



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

MODULE EIGHT

**Long-Term Care Ombudsman
Program Complaint
Processing: Analysis,
Planning, Implementation, and
Resolution**

TRAINER GUIDE

January 2022

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Module 8 State-Specific Information

The list below outlines state-specific information for trainers to discuss, provide a link to, or add directly to the Trainer Guide, Trainee Manual, and/or PowerPoints. When you get to the point in the training where you need to discuss, include a link to, or add state-specific information, you will see a **bold, blue arrow (→)** and a brief description of what to include.

→ State-Specific Information

Section 3 Implementation and Resolution

- Reiterate your program's policies and procedures regarding systems advocacy.

Section 1:

Welcome and Introduction

Welcome

Trainer's Note: Allow at least 15 minutes for Section 1.

Begin the session by welcoming the trainees to the training session and thanking them for their continued interest in the program. Make sure everyone introduces themselves – even if they come late.

To begin, please share:

- *Your name*
- *Where you are from*
- *One thing you learned from Module 7 - something that really stuck with you or surprised you*
- *What you hope to learn since the last module*

After introductions, thank the trainees for their information and explain any housekeeping items that need to be addressed including the time frame of the training day, breaks, location of restrooms, refreshments, etc. Ask the trainees to speak up if they have any questions throughout the training.

Welcome to Module 8 of certification training, **Long-Term Care Ombudsman Program Complaint Processing: Analysis, Planning, Implementation, and Resolution**. Thank you for being here to learn more about the Long-Term Care Ombudsman program and the certification process.

Module 8 Agenda

Trainer's Note: *The timeframes for each Section are approximate. Allow at least 3 hours for Module 8.*

- Section 1: Welcome and Introduction *(15 minutes)*
Section 2: Analysis and Planning *(60 Minutes)*
BREAK *(15 Minutes)*
Section 3: Implementation and Resolution *(60 Minutes)*
Section 4: Conclusion *(20 Minutes)*

Module 8 Learning Objectives

Trainer's Note: *Go over the Module 8 learning objectives.*

After completion of Module 8 you will understand:

- the analysis and planning stage of Long-Term Care Ombudsman program Complaint Processing
- the implementation and resolution stage of Long-Term Care Ombudsman program Complaint Processing

Module 8 Key Words and Terms

The key words and terms are defined as they are specifically applied to the Ombudsman program and are found throughout this Module. Take a moment to familiarize yourself with this important information.

Appeal Hearing – A process that occurs after a resident appeals a notice of transfer or discharge to determine if the facility or the resident prevails. In some states, appeal hearings may also be referred to as “administrative hearing” or “fair hearing.”

Case – Each case must have a minimum of one complaint. A case must contain a complainant, complaint code(s), a setting, verification, resolution, and information regarding whether a complaint was referred to another agency. For abuse, neglect, and exploitation codes, a perpetrator code is also required.¹

Code – An alphanumeric assignment to a data element of a case (e.g., complaint code, verification code, disposition code, etc.).²

Complainant – An individual who requests Ombudsman program complaint investigation services regarding one or more complaints made by, or on behalf of, residents.³

Complaint - An expression of dissatisfaction or concern brought to, or initiated by, the Ombudsman program which requires Ombudsman program investigation and resolution on behalf of one or more residents of a long-term care facility.⁴

Complaint Disposition (Resolution) – Final resolution or outcome of the complaint.

Complaint Verification (Verification) – Confirmation that most or all facts alleged by the complainant are likely to be true.⁵

National Ombudsman Reporting System (NORS) – The uniform data collection and reporting system required for use by all State Long-Term Care Ombudsman programs.

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.⁶

¹ CA-04 Table 1: Part A https://ltombudsman.org/uploads/files/support/NORS_Table_1_Case_Level_10-31-2024.pdf

² These codes are also referred to as “element numbers” in NORS Tables 1, 2, and 3. Links to NORS Tables are available here: https://ltombudsman.org/omb_support/nors/nors-training

³ https://ltombudsman.org/omb_support/nors

⁴ CA-04 Table 1: Part B - Complaint Data Components

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

⁵ CD-07 Table 1: - Complaint Data Components

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

⁶ 45 CFR Part 1324 Subpart A §1324.1 Definitions

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.

PEP Method (Point, Evidence, Repeat Point) - A method of specific communication skills and problem-solving approaches.

Perpetrator – Person(s) who appear to have caused the abuse, neglect, or exploitation.⁷

Protection and Advocacy (P&A) - A system to protect and advocate for the rights of individuals with developmental disabilities; as designated by the State, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.).⁸

Referral Agency - The agency or agencies to which a complaint was referred as part of the Ombudsman program’s plan of action for complaint resolution.⁹

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.¹⁰

Setting – Description of where Ombudsman services are provided.¹¹

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.¹²

⁷ https://ltombudsman.org/uploads/files/support/NORS_Training_Part_II_Principles_2021.pdf

⁸ <https://acl.gov/programs/aging-and-disability-networks/state-protection-advocacy-systems>

⁹ CD-06 Table 1 Part B – Complaint Data Components

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

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

¹¹ https://ltombudsman.org/omb_support/nors/nors-training#training

¹² 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).¹³

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

Systems Advocacy – Work to change a system (e.g., a long-term care facility, a government agency, an organization, a corporation, policies, regulations, and laws) to benefit long-term care residents.¹⁴

¹³ <https://www.govinfo.gov/content/pkg/CFR-2017-title45-vol4/xml/CFR-2017-title45-vol4-part1324.xml>

¹⁴ <https://ltcombudsman.org/uploads/files/support/systems-advocacy-lltco.pdf>

Section 2:

Analysis and Planning

Long-Term Care Ombudsman Program Complaint Processing

Trainer's Note: Allow at least 60 minutes for Section 2. Remind the trainees that Long-Term Care Ombudsman Program Complaint Processing was introduced in Module 7 and Stage 1 was covered in detail. This Module describes Stages 2 and 3 of Long-Term Care Ombudsman Program Complaint Processing. Review the Figure 1 chart once again.

Ombudsman Program Complaint Processing was introduced in Module 7 with Stage 1: *Intake, Planning, Investigation, and Verification* covered in detail. Representatives analyze the information gathered during intake and investigation and use it to develop a resolution strategy with the resident. This Module describes Stage 2: *Analysis and Planning*, and Stage 3: *Implementation and Resolution*. Remember, regardless of the facility or setting, representatives use the same complaint processing method to work towards complaint resolution.

