



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

MODULE NINE

Challenging Complaints and Referral Agencies

TRAINER GUIDE

January 2022

Table of Contents

Module 9 State-Specific Information.....	2
Section 1: Welcome and Introduction.....	4
Section 2: Challenging Complaints	11
Section 3: Additional Referral Agencies	34
Section 4: Conclusion.....	40

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.

Module 9 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 2 Difficult Cases

- Include state-specific requirements for each type of residential care community (RCC) regarding reporting and investigating allegations of abuse, neglect, and exploitation (ANE). Clarify whether all RCC staff and other contracted service providers are mandated reporters.
- Indicate the state agency(ies) responsible for investigating ANE for each facility type.
- Include your procedures for filing complaints with the state survey agency for each type of facility. Include the contact information of the State Survey Agency(ies), information to be included in the referral, and required forms (paper or electronic) as applicable.
- Explain whether Adult Protective Services (APS) investigates ANE in long-term care facilities in your state. It could depend on the facility type or where the ANE allegedly occurred, or whether the alleged perpetrator is a staff member, a family member, or a visitor. Explain the relationship your program has with APS, including when and how you would make a referral.
- Explain your state's policies and procedures on when and how a referral would be made to law enforcement, including the Medicaid Fraud Control Unit and any other offices within the Attorney General's office.

Section 3 Additional Referral Agencies

- Include the name(s) of the legal assistance program(s) in your area and discuss when and how you would make a referral.
- Include the name of the Protection and Advocacy (P&A) entity in your area and explain the relationship your program has with the P&A, including when and how you would make a referral.

- Add state-specific contact information for the entity or entities that provide guardianship or conservatorship, other than private guardians/conservators. Those entities could be state or county guardians, for example.
- Include state-specific information about when and how to contact the Aging and Disability Resource Center (ADRC) in your area.
- Include state-specific information about the Money Follows the Person program (if applicable in your state).
- Include the contact information for the agency responsible for Home and Community-Based Services (HCBS) in your area and explain the relationship your program has with them, including when and how you would make a referral.
- Include the contact information for the Centers for Independent Living (CILs) in your area and explain the relationship your program has with the CILs, including when and how you would make a referral.
- Include information about the State Health Insurance Assistance Program (SHIP) in your state and explain the relationship your program has with SHIP, including when and how you would make a referral.
- Include information about the Senior Medicare Patrol program (SMP) in your area and explain the relationship your program has with the SMP, including when and how you would make a referral.

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 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 8 - 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 9 of certification training, **Challenging Complaints and Referral Sources**. Thank you for being here to learn more about the Long-Term Care Ombudsman program and the certification process.

Module 9 Agenda

Trainer's Note: The time frames for each Section are approximate. Allow at least 3 hours for this session.



Optional Prework: Prior to meeting for classroom training ask the trainees to read about one of the referral agencies/entities and be ready to share one or two facts about the agency/entity.

- Section 1: Welcome and Introduction *(15 Minutes)*
- Section 2: Challenging Complaints *(90 Minutes)*
- BREAK *(15 Minutes)*
- Section 3: Additional Referral Agencies *(45 Minutes)*
- Section 4: Conclusion *(15 Minutes)*

Module 9 Learning Objectives

Trainer's Note: Go over the Module 9 learning objectives.

After completion of Module 9 you will understand:

- Common challenges when investigating complaints involving facility-initiated discharges and available resources
- The role of the Long-Term Care Ombudsman program (LTCOP) and other entities when complaints of abuse, neglect, and exploitation are made
- The various referral agencies utilized by the LTCOP and how they assist individuals

Module 9 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.

Abuse – Any willful mistreatment of residents by facility staff, resident representative/family/friend, other residents, or an outside individual. There are three categories of abuse: physical, sexual, and psychological.¹

Adult Protective Services (APS) – A social services program provided by state and local governments serving older adults and, in some states, adults with disabilities who need assistance because of abuse, neglect, self-neglect, or financial exploitation.²

ANE – Abuse, neglect, and exploitation.

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.³

Code – An alphanumeric assignment to a data element of a case (e.g., complaint code, verification code, disposition code, etc.).⁴

Complainant – An individual who requests Ombudsman program complaint investigation services regarding one or more complaints made by, or on behalf of, residents.⁵

Complaint – An expression of dissatisfaction or concern brought to, or initiated by, the Ombudsman program that requires Ombudsman program investigation and resolution on behalf of one or more residents of a long-term care facility.⁶

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.⁷

Complaint Visit – An Ombudsman program visit to a facility in response to a complaint when only complaint-related activities are conducted.

¹ https://ltombudsman.org/uploads/files/support/NORS_Table_2_Complaint_Code_10-31-2024.pdf

² <https://acl.gov/programs/elder-justice/supporting-adult-protective-services>

³ CA-02 Table 1 Part A https://ltombudsman.org/uploads/files/support/NORS_Table_1_Case_Level_10-31-2024.pdf

⁴ 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

⁵ https://ltombudsman.org/omb_support/nors

⁶ CA-04 Table 1: Part B - Complaint Data Components

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

⁷ CD-07 Table 1: - Complaint Data Components

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

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 LTCOP.

Discharge – The movement of a resident from a bed in one certified facility to a bed in another certified facility or other location in the community, when return to the original facility is not expected.⁸

Facility-Initiated Transfer or Discharge – A transfer or discharge to which the resident objects, which did not originate through a resident's verbal or written request, and/or is not in alignment with the resident's stated goals for care and preferences.⁹

Financial Exploitation (Exploitation) – The illegal or improper use of an individual's funds, property, or assets for another person's profit or advantage.¹⁰

Gross Neglect (Neglect) – The failure to protect a resident from harm or the failure to meet their needs for essential medical care, nutrition, hydration, hygiene, clothing, basic activities of daily living, or shelter, which results in a serious risk of compromised health and/or safety, relative to age, health status, and cultural norms.¹¹

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.

Law Enforcement – People employed by a local, state, tribal, or federal justice agency. This includes police, courts, district attorney's office, probation, or other community corrections agency, and correctional facilities; including the State Medicaid Fraud Control Unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q)).¹²

Legal Services – Entity or individual attorney providing legal representation and/or consultation to residents including but not limited to legal services funded through Older Americans Act or Legal Services Corporation funds, Ombudsman legal counsel, or any other attorney.

Long-Term Services and Supports (LTSS) – Services and supports provided to beneficiaries of all ages who have functional limitations and/or chronic illnesses that have the primary purpose of supporting the ability of the beneficiary to live or work in the setting

⁸ <https://www.cms.gov/medicare/provider-enrollment-and-certification/guidanceforlawsandregulations/downloads/appendix-pp-state-operations-manual.pdf>

⁹ <https://www.cms.gov/medicare/provider-enrollment-and-certification/guidanceforlawsandregulations/downloads/appendix-pp-state-operations-manual.pdf>

¹⁰ https://ltcombudsman.org/uploads/files/support/NORS_Table_2_Complaint_Code_10-31-2024.pdf

¹¹ https://ltcombudsman.org/uploads/files/support/NORS_Table_2_Complaint_Code_10-31-2024.pdf

¹² CD-06 Table 1 Part C https://ltcombudsman.org/uploads/files/support/NORS_Table_1_Case_Level_10-31-2024.pdf

of their choice, which may include the individual's home, a worksite, a provider-owned or controlled residential setting, a nursing facility, or other institutional setting.¹³

Mandated (or Mandatory) Reporter – An individual who holds a professional position or license that requires them to report known or suspected abuse to the appropriate state agency.

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.¹⁴

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.

