Additional Resources

Access and Disclosure

- NORC Resource: The Law and the Rule Pertaining to Access of Records
<https://ltcombudsman.org/uploads/files/support/the-law-and-the-rule-access-to-records-2.pdf>
- NORC Resource: Disclosure of Files, Records, and Other Information Maintained by the LTCOP
<https://ltcombudsman.org/uploads/files/support/disclosure-of-ltco-information-september-2015-renumbered.pdf>

Communication

- Overview of Key Communications Techniques
<https://ltcombudsman.org/uploads/files/support/appendix-1.pdf>
- Communication Tips
https://theconsumervoice.org/uploads/files/long-term-care-recipient/19_Communication_Tips.pdf
- Information on Communication from Washington DC LTCOP
<https://ltcombudsman.org/uploads/files/support/DC-Module-5A.pdf>
- Navigating the Needs of Long-Term Care Residents Who are Deaf or Hard of Hearing: A Training for Kentucky LTCOP
https://ltcombudsman.org/uploads/files/support/Kentucky_information_on_Hearing_Impaired_Resources.pdf