The Stages of Long-Term Care Ombudsman Program Complaint Processing

Figure 1

STAGE 1 INTAKE, PLANNING, INVESTIGATION, AND VERIFICATION	
Intake	Receive problems, concerns, and complaints. Confirm the resident's perspective of the problem. Determine if the problem or concern is a complaint as defined by the LTCOP.
Develop an Initial Plan of Action with the Resident	Advise resident of rights and discuss their desired outcome and possible solutions; obtain consent to act and consent to identify the resident when speaking with involved parties. Seek consent to access records when applicable. Determine who is responsible for all required actions within the plan.
Investigate	Collect information from interviews, observations, and records (when necessary).
Verify	Review information gathered. Determine if the complaint is generally accurate and if further action is needed. If no action is needed, complaint processing stops here, except for documentation.
STAGE 2 ANALYSIS AND PLANNING	
Analyze	Once the complaint is identified and verified, consider the root cause(s). If the complaint is not verified, but the resident's perception of a problem exists, determine the root cause of the problem and if there is a need for LTCOP involvement.
Revisit the Plan of Action with the	Review the desired outcome and possible solutions. Determine if any changes need to be made to the plan of action.

Resident	Anticipate barriers to select an appropriate approach and identify alternative strategies if needed.
STAGE 3 IMPLEMENTATION AND RESOLUTION	
Act	Proceed with implementing the agreed-upon plan of action.
Assess	Check back with the resident and others involved to measure the progress of the plan. Determine if alternative actions need to be considered.
Resolve	Follow up to confirm with the resident that the complaint is resolved or partially resolved to their satisfaction.

Analysis and Planning

***Trainer's Note:** A case study was conducted in Module 7 demonstrating Stage 1 of Long-Term Care Ombudsman Program Complaint Processing. Use the information about Mrs. Bronner's purse to preface this section. The module questions will walk trainees through analysis, planning, implementation, and resolution using the Mrs. Bronner case, so you may want to let them know this case will be discussed again at the end of the module.*

Case Study: Mrs. Bronner's Purse

In Module 7 an investigation into Mrs. Bronner's missing purse was conducted. Based on interviews and observation, here are the facts of the case:

- ✓ The Ombudsman program (LTCOP) has permission from Mrs. Bronner to talk to her daughter, Stephanie, and the Social Services Director, Anita.
- ✓ The missing purse is a brown handbag containing a wallet and special pictures.
- ✓ Mrs. Bronner keeps the purse on the chair, next to her bed.
- ✓ The purse is not in her room.
- ✓ Mrs. Bronner often misplaces her purse, usually leaving it in the dining room or the activity room.
- ✓ Neither Stephanie nor Anita have attempted to locate the purse.

Once a complaint has been investigated, you are ready to analyze the information gathered to determine the reason the problem occurred. The Mrs. Bronner case study in Module 7 shows the importance of identifying the underlying problem and understanding why the problem occurred as one may automatically assume the purse was stolen prior to investigating and gathering facts. This Module will explain Stages 2 and 3 using new case studies and the Module questions will review the Mrs. Bronner case study through both stages. The analysis and planning stage will enable you to prepare more effectively by defining potential solutions and identifying barriers that may be encountered.

There are two parts to the Analysis and Planning Stage:

1. Analyze the situation.
2. Revisit the plan of action with the resident.

Analyze the Situation – Why Did the Problem Occur?

The information you gather during an investigation should give you some idea about the cause of the problem. The 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. Therefore, the root of the problem is not an issue with theft, but laundry management.

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

Sometimes complaints that are not verified might still warrant further action on the part of the LTCOP. Those situations usually include when the resident, due to problems with memory or other cognitive issues, believes the complaint to be true even after your investigation proves otherwise. You may still work with the resident, and others, with the resident's permission, to come up with a solution that would satisfy the resident.



Example: Jessica

Jessica complains to you that the facility does not bring her ice cream in the evening (it is in the care plan that Jessica gets ice cream every night before bedtime). The facility says that they bring it, but Jessica doesn't remember eating it and accuses them of not providing it. Jessica's daughter confirms with you this also happened when her mom lived with her and has witnessed it happening in the facility. You review case records and see that staff document bringing her ice cream. You cannot prove that Jessica isn't getting ice cream. After brainstorming with the resident and facility staff, the staff have the idea to create a form for Jessica to choose the ice cream flavor and to initial it after receiving the ice cream. The form will be left in Jessica's room for her to see any time. This will hold the facility accountable and will show Jessica that she did receive her ice cream. All parties, including Jessica, agree to the solution. On a future visit, you can visit with Jessica to see if the form has been helpful to her.

There is a lot to consider when determining the root cause of a complaint. You will learn what questions to ask through experience. You are not expected to memorize the following questions; rather, you may use this manual as a reference when processing a complaint. Thinking through the cause of a complaint leads to identifying potential solutions.

When determining the possible causes, consider the following:

- Was there an oversight on the part of facility staff?
- Was there deliberate retaliation against the resident?
- Is the problem related to the facility's policies and procedures?
- Is there a problem with communication (e.g., are staff aware of the contents of the care plan, how is shift-to-shift communication, etc.)?
- Are there issues related to trust?
- Is the facility frequently short staffed?
- Does the staff spend the time necessary to address individual physical or mental needs?
- Does the resident need a different level of care than the facility is providing or is able to provide?
- Is the quality of care provided by staff related to the resident's method of payment (e.g., Medicaid vs. private pay)?
- Are other residents part of the complaint (e.g., resident-to-resident mistreatment, bullying, roommate conflicts, etc.)?
- Are family members part of the complaint (e.g., interfering with care, or denying visitors)?

A thorough analysis includes considering each party's perspective of the problem, including staff members involved. The facility's explanations of the issue may also reveal possible barriers to resolution.

Examples of statements you might hear include:

- There is no problem.
- The problem is due to a "difficult" resident or family member.
- The facility's action is based on medical/professional judgment.
- The care is as good as it can be considering the low rate of reimbursement.
- The facility meets regulations and has good inspection reports.