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.).¹⁵

Resident-Initiated Transfer or Discharge – Means the resident or, if appropriate, the resident representative, has provided verbal or written notice of intent to leave the facility. Leaving the facility does not include the general expression of a desire to return home or the elopement of residents with cognitive impairment.¹⁶

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.¹⁷

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.¹⁸

¹³ <https://www.law.cornell.edu/cfr/text/42/438.2>

¹⁴ 45 CFR Part 1324 Subpart A §1324.1 Definitions

¹⁵ <https://acl.gov/programs/aging-and-disability-networks/state-protection-advocacy-systems>

¹⁶ <https://www.cms.gov/medicare/provider-enrollment-and-certification/guidanceforlawsandregulations/downloads/appendix-pp-state-operations-manual.pdf>

¹⁷ CD-06 Table 1 Part B – Complaint Data Components

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

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

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 to personally, or through representatives of the Office, 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.¹⁹

State Long-Term Care Ombudsman Programs Rule (LTCOP Rule) – The Federal Rule that governs the Long-Term Care Ombudsman program (45 CFR Part 1324).²⁰

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

Transfer – The movement of a resident from a bed in one certified facility to a bed in another certified facility when the resident expects to return to the original facility.²¹

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

²⁰ <https://www.govinfo.gov/content/pkg/CFR-2017-title45-vol4/xml/CFR-2017-title45-vol4-part1324.xml>

²¹ <https://www.cms.gov/medicare/provider-enrollment-and-certification/guidanceforlawsandregulations/downloads/appendix-pp-state-operations-manual.pdf>

Section 2:

Challenging Complaints

There is a significant variety of complaints as residents' needs and preferences vary. Some complaints are complex and take a long time to reach a resolution and others are simpler and are closed within a visit or a few days. While every case is different, there are some issues that are particularly challenging. For example, cases involving discharge or abuse, neglect, and/or financial exploitation (ANE) are often more difficult than others. This module will review examples of difficult cases and the role of potential referral sources when the Ombudsman program needs to refer a complaint as part of the plan for resolution.

Discharge Complaints

Trainer's Note: Explain that the definitions of transfer and discharge may vary for residential care communities (RCCs), depending on state regulations. Remind the trainees that they are not expected to memorize this material and they will not be alone while working with residents on these difficult cases.

The terms “transfer” and “discharge” are often used together or interchangeably to mean relocating a resident. However, they have very different meanings. In general, a discharge happens when a resident decides to move out of the facility or when the facility initiates a discharge against the resident's wishes. Discharge complaints usually occur when the resident does not want to leave the facility, but the facility attempts to discharge them against their will. In general, transfers happen when a resident is moved from one facility to another and is expected to return to the original facility. Complaints about transfers are not as common as complaints about discharges.

Familiarize yourself with state requirements for nursing facilities and RCCs regarding transfers and discharges.

Residential Care Communities (RCCs)

While there are state rules and/or regulations for residential care communities, there are no federal regulations. It is likely that state requirements for RCCs differ from the federal regulations for nursing facilities. If your state has multiple RCC types, then there may be separate state requirements pertaining to each specific facility type.

Trainer's Note: Explain to the trainees how they will learn more about state regulations related to discharges in RCCs. You may have additional training and/or resources on the topic. The point of this section is to give them an initial foundation about discharge complaints.

Discharge/Transfer Definitions Pertaining to Nursing Facilities

Discharge – The movement of a resident from a bed in one certified facility to a bed in another certified facility or other location in the community, when return to the original facility is not expected.

Transfer – The movement of a resident from a bed in one certified facility to a bed in another certified facility when the resident expects to return to the original facility.

Facility-initiated transfer or discharge – A transfer or discharge to which the resident objects, which did not originate through a resident's verbal or written request, and/or is not in alignment with the resident's stated goals for care and preferences.

Resident-initiated transfer or discharge – Means the resident or, if appropriate, the resident representative has provided verbal or written notice of intent to leave the facility. Leaving the facility does not include the general expression of a desire to return home or the elopement of residents with cognitive impairment.

Differing rules and/or regulations for RCCs may mean different:

- Definitions or terminology
- Reasons for discharge
- Notification requirements for residents and the LTCOP

Despite the lack of federal requirements for RCCs, similar Long-Term Care Ombudsman program (LTCOP) advocacy strategies can be applied in these settings. In addition, you will find that many of the issues related to discharge complaints are the same as the issues residents experience in nursing homes.



Learn more about transfers and discharges in RCCs, [here](#)²² and [here](#).²³

Nursing Facilities

There are several reasons discharge cases can be complicated. To begin with, federal and state regulations are not always the same. Nursing facilities are required to follow the nursing facilities federal regulations and state regulations pertaining to nursing facilities.

Nursing facilities federal regulations distinctly clarify the terms transfer and discharge as noted in the sidebar on the left.

(Trainer's Note: Go over the definitions of discharge and transfer.) In addition to transfer and discharge definitions, it is

important to understand who initiated the transfer or discharge and why it is relevant (definitions included in the sidebar on the left).

²² <https://ltcombudsman.org/uploads/files/issues/oregon-transitions-guidance.pdf>

²³ <https://consumervoice.app.box.com/s/jl4rwm0sgzyijhv7gf0go7onx327q0pi>

Trainer's Note: Go over the definitions of Facility-Initiated and Resident-Initiated. ²⁴

As discussed in Module 4, there are only six specific reasons nursing facilities may discharge a resident:

- The facility cannot meet the resident's needs
- The resident no longer needs the services provided by the facility
- The resident endangers the safety of individuals in the facility
- The resident endangers the health of individuals in the facility
- The resident fails to pay for their stay at the facility
- The facility closes

Discharges are complicated cases. **It is not expected that new, or even experienced representatives, manage such cases without guidance and supervision.** Representatives need a strong working knowledge of federal and state requirements and Ombudsman program policies, including when to consult your supervisor and/or Ombudsman on a complaint.

What makes discharge cases difficult?

Each case is different and has its own challenges. Some reasons discharge cases are difficult could be:

- Federal and state regulations may be interpreted differently by different parties, or individuals may not understand the regulations
- By the time a facility issues a discharge notice, the root cause(s) may have been going on for months and can be hard to resolve in a short period of time
- Most residents and family members experience feelings of anger, fear, sadness, and anxiousness when told the facility is attempting to discharge the resident against their wishes
- Multiple problems occurring at the same time
- The facility doesn't follow regulations pertaining to discharge or other areas related to the problem
- The resident's representative is not fulfilling their fiduciary duties
- Investigations are time-consuming

²⁴ State Operations Manual Appendix PP Guidance to Surveyors for Long Term Care Facilities
<https://www.cms.gov/medicare/provider-enrollment-and-certification/guidanceforlawsandregulations/downloads/appendix-pp-state-operations-manual.pdf>

Some discharges may seem to have a valid reason, such as non-payment. However, through investigation you may find that the resident doesn't know they are in arrears. If the resident representative is responsible then the root cause could be miscommunication, misunderstanding, mismanagement, or financial exploitation.

Here's another example of a discharge that may seem valid on the surface:

The LTCOP receives a call from Mary Lou, the wife of a resident named Jerry, who received a notice of discharge for hitting a resident. Mary Lou admitted Jerry has been striking out when he gets angry. The discharge notice says that Jerry endangers the safety of individuals in the facility. You know this is a valid reason for discharge. However, after investigating the matter through interviews and record reviews, you notice that Jerry has a history of urinary tract infections (UTI) that, if left untreated, result in Jerry striking out. The care plan states that if any signs or symptoms of a UTI are present, the physician should be notified. You see that the symptoms of blood in his urine and a fever are charted for the last week. However, the facility did not follow the care plan and instead issued a notice of discharge.

All issues above could have been prevented if the facility would have followed the care plan. If the facility would have contacted the physician, Jerry wouldn't be in pain and in danger of the infection becoming worse, and the resident may not have been hit. The facility must follow the care plan and must make every effort to ensure the safety and well-being of all residents in the facility.

Due to possible reasons (valid or not) for discharge and the multiple regulations involved, it is time-consuming to research and investigate. The LTCOP often refers residents to legal assistance programs (discussed later in the Module) to represent them or to help resolve other legal concerns related to the discharge.