While you may not agree with the facility's response, it is helpful to understand their point of view to know how to approach the situation from their perspective while investigating the problem from the resident's standpoint.

CONSIDER THE CAUSES - WHO OR WHAT IS RESPONSIBLE FOR THE PROBLEM?

Knowing who or what is responsible for the problem is helpful when moving into the resolution stage.

The responsibility may rest with one or more of the following:

- Facility staff failed to perform their duties properly
- Facility policies and procedures are not person-centered
- State/federal regulations are vague or confusing regarding the issue(s) raised in the complaint(s)
- Third-party reimbursement programs may not pay for certain procedures, services, or items
- Independent professionals (e.g., doctor, physical therapist) may not provide appropriate services for residents
- The resident's condition (e.g., adverse reaction to medication, dementia, etc.)
- Family members' involvement (conflicting requests or concerns, interfering with care)
- Resident representative (absent, doesn't represent the resident's best interest, doesn't respond to staff, etc.)

Use the information from your analysis of the situation to begin planning the next stage of complaint processing. Always keep the resident's or complainant's goals in mind.

Revisit the Plan with the Resident

When a complaint is verified and you understand the cause of the complaint as well as the facility's response to the complaint, make sure you revisit the plan of action with the resident to determine if any modifications need to be made. Has anything changed or is there new information which affects the initial plan? When revisiting, you can develop another plan which includes the following factors.

Questions to help determine if the plan needs to change:

- Has the resident's desired outcome changed?
- Are there new or different concerns?
- Has the resident's desire to participate in actions related to resolving the problem changed?
- Does anyone else need to be involved?
- What might resolve the problem?
- What will it take to keep the problem from recurring?
- What possible solutions does the resident want to try first?
- What barriers might be encountered?

Identify Barriers

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

Using your list of potential solutions and barriers, think of other alternatives that can be used to achieve 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. Be prepared with ideas and remain flexible to prevent barriers from ending a resolution discussion.

***Trainer’s Note:** Refer trainees to the Figure 2 chart. Ask for a volunteer to read the 1st complaint. Ask for volunteers to read the potential barriers, suggestions, and potential solutions.*

Ask for a volunteer to read the 2nd complaint. Ask for volunteers to read the potential barriers, suggestions, and potential solutions.

Ask the trainees to close their manuals. Read the last quote then ask the trainees to come up with potential barriers, suggestions, and potential solutions. Make sure the corresponding information in the chart is covered.

Identifying and Addressing Potential Barriers

Figure 2

Complaints	Potential Solutions	Potential Barriers	Suggestions to Address Barriers
“I have to keep telling staff not to wake me up before 9:00 a.m.”	<ul style="list-style-type: none"> Care plan reflects resident’s preferences and staff follow the care plan. Consistent staff assignments. Improved communication between staff. 	<ul style="list-style-type: none"> Care plan does not reflect the resident’s preferences and/or is not followed. The rate of staff turnover is so high that consistent staff assignment is meaningless. Administration does not want to do consistent assignments. 	<ul style="list-style-type: none"> Advocate for a care plan that reflects resident’s preferences and ask how staff will be informed and trained to ensure this preference is honored. Share resources on consistent staff assignments, culture change, and care planning. Encourage training on consistent staff assignments, culture change and care planning.

<p>“Staff keeps repositioning me in my wheelchair by pulling me up by my waistband or belt loops which rips my pants.”</p>	<ul style="list-style-type: none"> • Staff are all trained to appropriately reposition all residents. • Supervisors ensure proper techniques are followed. 	<ul style="list-style-type: none"> • Staff are not trained on repositioning. • Staff don't apply training. • There is no supervision or follow up after the training. • Supervisors' attitudes and expectations do not change to reflect a new approach. 	<ul style="list-style-type: none"> • Encourage all staff to attend repositioning training. • Determine how training will be applied to daily staff routines and addressed in supervision. • Determine how staff will identify changes made.
<p>“I can't get the wrapping off of my meal when it is left on my bedside table.”</p>	<ul style="list-style-type: none"> • Care plan reflects resident's preferences and staff follow the care plan. • Improved communication between staff. 	<ul style="list-style-type: none"> • The care plan is completed without the input of the resident. • Staff are not informed of the resident's need. • No one checks with the resident to see if they have eaten. 	<ul style="list-style-type: none"> • Advocate for a care plan that is clear, specific, and understood by all. • Ask how all staff will implement the care plan. • Be sure the resident knows who to contact if concerns arise. • Confirm implementation of agreed upon plan.

IDENTIFY ALTERNATIVE STRATEGIES

Once the plan of action has been determined and potential barriers are identified, you may need to discuss alternative strategies with the resident. This action is not always necessary but is beneficial when the initial strategies are unsuccessful. Because each case is different, there could be numerous potential strategies.

Alternative strategies may include, but are not limited to:

- involving different facility staff members
- involving other family or friends of the resident
- seeking the input of the resident's physician or seeking a second opinion from another doctor
- referring the complaint to another entity, such as the state survey agency

Analysis and Planning – Putting it Together

Trainer's Note: Show the 6-minute video “Anne Walker – Analysis and Planning” and ask the trainees the following questions. Make sure the appropriate responses are

addressed. The video refers to LTCOP Complaint Processing by its former name, “Ombudsman Program Problem-Solving Process” but the stages are still the same.

The following video addresses Stage 2 of LTCOP Complaint Processing: Analysis and Planning. Consider the questions below as you watch the video.



Watch the video: [Anne Walker – Analysis and Planning](#)¹⁵ and answer the following questions.

1. What options does Gloria present to Anne Walker to work towards resolution?

Answer: *The options are to either address the concern at the Resident Council meeting or to meet with Carol Lee, the Director of Nursing.*

2. Is Gloria effective in facilitating the conversation between Ms. Walker and the Director of Nursing (DON), Ms. Lee? Why or why not?

Answer: *Yes, Gloria waits until Ms. Walker gives her a nonverbal cue to share her concerns and then provides an overview of Ms. Walker’s concerns. Once Ms. Walker feels comfortable speaking, she shares her perspective with Gloria’s support. Gloria makes sure all of Ms. Walker’s points are addressed, stresses her rights, and guides the conversation to a resolution Ms. Walker appreciates.*

3. How does Gloria respond to the DON’s pushback on changing the bathing schedule?

Answer: *Gloria treats the DON with professional respect, reiterates the resident’s wishes, and reminds the DON of Ms. Walker’s right to have her showers at her preferred time.*

4. Is there anything you would do differently in this scenario?

Trainer’s Note: *Highlight how Gloria focuses her advocacy on Ms. Walker’s preferences and empowers Ms. Walker to share her experience as Gloria facilitates the meeting between Ms. Walker and Ms. Lee. The decision for Ms. Walker to verbalize her preferences to the DON instead of focusing on the written care plan is an effective strategy as it may be more convincing for staff to hear directly from the resident. Gloria focused on what is most important in this situation: the current shower situation, Ms. Walker’s wishes, how the aides interact with Ms. Walker, and how to ensure that her bathing preferences are upheld in the future.*

¹⁵ This video clip is part of the [Long-Term Care Ombudsman Program: Advocacy and Communication Skills Training Kit](#) developed by the Texas Department of Aging and Disability Services in coordination with the Texas Long-Term Care Ombudsman Program. Questions are from both the [Long-Term Care Ombudsman Casework: Advocacy and Communication Skills Trainer Guide with Answers](#) and the Illinois State Long-Term Care Ombudsman Program Level 1 Training manual.

Section 3:

Implementation and Resolution

Trainer's Note: Allow at least 60 minutes for Section 3.

The next step of Ombudsman Program Complaint Processing is *Stage 3: Implementation and Resolution*. During this stage, you will act on the developed plan, assess the effectiveness of the intervention, and attempt to resolve the complaint(s) to the satisfaction of the resident.

Prior to acting on behalf of the resident, check back with the resident to ensure you are still in agreement about what measures will be taken.

- Share all information gathered with the resident.
- Be sure the resident still wants your help.
- Determine the level of involvement from the resident, the resident representative, or anyone else when addressing the complaint(s).
- Confirm all individuals with whom you have permission to address the complaint(s) and if there are individuals with whom you may not address the complaint(s).
- Confirm the plan of action.
- Explain all potential outcomes of the plan of action.
- Verify the outcome the resident is seeking.

Implementation

Implementation is putting your plan of action into effect. The action taken depends upon the problem, the resident's preferences, direction, and involvement.

The following are implementation options:

- no action needed;
- self-advocacy;
- direct advocacy;
- negotiation;
- mediation;
- represent the resident in an appeal hearing;
- referrals; and
- systems advocacy.



No Action Needed

Once the facts surrounding the complaint have been investigated and the circumstances surrounding the events described in the complaint have been explained to the resident, the resident may feel that no further intervention is necessary.



Self-Advocacy

Trainer's Note: "Self-advocacy" will be discussed in more detail in this Module after the implementation options are covered.

If it is determined that action is needed, the first option to consider is self-advocacy when possible. This occurs when the resident is empowered to speak for themselves. Residents who self-advocate are able to ask for what they need and want, and to express their thoughts and feelings. Residents who advocate on their own behalf know their rights and responsibilities, speak-up for these rights, and are able to make choices and decisions that affect their lives.¹⁶

Self-advocacy will be discussed in greater detail later in this section.



Direct Advocacy

Direct advocacy is when a representative of the Office advocates on behalf of the resident with facility staff, a family member, or another entity responsible for the concern. Where possible, first utilize the techniques for self-advocacy and ask the resident to attend meetings with you, facility staff, and/or family members. During such meetings, give the resident an opportunity to express their concern(s) in their own words. It may be necessary for you to encourage facility staff and/or family members to listen to what the resident says.



Negotiation

Trainer's Note: *"Negotiation" will be discussed in more detail in this Module after the implementation options are covered.*

Negotiation is a planned discussion to resolve an issue in a way that both parties find agreeable. If the findings of your investigation determine an agreement with facility staff or other relevant parties is necessary to resolve the problem to the resident's satisfaction, you may use negotiation to achieve resolution. Because negotiation involves give and take from each party, you must be careful to never negotiate in a way that will weaken residents' rights. Negotiation will be discussed in greater detail at the end of this section.



Mediation

When the complaint involves conflict between two or more residents, you may serve as an impartial mediator to help the conflicting parties reach an agreement to resolve the complaint.

Examples of when mediation can be used as an effective tool are when roommates have a dispute over the volume of the television or the temperature of the room and need to come up with an agreed-upon outcome.

¹⁶ Texas State Long-Term Care Ombudsman Program Initial Certification Training



Represent the Resident in an Appeal Hearing

Trainer's Note: Clarify with the trainees if residents in RCCs have rights to a fair hearing. Insert information if your state LTCOP represents residents in other types of hearings such as Medicaid eligibility.

All residents in nursing facilities have a right to a fair hearing when they disagree with the decision of a facility to issue a facility-initiated transfer or discharge. An appeal hearing is a process that allows both parties to explain their case. You may be instrumental in helping a resident assert their right to an appeal hearing in situations of transfer or discharge. Cases regarding transfers and discharges will be discussed in more detail in the next Module.



Referrals

Sometimes a resident may ask you to make a referral to another agency on their behalf. You may also coordinate referrals to agencies that provide services that are outside the scope of the Long-Term Care Ombudsman program (LTCOP), or if you need additional assistance to achieve resolution. Referral agencies are discussed in more detail in Module 8.



Systems Advocacy

→ **Reiterate your program's policies and procedures regarding systems advocacy.**

There are complaints that require work to change a system (e.g., a long-term care facility, a government agency, an organization, a corporation, policies, regulations, and laws) to benefit long-term care residents. If a case requires changes to policies, laws, or regulations, contact your supervisor to learn how your program engages in systems advocacy.