Trainer's Note: *Refer to the Advocacy Toolbox resource below. Explain that it will be useful when working on complaints about discharges. When mentioned, review the Basic Discharge Complaint Investigation Process Checklist (by clicking the hyperlink), and point out that the checklist (as well as the Advocacy Toolbox) follows the stages of Long-Term Care Ombudsman Complaint Processing.*

To assist Ombudsman programs when working with nursing facility residents who are facing a facility-initiated discharge, the National Ombudsman Resource Center developed a resource titled, [Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing](#)

[Facility-Initiated Discharges](#) (Advocacy Toolbox).²⁵ The Advocacy Toolbox is based on federal requirements for certified nursing facilities. This is a resource for you to use once you are certified and have gained experience working in the field.

The Advocacy Toolbox includes charts with resolution strategies, action steps, and the legal basis to address common discharge reasons. Review the chart that is used regardless of the reason for transfer/discharges called [Basic Discharge Complaint Investigation Process Checklist](#).²⁶

Here is an excerpt from page one of three of the chart:

First, the representative educates and empowers the resident by explaining residents' rights and options.

At a minimum:

- Shares information about the Ombudsman program and how it can help
- Discusses residents' rights and facility responsibilities related to discharges
- Explains possible advocacy steps (e.g., speaking with the facility staff about the discharge)
- Informs the resident of their right to appeal the notice and the hearing process
- Explains how to access legal counsel
- Offers to assist the resident to resolve the complaint

If the resident provides consent for the Ombudsman program to investigate, the representative then develops an agreed upon plan of action with the resident and follows the wishes of the resident.

The plan could include, but is not limited to:

- Permission to access the resident's records
- Permission to speak with any necessary party to assist with preventing the discharge
- Request for a care plan meeting and/or a request for a second opinion on a diagnosis
- Appealing the discharge notice
- Referral for legal assistance

²⁵ <https://tcombudsman.org/uploads/files/support/enhancing-your-advocacy-toolbox.pdf>

²⁶ <https://tcombudsman.org/uploads/files/support/enhancing-your-advocacy-toolbox-basic-discharge-complaint-investigation-process-checklist.pdf>

You can see from the Figure 1 chart how the Basic Discharge Complaint Investigation Checklist follows Long-Term Care Ombudsman Program Complaint Processing *Stage 1: Intake, Planning, Investigation, and Verification* discussed in Module 7.

Figure 1

Ombudsman Program Complaint Processing Stage 1	Basic Discharge Complaint Investigation Checklist:
Intake	<ul style="list-style-type: none"> • Begins once the LTCOP receives discharge complaint.
Initial Plan Development	<ul style="list-style-type: none"> • Directs the LTCOP to advise resident of rights related to discharges, right to appeal, right to legal counsel, offer to assist resident with complaint resolution. • Guides the LTCOP to request a care plan meeting, a second opinion, an appeal of the discharge notice, a referral for legal assistance, a request for permission to access records, and to speak with necessary parties.
Investigate	<ul style="list-style-type: none"> • Suggests questions to ask residents and staff members • Explains potential resolution strategies and action steps. • Provides the legal basis for the LTCOP's resolution strategies and action steps.
Verify	<ul style="list-style-type: none"> • Determines interview questions help clarify verification.

This information is an introduction to discharge issues. Additional training is available to help you respond to complaints about transfers and discharges. Remember you have support from the LTCOP and your supervisor to address challenging cases in addition to outside resources and referral agencies.

***Trainer's Note:** Because this information is hard to learn and potentially emotional, take a short break here and recommend trainees get up and move around for 5-10 minutes.*

Allegations of Abuse, Neglect, & Exploitation and the Role of the Ombudsman Program

Every resident has a right to be free from abuse, neglect, and exploitation (ANE). The Ombudsman program is required to follow the Older Americans Act (OAA) and the Long-Term Care Ombudsman Programs Rule (LTCOP Rule) regarding confidentiality and disclosure and the unique role representatives of the Office have as resident-directed advocates. The OAA and LTCOP Rule requirements apply to Ombudsman program advocacy in all facility types.

As discussed in Module 1, **representatives are not mandated reporters and shall not report without proper permission.** The LTCOP Rule [§1324.19 Duties of the representatives of the Office (b)(3)(iii)] indicates the LTCOP shall not report suspected abuse, neglect, or exploitation of a resident unless a resident or resident representative (as applicable) has communicated informed consent.²⁷

Federal disclosure requirements for the Ombudsman program do not change when the LTCOP receives a complaint about abuse, neglect, or exploitation of a resident. Regardless of the complainant, representatives are directed by resident goals for complaint resolution.

Confidentiality

***Trainer's Note:** Include an example of how you maintain confidentiality.*

Respecting resident confidentiality is critical not only to maintain compliance with program requirements, but also to adhere to the fundamental LTCOP role as resident advocates, maintain the integrity of the LTCOP, and foster trust between the representatives and residents.²⁸ Maintaining confidentiality in response to complaints involving abuse, neglect, and exploitation is a challenging, complex situation that requires careful analysis and often, consultation with your supervisor.

MAINTAINING CONFIDENTIALITY

Complies with LTCOP requirements.

Preserves the integrity of the Ombudsman program.

Fosters trust between representatives and residents.

Requires careful analysis and consultation with your supervisor.

²⁷ except as set forth in paragraphs (b)(5) through (7) of this section, notwithstanding State laws to the contrary.

²⁸ https://ltcombudsman.org/uploads/files/issues/ane-no-consent-ref-guide-july_2018.pdf

Recognizing Abuse, Neglect, and Exploitation (ANE)

It is important for you to know how to recognize and respond to allegations of ANE. Having a thorough understanding of your responsibilities as a representative of the Office about when and how to report it is crucial. **Representatives do not determine whether ANE occurred for the purposes of legal action or facility compliance with federal or state requirements.** This is the responsibility of the state survey agency and/or law enforcement, or in some states, Adult Protective Services (APS).

Abuse

The LTCOP describes abuse as any willful mistreatment of residents by facility staff, resident representative/family/friend, other residents, or an outside individual.²⁹ There are three types of abuse: physical, sexual, and psychological.

Physical abuse is defined as the intentional use of physical force that results in acute or chronic illness, bodily injury, physical pain, functional impairment, distress, or death (e.g., hitting, slapping, pinching, kicking, etc. and/or controlling behavior through corporal punishment).

Sexual abuse is defined as forced and/or unwanted sexual interaction (touching and non-touching acts) of any kind.

Psychological abuse is defined as the infliction of anguish, pain, or distress through verbal or nonverbal acts. This includes but is not limited to verbal assaults, insults, threats, intimidation, humiliation, and harassment.

Examples of abuse may include:

- A staff member slaps a resident
- A physical therapist tells a resident they will never see their family again if they don't comply with physical therapy
- A staff member yells at a resident who did not make it to the restroom in time
- A CNA pinches a resident's arm to get them to move out of the way
- A manager shows a resident a video containing nudity, making the resident uncomfortable

Neglect (Gross Neglect)

For the purposes of the LTCOP, neglect and gross neglect are used interchangeably. It is the failure to protect a resident from harm or the failure to meet needs for essential medical care, nutrition, hydration, hygiene, clothing, basic activities of daily living, or shelter, which results in a serious risk of compromised health and/or safety, relative to

²⁹ NORS Table 2 Complaint Codes and Definitions.

https://ltcombudsman.org/uploads/files/support/NORS_Table_2_Complaint_Code_10-31-2024.pdf

age, health status, and cultural norms. Review examples of neglect and the effects on residents in the Figure 2 chart below.

Figure 2

Cause	Effect
<i>Incorrect body positioning leading to...</i>	<i>contractures³⁰ and pressure sores/pressure ulcers.</i>
<i>Failure to assist with toileting and/or not changing a disposable brief in a timely manner, leading to...</i>	<i>a resident falling while going to the bathroom alone; a resident sitting in urine or feces which can cause skin breakdown; feelings of shame, indignity, and distress for the resident.</i>
<i>Lack of assistance eating or drinking leading to...</i>	<i>malnutrition and dehydration.</i>
<i>Lack of assistance with walking leading to...</i>	<i>immobility.</i>
<i>Poor hand washing techniques leading to...</i>	<i>infection.</i>
<i>Lack of assistance with participating in activities of interest leading to...</i>	<i>withdrawal and isolation.</i>
<i>Ignoring call lights or cries for help leading to...</i>	<i>residents having unnecessary pain, anxiety, increased falls, and losing bladder or bowel control.</i>

Exploitation (Financial Exploitation)

For the purposes of the LTCOP, exploitation and financial exploitation are used interchangeably. It is the illegal or improper use of an individual's funds, property, or assets for another person's profit or advantage.