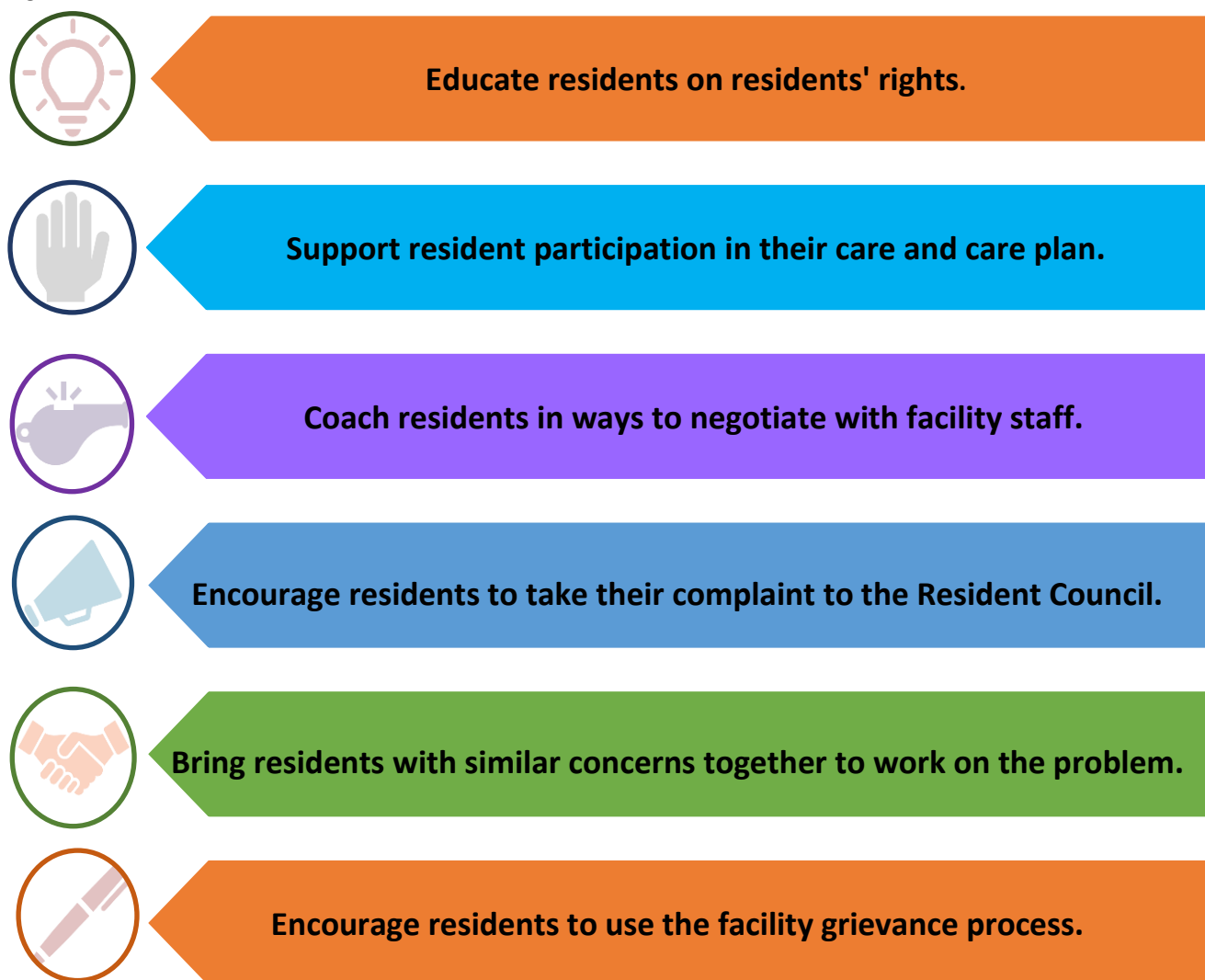


Self-Advocacy

Representatives cannot be in the facility 24 hours a day, 7 days a week. It is imperative to encourage residents and provide them with knowledge and skills, so they are empowered to advocate on their own behalf. There are several ways in which the Ombudsman program can use empowerment to support self-advocacy. Some examples include the resident resolving the complaint on their own, with other residents, or with some assistance from the LTCOP. Encourage as much self-advocacy as the resident is comfortable doing.