Examples of financial exploitation may include:

- Misappropriating income or assets. An individual who obtains access to social security checks, pension payments, checking or savings accounts, credit cards, or ATM (debit) cards, or withholds money and uses the funds for their own benefit.

³⁰ According to Merriam-Webster Dictionary, a contracture is a permanent shortening (as of muscle, tendon, or scar tissue) producing deformity or distortion.

- An aide who provides care to a resident offers to go to the store to buy snacks for the resident. The resident gives the aide a debit card and personal identification number. The aide purchases additional items for themselves.
- Charging excessive fees for goods and services.
 - A friend of the resident charges them \$200 every week to bring in the resident's dog for a visit.
- Obtaining money or property by undue influence (e.g., using a position of power to take advantage), misrepresentation, or fraud, often using manipulation and threats.
 - A family member pressures a resident into signing over their home and other assets saying they will stop visiting the resident if they do not do what the family member tells them to do.
- Improper or fraudulent use of power of attorney or legal authority.
 - A resident representative borrows money to buy a boat using the resident's name without the resident's permission to do so.

The Ombudsman Program and Complaints about Abuse, Neglect, and Exploitation

The Ombudsman program investigates ANE solely for gathering necessary information to resolve the complaint to the satisfaction of the resident, not to determine whether any law or regulation has been violated for purposes of a potential civil or criminal enforcement action. According to the LTCOP Rule, the Ombudsman program investigates complaints related to abuse, neglect, or exploitation, “for the purposes of resolving the complaint to the resident's satisfaction and of protecting the health, welfare, and rights of the resident.” Therefore, the LTCOP is not the finder of fact, meaning the LTCOP investigation is not for the purposes of determining *if* the ANE occurred.

After receiving resident consent when investigating a complaint regarding ANE, representatives may:

- Explain residents' rights and the LTCOP role
- Assist a resident with reporting abuse, neglect, and exploitation
- Meet with residents, including Resident Council members to find out if others have the same or similar experience (without breaking confidentiality)
- Meet with family members, including Family Council members to determine if they have concerns about residents experiencing ANE (without breaking confidentiality)
- Work with the facility to ensure residents feel safe
- Ensure the facility makes efforts to protect residents from further harm

- Follow up with the facility to determine if proper reporting of ANE has been completed (staff ARE mandated reporters)
- Research the facility's abuse, neglect, and exploitation history if unknown

As with all LTCOP work, advocacy strategies in response to allegations of abuse vary depending on the situation (e.g., type of abuse allegation, type and size of long-term care setting, identity of the perpetrator- family member, visitor, facility staff or another resident). For example, a LTCOP representative's approach in response to an allegation of abuse in a small personal care home may differ from their approach in response to a similar allegation in a large nursing facility. The advocacy strategies we will discuss during this training are not comprehensive, but they provide a few examples of successful LTCOP advocacy in response to this delicate situation.

Trainer's Note: *Tell the trainees to close their manuals when discussing the case study below. The answers are in their manuals.*



Case Study: You receive a complaint from an anonymous nursing facility staff member regarding another staff member hitting a resident named Ariella. What would you say to the complainant and what would you do?

Possible actions include:

- Tell the staff member that the Long-Term Care Ombudsman program is not the primary investigator and inform them of the role of the program
- Remind the complainant that under federal and state requirements facility staff must report allegations of abuse to the licensing agency or Adult Protective Services and/or local law enforcement
- Inform the complainant if your state allows anonymous reports
- Visit Ariella per your program's policies and procedures
- Explain residents' rights and your role as a representative
- Listen to Ariella's concerns
- Follow the Ombudsman program complaint processing requirements and your program policies and procedures

Why would a resident choose not to report an allegation of ANE?

Fear of retaliation³¹

“Fear of retaliation is one of the most common reasons residents do not want to pursue a complaint and disclose their identity. Since residents live in the facility and rely on staff for their basic needs their fear of retaliation cannot be overemphasized. It is critical that LTCOP representatives understand how fear of retaliation influences a resident’s, or another complainant’s, choices regarding complaint reporting and resolution.”

The Ombudsman Program’s Abuse, Neglect, and Exploitation Reporting Requirements

Trainer’s Note: This part of the training focuses on LTCOP reporting requirements. There are case studies for each situation that ask the trainees what they would do.

Reporting Abuse, Neglect, and Exploitation (ANE)

Permission to report ANE is required whether a resident can communicate consent, or a resident cannot communicate consent and has a resident representative. Prior to getting permission, representatives:

- ✓ Discuss pros and cons of reporting
and
- ✓ Discuss potential outcomes of reporting

Where the goals of a resident or resident representative are to report abuse, neglect, and exploitation, and the resident or the resident representative has communicated informed consent³² to the LTCOP, the Ombudsman program must **assist** with contacting and/or disclosing the provided information to the appropriate agency. This could include the LTCOP making the referral or providing the resident/resident representative with the contact information for them to make the referral themselves.

The text box to the left describes the required process when working with residents and/or their representatives regarding reporting allegations of ANE.

Most states have mandatory reporting laws that require certain individuals to report suspected ANE. However, “state law may not require reporting of suspected abuse, neglect or exploitation by the LTCO program where such reporting violates the Federal requirement that an ombudsman is prohibited from the disclosure of the identity of a complainant or resident without appropriate consent

pursuant to Section 712(d) of the OAA.”³³

³¹ Responding to Allegations of Abuse: Role and Responsibilities of the Long-Term Care Ombudsman Program https://ltcombudsman.org/uploads/files/issues/ane-no-consent-ref-guide-july_2018.pdf

³² Communication of informed consent may be made in writing, orally or visually, including through the use of auxiliary aids and services and such consent must be documented immediately.

³³ AoA. Letter to Director Holmgren. op.cit.

Furthermore, anyone working as a representative of the Office is required to follow LTCOP disclosure requirements, regardless of holding a license that indicates mandated reporting.³⁴

Ombudsman program representatives must employ other advocacy strategies when responding to allegations of abuse, where consent is not given, to protect resident confidentiality and do their best to ensure resident safety. When responding to allegations of abuse, representatives should exhaust all possible advocacy strategies for the safety not only of the complainant resident but for the safety of all residents.

Trainer's Note: *Tell the trainees to close their manuals when discussing the case study below. The answers are in their manuals.*



Case Study: Noah

A resident named Noah informs you about a staff member's abusive actions towards him during his evening shower but does not give you permission to pursue the complaint. What would you do?

Even if a representative has a professional license (e.g., a licensed social worker) that mandates abuse reporting, the representative must adhere to the Ombudsman program federal disclosure requirements when conducting the duties of the program. The representative must not report ANE without appropriate consent from the resident, resident representative, or the Office.

Trainer's Note: *After the trainees respond to the question "what would you do" make sure to go over the bullet points below.*

Suggested practices for responding to this situation:³⁵

- Explore the reason for Noah's reluctance to pursue the allegation of abuse and explain residents' rights and the LTCOP role and responsibilities in supporting residents. Inform him of the complaint process, including how not disclosing his identity may impact complaint investigation and resolution, the potential risks of consenting to disclosure, as well as risks of not pursuing allegations of abuse. Offer to investigate the complaint without disclosing his name (e.g., reporting the time and dates the incidents occurred without disclosing his name or identifying information). If possible, visit Noah frequently, see if he is interested in seeking supportive services (e.g., counseling) and encourage him to give permission to

³⁴ ACL. Long-Term Care Ombudsman Program Frequently Asked Questions (FAQs). Number 6. <https://acl.gov/programs/long-term-care-ombudsman/long-term-care-ombudsman-faq>

³⁵ https://ltcombudsman.org/uploads/files/issues/ane-no-consent-ref-guide-july_2018.pdf

report the alleged abuse. Take care to ensure that Noah does not feel that you are pressuring him to give permission to report.

- Ask Noah if he has shared this information with anyone else or if there is someone he trusts such as a family member, friend, or another staff person with whom he could share it. If so, ask if you can talk to that person.
- See if there are other residents with the same issue who are willing to pursue it to resolution. By resolving the issue for others, you might be able to resolve it for Noah.³⁶ Be careful to avoid revealing Noah's identity and to avoid elevating anxiety levels among other residents with whom you speak.
- Investigate to gather information regarding the allegation. If you gain information supporting the allegation, share the information with the facility administrator if it is possible to do so without identifying the resident(s) involved (e.g., "here is information we gathered supporting allegations that the nurse aide, Jackie, on the evening shift is..."). You should not recommend that the facility take any specific action against the accused employee, but rather remind the administrator of the facility's responsibility to investigate and report allegations of abuse. If the facility administrator asks you for advice, you could suggest that they consult the regulations for guidance and contact the state survey agency with questions about how to proceed.
- For complainants other than the resident, inform them of the role of the LTCO program and refer them to the appropriate investigative entity (e.g., state licensing and certification agency, Adult Protective Services, law enforcement). Then speak with the resident regarding the complaint and their options including the advocacy strategies listed above.

What if the Representative Witnesses Abuse, Gross Neglect, or Exploitation?

If you witness physical or verbal abuse, there is often no time to stop and ask questions of consent as stopping the abuse from happening is the immediate priority. This often involves notifying staff to assist the resident who has been harmed.³⁷

The LTCOP Rule describes the actions a representative must take if they personally witness suspected abuse, gross neglect, or exploitation. Essentially, if a representative witnesses abuse, gross neglect, or exploitation, the LTCOP must seek informed consent from the resident to disclose resident-identifying information to appropriate agencies.

³⁶ NORC. The Problem-Solving Process: Investigation. Resource Material for the NORC Curriculum. April 2006. <http://www.ltombudsman.org/sites/default/files/ombudsmen-support/training/Local-Investigation-Curri-cResource-Material.pdf>

³⁷ https://ltombudsman.org/uploads/files/issues/ane-no-consent-ref-guide-july_2018.pdf



Case Study: Denny

During a facility visit you witness a staff member harassing a resident named Denny by repeatedly tapping Denny's head with a ruler and using an ethnic slur. Denny then lunges forward and begins punching the staff member. What would you do?

Trainer's Note: *After the trainees respond to the question "what would you do" make sure to go over the bullet points below.*

If you witness abuse:³⁸

- Stop what you are doing, remain calm, and call attention to the situation. For example, if it is a physical altercation (such as a resident-to-resident assault), don't physically intervene, but capture the attention of the abuser, the victim, and others. Calling attention to the attack by yelling "stop" or "help" may stop it and attract staff. This is similar to action you would take if you found a resident in distress (such as a resident that fell or was choking).
- Pay close attention to details (e.g., what did you see and hear, what is the room number, who are the individuals involved). Identify other witnesses, especially facility staff since they are mandatory reporters of abuse.
- Following the incident: speak with the resident (or residents) about the incident; explain the role of the program; ask the resident if he/she wants to report the incident to the investigative agency; and inform the resident of the facility staff's responsibility to report the incident and conduct an internal investigation.
 - If the resident does not want to report to the investigative entity, the LTCOP representative should explore the resident's concerns, address any fear of retaliation, and discuss what steps can be taken to keep the resident safe (e.g., the advocacy strategies in above scenarios in which the resident does not provide consent).
 - If the resident cannot provide consent, in addition to documenting everything and consulting with your supervisor (staff, LTCOP representative, or Ombudsman):
 - Find out if the resident has a representative (e.g., family member, power of attorney, guardian) who can speak on behalf of the resident. Inform the representative of the need to involve outside individuals, such as facility staff or the investigative agency, and the role of the LTCO program. Work with the individual to develop a plan of action for resolution of the complaint.

³⁸ https://ltcombudsman.org/uploads/files/issues/ane-no-consent-ref-guide-july_2018.pdf

- If the resident does not have a representative, or the representative cannot be reached, or the representative is not acting in the best interest of the resident and the resolution goal is for action by the state licensing and certification agency, Adult Protective Services and/or law enforcement, then the program representative should obtain approval from the Ombudsman or follow policies and procedures of the Office which provide for such disclosure.
- Document everything and contact your supervisor to report the incident, to debrief, and for support.
- Only after obtaining resident consent, or approval of the Ombudsman, ask the facility staff to work with the resident to develop a plan to maintain their safety, meet their needs after the incident (e.g., counseling) and prevent future incidents. For example, if this was a physical assault by another resident there are two issues to address immediately. First, how to ensure the safety of the victim of abuse and second, how the facility will ensure the other resident is properly supervised and will not harm anyone else.

What if the Resident is Not Able to Communicate Informed Consent to Reporting Alleged Abuse, Gross Neglect, or Exploitation?

This section covers information about how and when a representative may refer alleged ANE if a resident cannot communicate informed consent. Making a referral is different than getting immediate help. To clarify, the LTCOP may act in rare situations when a resident cannot communicate informed consent and the representative observes that the resident needs immediate assistance. This situation is demonstrated in the case study after a discussion of the LTCOP Rule outlining referral requirements.

***Trainer's Note:** Go over the federal requirements for reporting alleged ANE of a resident who cannot communicate informed consent.*

The LTCOP Rule [§1324.19 (b)(6-7)] states that the Ombudsman program **may refer** the ANE matter and disclose resident-identifying information “to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action in the following circumstances.”

1. The resident is unable to communicate informed consent and has no resident representative and the LTCOP has reasonable cause to believe that an action, inaction, or decision may adversely affect the health, safety, welfare, or rights of the resident **or**

2. The resident has a resident representative and the LTCOP has reasonable cause to believe that the resident representative has taken an action, inaction or decision that may adversely affect the health, safety, welfare, or rights of the resident.

All conditions listed below (a, b, c) must be true for both number 1 and number 2 above.

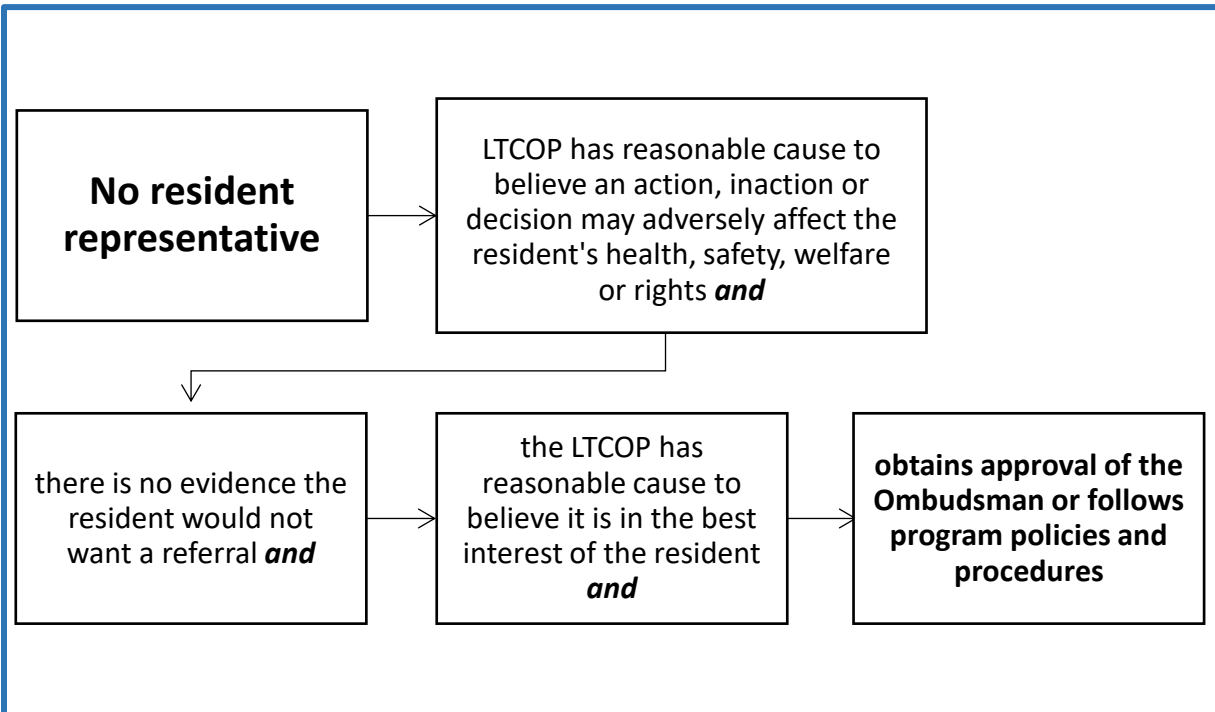
- a. LTCOP has no evidence indicating that the resident would not wish a referral to be made **and**
- b. LTCOP has reasonable cause to believe that it is in the best interest of the resident to make a referral **and**
- c. The representative obtains the approval of the Ombudsman