Ombudsman Program Actions to Empower Resident Self-Advocacy

Figure 3



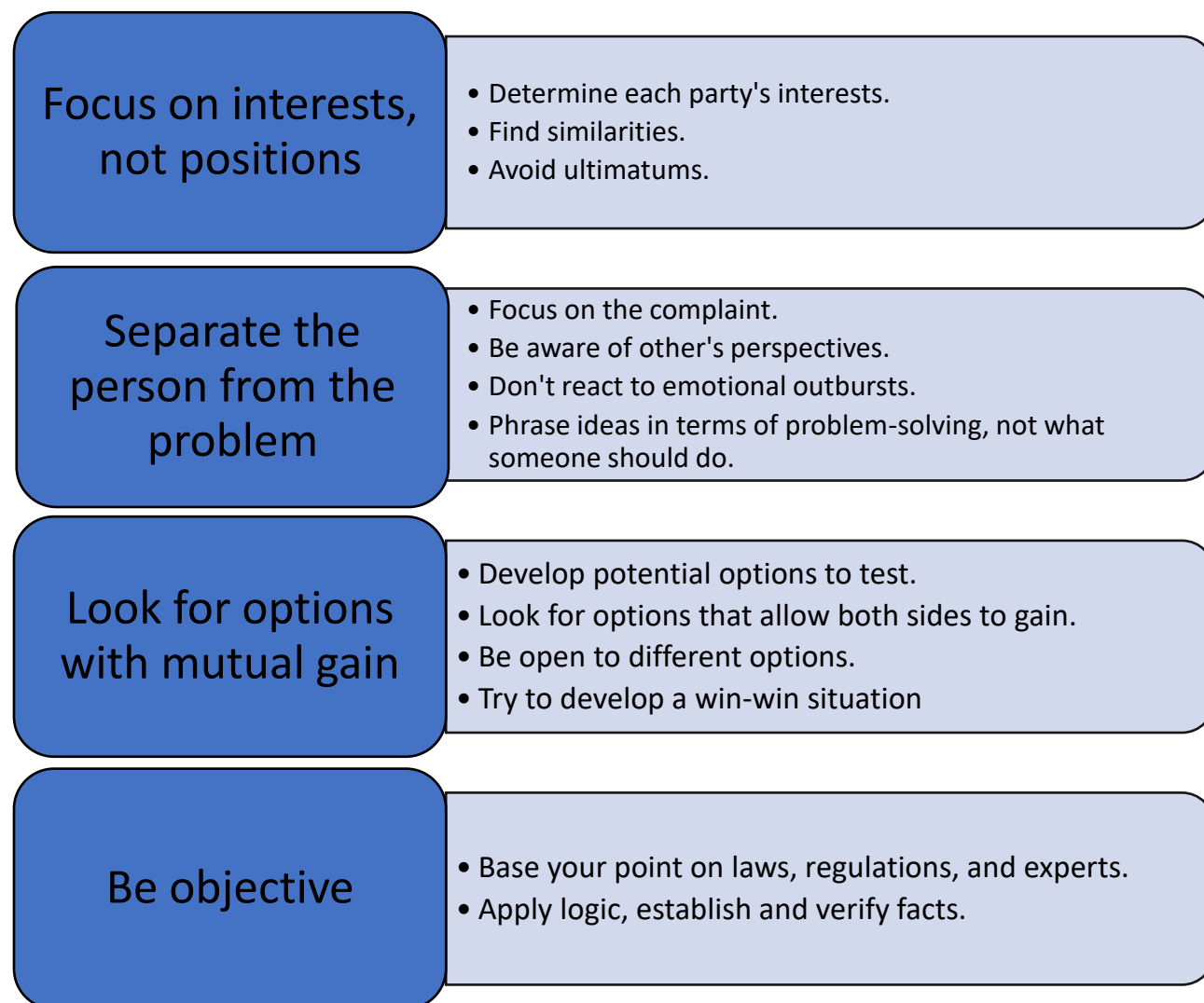
Negotiation

Negotiation focuses on interests rather than positions. **Interests** are what cause someone to make a decision, such as “I want to be treated with dignity and respect.” **Positions** are decided upon, such as “I don’t want male staff helping me with my shower.” When it comes to residents’ rights, **how** a resident right is met can be negotiated, but not **if** it is met.¹⁷ Figure 4 provides negotiation tips.

¹⁷ Texas State Long-Term Care Ombudsman Program Initial Certification Training

Ombudsman Program Negotiation

Figure 4



Trainer's Note: Use the negotiation examples to explain the negotiation tips in Figure 4.

NEGOTIATION EXAMPLES

The following examples describe the negotiation tips explained in Figure 4.

Focus on Interests, not Positions

"We agree residents need the best care possible. Let's discuss what Mr. Tanaka needs to feel safe and secure in his home."

Separate the Person from the Problem

“I know your facility strives to meet residents’ needs. However, dinner trays left without providing help and removed without the resident being able to eat is a serious issue because they are not getting the nutrition they need. Let’s focus on ways to avoid this. It could help if the staff were clear about which residents need help with eating and drinking, whose responsibility it is to help, and how to assist the residents.”

Look for Options with Mutual Gain

“Based on our discussion, we agree Mr. Dillard needs more opportunities to move around and to be outdoors. In the past, a complaint was filed with the state survey agency after Mr. Dillard fell outside, and because you don’t want another complaint filed, you are concerned when Mr. Dillard goes outside by himself. Can we brainstorm some ideas about how his needs can be met while considering his safety and need for supervision?”

Use Objective Criteria

“I understand your concern that Mrs. Everett’s health will decline if she doesn’t take the medicine her doctor ordered. You have explained the consequences of her decision and offered other options. Nevertheless, you cannot discharge Mrs. Everett for exercising her right to refuse treatment.”



Activity: Putting Your Negotiation Skills to the Test

Trainer’s Note: *Separate the trainees into groups of two and ask one of the trainees in each group to negotiate with the other to switch seats. Give them 5 minutes to do so. Ask each pair about the outcome of the negotiation.*

If you are conducting this session virtually, ask the trainees to negotiate with you to end the training 15 minutes early. Give them 5 minutes to do so.

Developing a Professional Relationship with Facility Staff

To be an effective representative, one needs to build a professional working relationship with staff. Relationship building is key to conflict resolution and negotiation. In a professional relationship, everyone needs to feel safe and secure, to feel respected and valued, and to know their voice is heard. To achieve this, the representative must be self-assured, respectful, and have a good attitude.

Trainer’s Note: *Explain that while the Figure 5 and 6 charts focus on relationship building with staff, many of the tips are also effective when building relationships with residents and family members.*

TIPS FOR ADDRESSING COMPLAINTS WITH FACILITY STAFF

Figure 5

Do
<ul style="list-style-type: none"> • Stick to the outcome that the resident wants without being sidetracked on other issues. • Start with the assumption that the other person has good intentions. • Consider your words, voice tone, and nonverbal communication such as posture, facial expressions, eye contact, and gestures. • Be assertive. • Know the applicable laws or regulations in case you have to use these to reach a resolution. • Be uncompromising on points that clearly violate laws or regulations. • Be prepared with examples of how other facilities have benefited from similar changes, if applicable. • Show how the changes will benefit the staff as well as the residents. • Offer staff clear reasons to change their minds—reasons that are important to them. • Allow staff to contribute to the resolution, identify actions, and make decisions. • Listen carefully to what is being said. • Restate to clarify and show understanding. • Have a plan in mind in case the staff does not identify an appropriate plan for resolution. • Persist in seeking resolution. If the facility refuses to agree to an acceptable resolution, inform them of your next step. • Set a time for follow-up to see if the resolution achieved the desired outcome.

Figure 6

DON'T
<ul style="list-style-type: none"> • Lose sight of the goal you are seeking on behalf of the resident. • Negotiate away any residents' rights. • Evaluate, make judgments, or accuse. • Become defensive or take things personally even if they are intended that way. • Appear negative in your posture or facial expressions. • Be demanding, threatening, intimidating, or aggressive. • Overlook the facility's responsibilities to maintain compliance with the law or regulations. • Bluff or develop your own interpretation of a law or regulation that will not be supported by a regulatory agency.

The following video illustrates how a representative addresses conflict and negotiation. Consider the questions below as you watch the video.



Watch the video: [Brian Brashear](#)¹⁸ and answer the following questions.

Trainer's Note: Show the 13-minute video on conflict and negotiation. Ask the following questions and make sure the correct responses are addressed.

1. What concerns does Mr. Brashear express in the video? Are all his concerns addressed?

Answer: Mr. Brashear wants his friends to be able to visit him at any time and he fears being discharged from the facility. Mr. Brashear also says that some nurses ignore him. No, Gloria does not address how the nurses treat Mr. Brashear.

2. What does PEP stand for?

Answer: Point, evidence, repeat point.