Trainer's Note: Use the Figure 3 chart to explain the steps to disclose ANE of a resident who cannot communicate informed consent and does not have a resident representative. Use the Figure 4 chart to explain the steps to disclose ANE of a resident who cannot communicate informed consent and has a resident representative.

What information do you need when a resident cannot communicate informed consent to a referral and has no resident representative?

All information in Figure 3 must be true to make a referral.

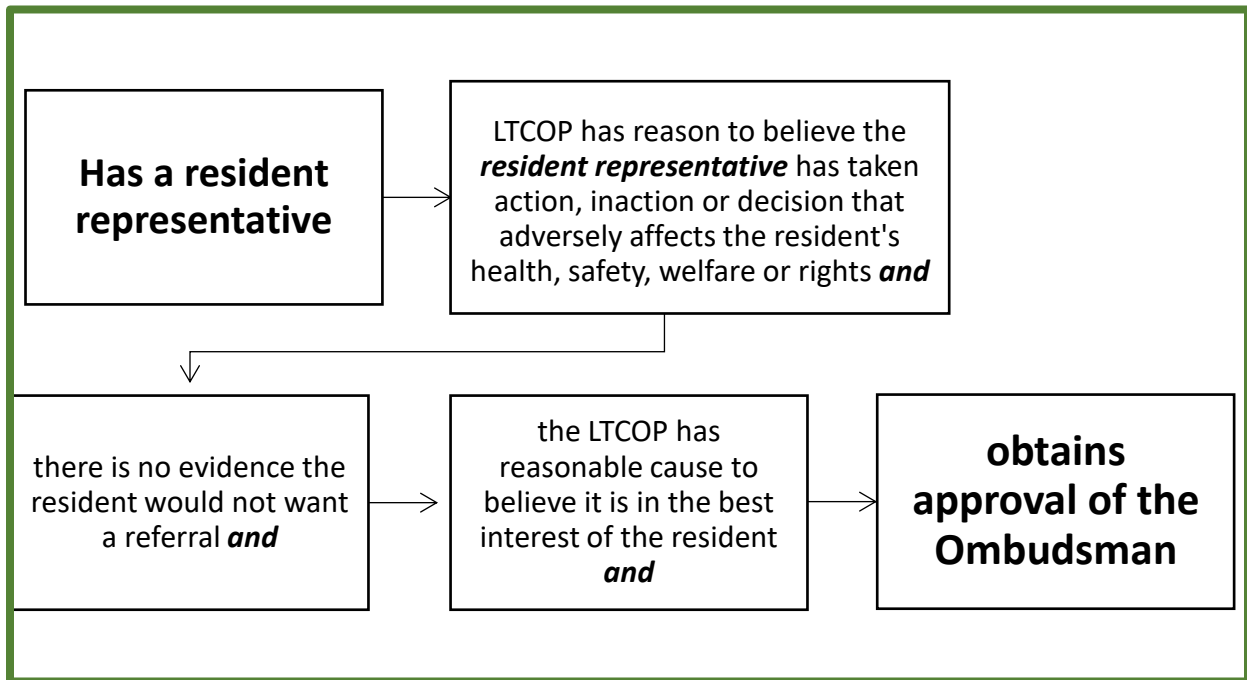
Figure 3



What information do you need when a resident cannot communicate informed consent to a referral and has a resident representative?

All information in Figure 4 must be true to make a referral.

Figure 4



Case Study: Bernice

You visit a facility and are talking to a resident named Millie who tells you that the staff do not take care of her roommate, Bernice. Millie says that they only change the pad on Bernice's bed once every couple of days and she needs help with eating, but staff don't help her. Millie said she tries to feed her but is really worried about her. According to Millie, Bernice doesn't get any visitors and she sleeps most of the day. You attempt to talk to Bernice, but she just stares at you and does not respond. You notice a strong odor of feces and urine in the room.

What's the first thing you do in this situation?

- ✓ Get a staff member to come and care for the resident.

Someone comes in to change and clean Bernice. You ask the charge nurse if Bernice has someone who makes decisions on her behalf and the charge nurse tells you that Bernice has a daughter, Pam, who is her resident representative. The charge nurse says they have never seen Pam and she does not attend care plan meetings. The charge nurse gives you Pam's phone number, but Pam doesn't return your calls. You visit the following week to check in on Bernice and to talk to Millie who tells you nothing has changed, and the room smells like feces and urine again.

What information have you gathered?

- ✓ Bernice has a representative
- ✓ You have reason to believe that Bernice is being neglected by the facility
- ✓ You have reason to believe that Pam's inactions may adversely affect Bernice's health and safety
- ✓ You have no evidence Bernice would not want your assistance or a referral

After getting someone to assist Bernice with her care again, you are concerned about Bernice's wellbeing.

What do you do next?

- ✓ Develop a plan of action with your supervisor to determine next steps to ensure the facility does not continue to neglect Bernice. Actions may include talking with appropriate facility staff, requesting to review the care plan, attempting to contact the resident representative again, contacting the Ombudsman, etc.
- ✓ Consult with your supervisor about obtaining permission from the Ombudsman to refer the complaint to the appropriate entity for investigation.

To reiterate, if you receive a complaint regarding abuse, gross neglect, or exploitation and the resident cannot provide consent to pursue the complaint:

- Find out if the resident has a representative (e.g., family member, power of attorney, guardian) who can speak on behalf of the resident. Inform the representative of the need to involve outside individuals, such as facility staff or the investigative agency, and the role of the LTCO program. Work with the resident representative to develop a plan of action for resolution of the complaint.
- If the resident does not have a representative, or the representative cannot be reached, or the representative is not acting in the best interest of the resident and the resolution goal is for action by the state licensing and certification agency, Adult Protective Services and/or law enforcement, then the program representative should obtain approval from the Ombudsman and disclose the identity of the resident to appropriate facility staff and the appropriate investigative agency.³⁹



Learn more about the LTCOP role and responsibilities when [responding to allegations of abuse](#).⁴⁰

³⁹ Federal Register DHHS AoA 45 CFR Parts 1321 and 1324 State Long-Term Care Ombudsman Programs; LTCOP Rule https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=5b7abe6b970a70ccdbff264ab58dcad2&mc=true&n=sp45.4.1324.a&r=SUBPART&ty=H TML#se45.5.1324_113

⁴⁰ https://ltcombudsman.org/uploads/files/issues/ane-no-consent-ref-guide-july_2018.pdf

Who Investigates Allegations of Abuse, Neglect, and Exploitation?

Trainer's Note: *Remind trainees to always follow state policies and procedures when making a referral to another agency, especially when the referral contains resident or complainant-identifying information.*

Once informed consent has been granted to report the allegation of abuse, or you have determined informed consent is not possible, where does the referral go? The answer will depend upon the direction of the resident, the resident representative, or the Ombudsman. It will also depend upon your state's structure for investigating abuse in long-term care facilities. Remember to always follow policies and procedures for disclosure of information.

The Facility

Trainer's Note: *Nursing facilities are required to conduct an internal investigation, but those findings don't have legal or regulatory consequences.*

With consent of the resident, the resident's representative, or the Ombudsman, you may inform the nursing facility of the alleged abuse. Facilities are required to conduct an internal investigation on all allegations of ANE immediately. In each facility, a staff member is designated as the responsible person to conduct an internal investigation. During the investigation, the facility is required to follow its policies and procedures and ensure the safety of residents. The facility must ensure that all allegations are reported immediately, but not later than 2 hours, if there is serious bodily harm, and no later than 24 hours if there is not serious bodily harm. The facility must inform the state survey agency and, in some states, Adult Protective Services (discussed below). Also, the facility must have policies and procedures ensuring that any reasonable suspicion of a crime is reported by individuals such as facility owners, operators, employees, managers, agents, or contractors to the state survey agency and one or more law enforcement entities.⁴¹

Representatives may also inform residential care communities (RCCs) of allegations of ANE with consent of the resident, resident representative, or the Ombudsman. RCCs have state requirements pertaining to a facility's response to alleged abuse, neglect, and exploitation.

→ Include state-specific requirements for each type of residential care community (RCC) regarding reporting and investigating allegations of

⁴¹ Center for Medicare and Medicaid Services. State Operations Manual – Appendix PP – Guidance to Surveyors for Long-Term Care Facilities. Updated November 22, 2017. Required Policies and Procedures for Reporting Suspicions of a Crime. Page 134. <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Downloads/Appendix-PP-State-Operations-Manual.pdf>

abuse, neglect, and exploitation (ANE). Clarify whether all RCC staff and other contracted services providers are mandated reporters.

State Survey Agencies

- *Indicate the state survey agency(ies) responsible for investigating ANE for each facility type.*
- *Include your procedures for filing complaints with the state survey agency for each type of facility. Include the contact information of the State Survey Agency(ies), information to be included in the referral, and required forms (paper or electronic) as applicable.*

With consent from the resident, you may refer the complaint regarding ANE to the state survey agency or agencies responsible for regulating long-term care facilities and investigating allegations of abuse, neglect, and exploitation based on federal regulations and state licensing requirements. State survey agencies investigate to determine if federal or state regulations have been violated and assess the level of harm to the resident(s).

The state survey agency investigates more than complaints of abuse, neglect, and exploitation. They investigate any complaint that is a potential violation of federal and/or state regulations.

Adult Protective Services (APS)

- *Explain whether Adult Protective Services (APS) investigates allegations of ANE in long-term care facilities in your state. It could depend on the facility type where the ANE allegedly occurred, or whether the alleged perpetrator is a staff member, a family member, or a visitor. Explain the relationship your program has with APS, including when and how you would make a referral.*

Trainer's Note: *If Adult Protective Services does not investigate allegations of ANE in long-term care facilities in your state, then skip to "Law Enforcement."*

With consent, you may refer the allegation of ANE to Adult Protective Services. APS is a social services program provided by state and/or local governments serving older adults and, in some states, adults with disabilities who need assistance because of abuse, neglect, self-neglect, or financial exploitation. APS responds to reports of abuse, neglect, and exploitation and works with individuals to provide the maximum possible degree of personal freedom, dignity, and self-determination.⁴²

⁴² https://ltombudsman.org/uploads/files/support/NORS_Table_1_Case_Level_10-31-2024.pdf

Law Enforcement

→ *Explain your state's policies and procedures on when and how a referral would be made to law enforcement, including the Medicaid Fraud Control Unit and any other offices within the Attorney General's office.*

With consent, you may refer the allegation of ANE to law enforcement. Law enforcement consists of people employed by a local, state, tribal, or federal justice agency. This includes police, courts, district attorney's office, probation or other community corrections agency, and correctional facilities; including the State Medicaid Fraud Control Unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q)).⁴³

The Medicaid Fraud Control Unit (MFCU) investigates and prosecutes Medicaid provider fraud as well as abuse or neglect of residents in long-term care facilities. To find the MFCU in your state click [here](#).⁴⁴

Attorney General

The role of an attorney general is to serve as counselor to state government agencies and legislatures, and as a representative of the public interest.⁴⁵

⁴³ https://ltombudsman.org/uploads/files/support/NORS_Table_1_Case_Level_10-31-2024.pdf

⁴⁴ <https://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu/files/contact-directors.pdf>

⁴⁵ <https://www.naag.org/attorneys-general/what-attorneys-general-do/>

Section 3:

Additional Referral Agencies

There are difficult cases other than complaints of abuse, neglect, and/or exploitation for which the LTCOP may refer a complaint to another agency. Referrals made should be included in the plan of action and for the purposes of complaint resolution.

When working on a case, referrals are made with consent of the resident and when:

- another agency has resources that benefit the resident;
- actions to be taken are outside of the expertise or scope of the LTCOP; or
- the representative needs outside assistance for complaint resolution.

When a representative makes a referral to another agency, it does not necessarily mean there is no further work to be done. LTCOP actions will depend upon the direction of the resident, the plan of action, and the resident's desired outcome.

Trainer's Note: *Read the scenario or ask the trainees to read it on their own. Reiterate that this example shows that just because referrals are made, the LTCOP's work is not done. Also let them know that agencies that assist residents with moving out are discussed later in the training.*



For example, a resident named Samantha expresses to you that she wants to move out of the facility to a less restrictive environment, but the facility says there is nothing they can do because Samantha is "too disabled" to live outside of long-term care. You explain the facility's responsibilities to assist her with discharging to a preferred location and to include her wishes in the care plan. You also tell her about state programs that help residents move out of long-term care with services. Samantha asks you to refer her to the agency that assists with community living and also to file a complaint with the survey agency. You refer Samantha to be assessed for community living and you refer the complaint to the survey agency, but Samantha wants you to attend the next care plan meeting and advocate on her behalf to change her discharge plan.

There are other times when individuals contact the LTCOP with a concern that is outside of the scope of the program's work. The LTCOP provides information and contact information to the individual about other agencies or entities based on the problem shared and the services provided.



For example, a representative of the Office receives a complaint about a facility type to which the LTCOP does not have access. In this situation, the Ombudsman program gives applicable information to the caller to address their situation and would have no further involvement.

Legal Services

Sometimes residents want or need legal assistance. Legal services include an entity or individual attorney providing legal representation and/or consultation to residents including but not limited to legal services funded through Older Americans Act or Legal Services Corporation funds, Ombudsman legal counsel, or any other attorney.⁴⁶ The type of help available varies and ranges from legal advice to actual representation in a lawsuit against a facility. There are two federally funded programs that assist residents with legal issues: Legal Services for Older Americans Program and Protection and Advocacy.

Legal Services for Older Americans

→ *Include the name(s) of the legal assistance program(s) in your area and discuss when and how you would make a referral.*

The Legal Services for Older Americans Program provides older persons who live in long-term care facilities with legal assistance that may include:

- drafting advance directives;
- assisting with issues related to guardianship;
- accessing public benefits; and
- discharge proceedings.⁴⁷

Protection and Advocacy (P&A)

→ *Include the name of the P&A agency in your area and explain the relationship your program has with the P&A, including when and how you would make a referral.*

Protection and Advocacy (P&A) is a system to protect and advocate 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.).⁴⁸

P&As protect individuals with disabilities by empowering them and advocating on their behalf. There are 57 P&As in the United States and its territories, and each is independent of service-providing agencies in their states.

P&As provide legal support to residents with disabilities and ensure those residents are able to exercise their rights to make choices, contribute to society, and live independently.