¹⁸ This video clip is part of the [Long-Term Care Ombudsman Program: Advocacy and Communication Skills Training Kit](#) developed by the Texas Department of Aging and Disability Services in coordination with the Texas Long-Term Care Ombudsman Program. Questions are from both the [Long-Term Care Ombudsman Casework: Advocacy and Communication Skills Trainer Guide with Answers](#) and the Illinois State Long-Term Care Ombudsman Program Level 1 Training manual.

Trainer's Note: PEP is discussed after the questions about the video.

3. How does Gloria address Mr. Brashear's concerns regarding his rights and other residents' rights when speaking with the Administrator, Mr. Cook? Is her approach effective?

Answer: Gloria is clear about Mr. Brashear's right to visitors and asserts that Mr. Brashear and his guests understand they should not interfere with his roommate and other residents' rights.

Gloria also points out that Mr. Brashear's roommate also enjoys the visits by Mr. Brashear's friends.

Yes, Gloria's approach is effective. She demonstrates that Mr. Brashear and his visitors respect the rights of others, yet Mr. Brashear's right to visitors is not supported by the staff.

4. How does Gloria ensure her complaint investigation is resident-directed while reminding Mr. Cook of the need for resident-directed care and quality of life? How does this impact her credibility with Mr. Brashear and with Mr. Cook?

Answer: Gloria informs Mr. Brashear of how she wants to proceed and asks for his permission before speaking with the Administrator. She invites Mr. Brashear to come with her to talk to Mr. Cook.

She encourages Mr. Cook to speak directly with Mr. Brashear to assure him he isn't being discharged. Her ability to remain objective and resident-directed enhances her credibility with both Mr. Brashear and Mr. Cook.

5. What is one improvement Gloria could have made during the discussion with Mr. Cook?

Answer: Although Gloria remained resident-directed in her actions while speaking with Mr. Cook, Mr. Brashear was clear in stating he wasn't ready to speak with Mr. Cook and he preferred that Gloria go on her own. While it was helpful for her to suggest that Mr. Cook speak with Mr. Brashear directly to reassure him that he is not being discharged and his rights will be respected, she should have asked Mr. Brashear if he was ready to speak with Mr. Cook prior to asking Mr. Cook to come back to his room for them to discuss the issue together.

6. The video states that representatives should remain "calm, objective, and in control" at all times, especially when a situation escalates. When speaking with Mr. Cook, what techniques, both verbal and nonverbal, does Gloria use to maintain her professionalism?

Answer: Gloria keeps her hands in her lap and looks relaxed. She does not raise her voice or interrupt the Administrator. She is professional and courteous, but explicitly states Mr. Brashear's concerns, his rights, and her concerns with the facility's response. She acknowledges the challenges Mr. Cook deals with when running a long-term care facility and that they both have the same goal, to meet the needs of residents.

7. In the follow-up conversation with Mr. Brashear and Mr. Cook, how does Gloria demonstrate her support of Mr. Brashear when facilitating the conversation? Why is that important?

Answer: To open the follow-up conversation, Gloria clearly states Mr. Brashear's concerns and paraphrases her previous conversation with Mr. Cook. After Mr. Brashear shares his perspective, Gloria echoes that she shared the concern regarding the Administrator's suggestion about Mr. Brashear moving out. She persists until Mr. Cook assures them that Mr. Brashear will not be discharged and his rights to visitors will be supported. Gloria's obvious support is important because it encourages Mr. Brashear to share his perspective.

8. Is there anything you would do differently in this scenario?

Answer: In addition to discussing the other concerns, Gloria could have asked more questions about the night nurse who ignores Mr. Brashear to see if that happens often and if other staff do the same thing.

Trainer's Note: Emphasize how critical it is for representatives to do their homework and build their case before moving to resolution. Remind the trainees that Ombudsman program staff are available to support them when they need assistance (e.g., discussing a case before meeting with residents, family members, or staff). Prior to speaking with Mr. Cook, Gloria makes sure she has the information she needs. She understands residents' rights and facility requirements and bases her actions on Mr. Brashear's direction. Gloria knows what she wants to accomplish during the meetings. Due to her preparation, she stays on track, she is confident, and is an effective advocate.

PEP METHOD: POINT, EVIDENCE, REPEAT POINT

As demonstrated in the Brian Brashear video, a proven way to reach resolution that works in many types of situations is the PEP method. This method uses the communication skills and problem-solving approaches discussed throughout this training. The PEP method is focused, direct, and respectful of the other person.¹⁹

Trainer's Note: *Numbers 4 and 5 are information already covered in this Section. You don't need to repeat the information but do point out that those steps are a part of the PEP Method.*

1. Get Your Message Across.

- a. Provide a clear statement of the problem.
- b. Present the evidence you have gathered during the investigation. Start with the most factual evidence.
- c. Repeat 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.
- e. If the other person is defensive, it could mean they did not hear your message or that it was not presented clearly.

3. Repeat the Process.

Persistence is the key. It may take 3 – 10 times through this process to change the other's behavior.

- a. Do not back the other person into a corner.
- b. Allow the other person to retain their dignity.
- c. Do not expect willingness to address the problem. You are asking for changed behavior.
- d. Make sure the solutions meet the resident's desired outcome.
- 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.

Be sure 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?

¹⁹ The Ombudsman Training Manual, Oregon LTCOP, developed by Wayne Nelson, April 1992, and revised by Ann Fade, 2005. An adapted summary is available here: https://issuu.com/consumervoice/docs/pep_method.

- 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. As needed, contact staff responsible for implementation.

Assessment and Resolution

At this point, you have analyzed the information collected during your investigation, verified the complaint(s), identified the root of the problem, identified possible barriers and ways to overcome them, and developed and implemented potential solutions.

Assessment requires checking back with the resident and/or complainant to measure the progress of the plan and to determine if alternative actions need to be considered.

To determine if resolution is achieved, follow up to confirm with the resident that the complaint is resolved or partially resolved to their satisfaction.

While you always seek to resolve a problem to the satisfaction of the resident, achieving this goal is not always possible. Some complaints cannot be resolved. In other instances, complaint resolution is not always clear cut.