Learn more about Protection and Advocacy and find the P&A agency(ies) in your state [here](#).⁴⁹

⁴⁶ https://ltombudsman.org/uploads/files/support/NORS_Table_1_Case_Level_10-31-2024.pdf

⁴⁷ <https://acl.gov/programs/legal-help/legal-services-elderly-program>

⁴⁸ https://ltombudsman.org/uploads/files/support/NORS_Table_1_Case_Level_10-31-2024.pdf

⁴⁹ <https://acl.gov/programs/aging-and-disability-networks/state-protection-advocacy-systems>

Guardianship and Conservatorship Resources

→ *Add state-specific contact information for the entity or entities who provide guardianship or conservatorship, other than private guardians/conservators. Those entities could be state or county guardians, for example.*

Circumstances when a representative would seek information about guardianships or conservatorships could be:

- The representative receives a complaint about a resident with a guardian/conservator
- A resident has a complaint against the guardian/conservator
- A resident wants to remove or change a guardian/conservator
- The guardian/conservator is not acting in the best interest of the resident

Aging and Disability Resource Centers (ADRCs)

→ *Include state-specific information about when and how to contact the Aging and Disability Resource Center (ADRC) in your area.*

Finding the right services for individuals can be confusing and challenging, so [Aging and Disability Resource Centers](#) (ADRCs)⁵⁰ serve as a single point of entry for older adults and individuals with disabilities and their caregivers seeking long-term services and supports (LTSS) options.

The ADRC program is designed to streamline access by providing information and counseling to individuals with all levels of income to obtain LTSS in the most suitable and appropriate setting.

Money Follows the Person (MFP)

→ *Include state-specific information about the Money Follows the Person program.*

Trainer's Note: *Not all states have a Money Follows the Person program. Skip this section if your state does not have MFP. In states that have an MFP program, it may be called by another name. Provide the information specific to your state.*

[Money Follows the Person](#) (MFP)⁵¹ is a Medicaid program that provides financial assistance to eligible nursing facility residents who want to move back into the community. Long-term services and supports are provided to help individuals successfully transition from institutional living to community living.

⁵⁰ <https://acl.gov/programs/aging-and-disability-networks/aging-and-disability-resource-centers>

⁵¹ <https://www.medicaid.gov/medicaid/long-term-services-supports/money-follows-person/index.html>

Some supports and services may include:

- Adult day center services
- Emergency response systems
- Home health care
- Home modifications
- Personal care assistance

Medicaid Home and Community-Based Services (HCBS)

→ *Include the contact information for the agency responsible for Home and Community-Based Services (HCBS) in your area and explain the relationship your program has with them, including when and how you would make a referral.*

Medicaid [Home and Community-Based Services](#) (HCBS) provide opportunities for Medicaid recipients to receive services in their own home or community rather than long-term care facilities. These programs serve a variety of targeted populations groups, such as people with intellectual or developmental disabilities, physical disabilities, and/or mental illnesses.⁵²

Centers for Independent Living (CILs)

→ *Include the contact information for the Centers for Independent Living (CILs) in your area and explain the relationship your program has with the CILs, including when and how you would make a referral.*

Centers for Independent Living provide independent living services for people with all types of disabilities. CILs work to support community living and independence for people with disabilities across the nation based on the belief that all people can live with dignity, make their own choices, and participate fully in society. CILs provide tools, resources, and supports for integrating people with disabilities fully into their communities to promote equal opportunities, self-determination, and respect.



Learn more about Centers for Independent Living and find the CILs in your state [here](#).⁵³

⁵² <https://www.medicaid.gov/medicaid/home-community-based-services/index.html>

⁵³ <https://acl.gov/programs/aging-and-disability-networks/centers-independent-living>

State Health Insurance Assistance Program (SHIP)

→ *Include information about the State Health Insurance Assistance Program (SHIP) in your state and explain the relationship your program has with SHIP, including when and how you would make a referral.*

SHIP is a resource that provides free, in-depth, unbiased, one-on-one health insurance counseling and assistance to Medicare beneficiaries, their families, and caregivers. There are 54 SHIPs in the United States and its territories.

SHIPs assist people in obtaining coverage through options such as Original Medicare (Parts A & B), Medicare Advantage (Part C), Medicare Prescription Drug Coverage (Part D), and Medicare Supplement policies (Medigap). SHIPs also assist beneficiaries with limited income to apply for programs, such as Medicaid, Medicare Savings Program and Extra Help/Low Income Subsidy, which help pay for or reduce healthcare costs.



Learn more about State Health Insurance Assistance Programs and to find the SHIPs in your state [here](#).⁵⁴

Senior Medicare Patrol Program (SMP)

→ *Include information about the Senior Medicare Patrol program (SMP) in your state and explain the relationship your program has with SMP, including when and how you would make a referral.*

The Senior Medicare Patrol program empowers and assists Medicare beneficiaries, their families, and caregivers to prevent, detect, and report health care fraud, errors, and abuse through outreach, counseling, and education. SMP is a grant-funded project of the federal U.S. Department of Health and Human Services (HHS), U.S. Administration for Community Living (ACL).⁵⁵

When Medicare beneficiaries or their loved ones bring their complaints to the SMP, a determination about whether fraud, errors, or abuse is made. When fraud or abuse is suspected, referrals are made to the appropriate state and federal agencies for further investigation.



Learn more about SMP [here](#).⁵⁶

⁵⁴ <https://acl.gov/programs/connecting-people-services/state-health-insurance-assistance-program-ship>

⁵⁵ <https://www.smpresource.org/Content/What-SMPs-Do.aspx>

⁵⁶ <https://acl.gov/programs/protecting-rights-and-preventing-abuse/senior-medicare-patrol-smp>

Section 4:

Conclusion

Module 9 Questions

Trainer's Note: Ask the following questions and make sure the correct answer is discussed. Allow approximately 20 minutes for this section.

1. True or False? The LTCOP is the finder of fact, meaning the LTCOP investigation is for the purposes of determining if ANE occurred.

Answer: False. The LTCOP is not the finder of fact. The purpose of the LTCOP investigation is to gather necessary information to resolve the complaint to the satisfaction of the resident, not to determine whether any law or regulation has been violated for purposes of a potential civil or criminal enforcement action.

2. Which of the following statements are true? Ombudsman program advocacy during an ANE investigation can include:
 - a. Assisting a resident with reporting abuse, neglect, and exploitation.
 - b. Meeting with residents, including Resident Council members.
 - c. Meeting with family members, including Family Council members.
 - d. Working with the facility to ensure residents feel safe.
 - e. Ensuring the facility makes efforts to protect residents from further harm.
 - f. Following up with the facility to determine if proper reporting of ANE has been completed.
 - g. Researching the facility's abuse, neglect, and exploitation history.

Answer: All are true

For the remainder of the questions, assume you have permission from the resident to make the referral.

3. What agency(ies) could you make a referral to if the resident experienced abuse in a nursing facility by a staff member?
 - a. The survey agency
 - b. Adult Protective Services
 - c. Medicaid Fraud Control Unit
 - d. Local Law Enforcement
 - e. SHIP

Answers will vary depending on your state. Answers “a” - “d” could all be correct. The wrong answer is SHIP. SHIP is a health insurance counseling program.

4. What agency(ies) could you make a referral to if the resident experienced abuse in an RCC by a staff member?
- a. The survey agency
 - b. Adult Protective Services
 - c. Medicaid Fraud Control Unit
 - d. Local Law Enforcement
 - e. MFP
 - f. Other _____

Answers will vary depending on your state. Answers “a” - “d” and “f” could all be correct. The wrong answer is MFP. Money Follows the Person helps some residents move back into the community.

5. What agency/entity could you make a referral to if the resident wants to move outside of long-term care?
- a. Money Follows the Person
 - b. Centers for Independent Living
 - c. Home and Community-Based Services
 - d. Aging and Disability Resource Centers

Answers will vary depending on your state. Make sure you include age or financial qualifiers with these resources if applicable.

Module 9 Additional Resources

Abuse

- CMS Hand in Hand Module 2 What is Abuse?
<https://www.youtube.com/watch?v=INwcizX2o0s>
- National Ombudsman Resource Center <https://ltcombudsman.org/issues/abuse-neglect-and-exploitation-in-long-term-care-facilities#recognizing-abuse>
- Consumer Voice Fact Sheet Abuse, Neglect, Exploitation, and Misappropriation of Property <https://ltcombudsman.org/uploads/files/issues/abuse-fact-sheet.pdf>
- National Center on Elder Abuse (NCEA)
<https://ncea.acl.gov/What-We-Do/Education.aspx>