For instance, sometimes:

- a problem will go away and then reappear;
- only part of a complaint is resolved;
- the resident/complainant is not fully satisfied with the resolution, but there is nothing more that can be done by the Ombudsman program;
- the problem can't be fully resolved due to lack of resources, a change in the resident's condition, or the lack of specific regulations; or
- the resident/complainant is satisfied with the situation, but you want to pursue the matter further. It is important to remember, that although you may not be satisfied, it is the satisfaction of the resident/complainant that is relevant. Therefore, you would stop all advocacy efforts.

Trainer's Note: *Don't go into detail on resolution or disposition codes because they are discussed in more detail during Module 10.*

There are only three possible outcomes to complaint resolution.

1. Partially or fully resolved
2. No action needed or withdrawn
3. Not resolved



Watch the video: [Anne Walker - Resolution](#)²⁰ and answer the following question.

Trainer's Note: Show the video “Anne Walker – Resolution” and ask the trainees the following questions. Make sure the appropriate responses are addressed. At the end of the video, it shows Mrs. Walker walking with her arm around Gloria’s arm as if Gloria is providing support. Remind the trainees that these are actors, and a representative would not walk arm in arm with a resident to provide physical support.

1. What are some reasons to revisit a resident to ensure the resolution lasts?

Answers: Reasons include changes in direct care staff, changes in management, changes with residents, and to identify new problems or systemic problems.

As you can see from the video, Gloria follows up with resident, Anne Walker, to ensure her complaints have been resolved. The best way to determine resolution is to go back and visit the resident to see if the resident is satisfied with the results. If the resident cannot communicate their satisfaction, then the representative should seek input from the resident representative and/or the complainant to determine if resolution has been met.

Despite barriers, the Ombudsman program resolves most complaints to the satisfaction or partial satisfaction of the resident or complainant. Representatives take a complaint as far as possible to accomplish the resident’s desired outcome.

Sometimes further action needs to be taken by an outside agency, whether at the beginning, middle, or end of a case. In these instances, a referral can be made to an outside agency. This is discussed in Module 9.

²⁰ This video clip is part of the [Long-Term Care Ombudsman Program: Advocacy and Communication Skills Training Kit](#) developed by the Texas Department of Aging and Disability Services in coordination with the Texas Long-Term Care Ombudsman Program. Questions are from both the [Long-Term Care Ombudsman Casework: Advocacy and Communication Skills Trainer Guide with Answers](#) and the Illinois State Long-Term Care Ombudsman Program Level 1 Training manual.

Section 4:

Conclusion

Module 8 Questions

Trainer's Note: Allow approximately 20 minutes for this section. Ask the following questions and make sure the correct answer is discussed. Use Mrs. Bronner's Purse case study from Module 7 to cover the rest of complaint processing.

Case Study: Mrs. Bronner's Purse
Stage 2 of Ombudsman Program
Complaint Processing is Analysis
and Planning.

1. The problem is a missing purse. Based on the information you gathered, what is the likely cause of the missing purse?

Answer: Mrs. Bronner likely misplaced her purse.

2. To develop a plan of action with Mrs. Bronner, what questions do you ask her to determine her desired outcome? Think of all possible outcomes and anticipate obstacles.

Possible responses – “Do you want to go together with me to Anita’s office to see if she has located your purse?”

“I understand you have misplaced your purse before;

do you want to talk with Anita about coming up with a plan to make sure your purse doesn’t get misplaced in the future?” “What do you want to do if we cannot find your purse?”

Mrs. Bronner tells you she wants both of you to go to Anita’s office to find out if she has found her purse. You meet with Anita, and she looked but has not found the

Mrs. Bronner

In Module 7 an investigation into Mrs. Bronner’s missing purse was conducted. Based on interviews and observation, here are the following facts of the case:

✓ The Ombudsman program (LTCOP) has permission from Mrs. Bronner to talk to her daughter, Stephanie, and the Social Services Director, Anita.

✓ The missing purse is a brown handbag containing a wallet and special pictures.

✓ Mrs. Bronner keeps the purse on the chair, next to her bed.

✓ The purse is not in her room.

✓ Mrs. Bronner often misplaces her purse, usually leaving it in the dining room or the activity room.

✓ Neither Stephanie nor Anita have attempted to locate the purse.

purse. Mrs. Bronner begins to cry. Anita said she will look one more time and will come down to Mrs. Bronner's room to talk with her.

You and Mrs. Bronner return to her room. What questions do you ask her now to find out what she wants to do knowing her purse is still not found?

Possible responses – *“What do you want to do if we cannot find your purse?” “Do you want to come up with a plan to make sure your purse doesn’t get misplaced in the future?”*

Mrs. Bronner says if her purse is not found, she wants a new one. She also says that she wants her daughter to bring her more pictures and a new wallet to keep in her new purse. Mrs. Bronner says she wants you to work with Anita to come up with a plan to make sure her purse stays with her and does not get lost.

Stage 3 of the Ombudsman Problem Solving Process is Implementation and Resolution.

3. How do you proceed with implementing the agreed-upon plan of action?

Responses may include - *“Follow up with Anita to see if her second attempt to locate the purse was successful.” “Talk with Anita and Stephanie to determine who will get Mrs. Bronner a new purse if the other purse is not located.” “Talk with Stephanie about bringing the items Mrs. Bronner requested.” “Schedule a meeting to determine what can be done to assure Mrs. Bronner doesn’t continue to misplace her purse.” “Make sure Mrs. Bronner is included in the meeting and is agreeable to the plan.”*

4. How do you measure the progress of the plan?

Answer: *Follow up with all parties involved and determine what has or has not been accomplished.*

5. How do you know if the complaint is resolved?

Answer: *When Mrs. Bronner has a purse and is satisfied with the outcome.*

Module 8 Additional Resources

PEP Method https://issuu.com/consumervoice/docs/pep_method

The Resident Advocate is a newsletter for residents of long-term care facilities.

It provides:

- Information on residents' rights and care issues
- News and updates on national policy
- Self-advocacy tips for obtaining person-centered, quality care

<https://theconsumervoice.org/issues/recipients/nursing-home-residents/resident-advocate>

Negotiation

“Getting to Yes” the video.

<https://youtu.be/VCXsiCpfXgg>

Mediation

Uses of Mediation in Assisted Living – And Some Advice Thrown In: An Ombudsman Training

Prepared by the National Association of State Units on Aging (now ADvancing States) <https://ltombudsman.org/uploads/files/support/Uses-of-Mediationin-AL.pdf>