



The National Long-Term Care
Ombudsman Resource Center

MODULE SEVEN

Long-Term Care Ombudsman
Program Complaint Processing:
Intake and Investigation

TRAINEE MANUAL

January 2025

Table of Contents

Section 1: Welcome and Introduction.....	2
Section 2: Introduction to Long-Term Care Ombudsman Program Complaint Processing	6
Section 3: Complaint Intake and Initial Plan Development.....	10
Section 4: Complaint Investigation	19
Section 5: Verification.....	34
Section 6: Common Complaints.....	37
Section 7: Conclusion.....	40

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Section 1:

Welcome and Introduction

Welcome

Welcome to Module 7 of certification training, ***Long-Term Care Ombudsman Program Complaint Processing: Intake and Investigation***.¹ Thank you for being here to learn more about the Long-Term Care Ombudsman program and the certification process.

Module 7 Agenda

- Section 1: Welcome and Introduction
- Section 2: Introduction to Long-Term Care Ombudsman Program Complaint Processing
- Section 3: Complaint Intake and Initial Plan Development
- Section 4: Complaint Investigation
- Section 5: Verification
- Section 6: Common Complaints
- Section 7: Conclusion

Module 7 Learning Objectives

After completion of Module 7 you will understand:

- Long-Term Care Ombudsman program Complaint Processing
- how to gather information during intake and investigation
- effective interviewing techniques

¹ Unless specifically cited, most of the content in this module is adapted from the *Equipping Long-Term Care Ombudsmen for Effective Advocacy: A Basic Curriculum. The Problem-Solving Process – Investigation*. NORC. <https://ltombudsman.org/uploads/files/support/Local-Investigation-Curri-cResource-Material.pdf>

Module 7 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.

Complainant – An individual who requests Ombudsman program complaint investigation services regarding one or more complaints made by, or on behalf of, residents.²

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.³

Complaint Verification (Verification) - Confirmation that most or all facts alleged by the complainant are likely to be true.⁴

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

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.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

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.

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

² https://ltombudsman.org/omb_support/nors

³ CA-04 Table 1: Part A - Complaint Data Components

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

⁴ CD-07 Table 1: Part B - Complaint Data Components

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

⁵ <https://www.cms.gov/medicare/provider-enrollment-and-certification/guidanceforlawsandregulations/downloads/appendix-pp-state-operations-manual.pdf>

⁶ 45 CFR Part 1324 Subpart A §1324.1 Definitions

designees or by an agency hosting a local Ombudsman entity designated by the Ombudsman pursuant to section 712(a)(5) of the Act.⁷

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.⁸

State Long-Term Care Ombudsman Programs Rule (LTCOP Rule) – The Federal Rule that governs the Long-Term Care Ombudsman program (45 CFR Part 1324).⁹

Subsection Symbol (§) – The subsection symbol is used to signify 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.¹⁰

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

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

⁹ <https://www.govinfo.gov/content/pkg/CFR-2017-title45-vol4/xml/CFR-2017-title45-vol4-part1324.xml>

¹⁰ <https://www.cms.gov/medicare/provider-enrollment-and-certification/guidanceforlawsandregulations/downloads/appendix-pp-state-operations-manual.pdf>

Section 2:

Introduction to Long-Term Care Ombudsman Program Complaint Processing

Long-Term Care Ombudsman Program

Complaint Processing

The first function of the Ombudsman program listed in the Older Americans Act (OAA) is to identify, investigate, and resolve complaints that are made by, or on behalf of, residents.

To comply with the Older Americans Act, the Ombudsman program follows three stages of complaint processing as noted in the Figure 1 chart.

This Module focuses on **Stage 1: Intake, Planning, Investigation, and Verification** which entails: receiving problems, complaints, and concerns; confirming the resident's perspective of the problem; developing an initial plan; gathering information through interviews, records, and observations; as well as determining if the

problem is generally accurate. Stages 2 and 3 of complaint processing, shown below, will be addressed in Module 8, "Long-Term Care Ombudsman Program Complaint Processing: Analysis, Planning, Implementation, and Resolution."

Keep in mind these objectives when handling complaints:

- Empower residents to self-advocate with minimal involvement from the Ombudsman program
- Remain resident-focused and resident-driven
- Maintain confidentiality

THE STAGES OF LONG-TERM CARE OMBUDSMAN PROGRAM COMPLAINT PROCESSING¹¹

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 Resident	Review the desired outcome and possible solutions. Determine if any changes need to be made to the plan of action. 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.

¹¹ Figure 1 and the section content is adapted from the *Equipping Long-Term Care Ombudsmen for Effective Advocacy: A Basic Curriculum. The Problem-Solving Process – Investigation*. NORC.
<https://ltcombudsman.org/uploads/files/support/Local-Investigation-Curri-cResource-Material.pdf>

As a representative, how you handle complaint processing directly impacts:

- your relationship with residents and facility staff
- your ability to achieve the desired outcome
- future relationships with residents, families, and facility staff
- the reputation of the Ombudsman program

Complaint processing is the primary means that the LTCOP uses to ensure residents' rights are understood and honored. It involves educating residents, staff members, and others about rights, and helping to find practical solutions to problems that arise when the interests of the facility and the interests of the resident conflict.

Responding to and resolving complaints can be difficult. There will be times when you will be asked to support the resident in a decision that may be potentially harmful to them (e.g., a person wants to move out of the facility to an unsafe environment). There will also be times when you will attempt to balance the rights of one resident with the rights of another.

Whatever the situation or facility type, the process is the same. Complaint processing is really nothing more than problem-solving from receipt of a complaint through investigation and resolution.

Long-Term Care Ombudsman Program Approach to Complaint Processing

The Ombudsman program's goal in problem-solving is to achieve satisfaction for residents. The approach you use is critical to the immediate outcome and to future complaint resolution. Therefore, as a representative, you must carefully select your strategies and be skillful and thoughtful when investigating and resolving problems.

Sometimes, you will educate, support, and encourage residents to engage in self-advocacy. Other times, you will represent the resident.

Your goal is to achieve resident satisfaction.

Working on behalf of one resident can lead to changes in facility policies and routine practices, which then benefit all residents. Some goals of the Ombudsman program are to help staff become more responsive to residents, and to better equip residents to directly express their concerns to staff (i.e., empower residents).

Be respectful, persistent, assertive, and professional in your advocacy to ensure residents' rights are upheld.

Another important consideration when presenting concerns to staff is personal style and demeanor. Taking an approach that is hostile, aggressive (rather than assertive), or assigning blame may damage your working relationship and make it difficult for you to collaborate with facility staff in resolving problems. On the other hand, a style that is too passive will not be effective in ensuring that residents' rights are respected.

Section 3:

Complaint Intake and Initial Plan Development

Complaint Intake

Recognizing and Receiving Complaints

The words “problems” and “concerns” are used in general terms within the LTCOP to explain general expressions of dissatisfaction. As part of the Ombudsman program team, you will hear problems and concerns on a regular basis. Some people complain to process their feelings or “vent” and may not expect or want your intervention. In the LTCOP, concerns, problems, and “venting” are not always complaints.

A “complaint” is the term used specifically regarding issues that the LTCOP works to

This definition of the word “**complaint**” is from the National Ombudsman Reporting System (NORS). NORS is the uniform data collection and reporting system all states must use to report data; it will be discussed in more detail in Module 9.

resolve. **A complaint is 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.**¹²

A concern or problem turns into a complaint when the following factors are present:

- the resident (or resident representative when applicable) consents to LTCOP assistance
- the concern affects the health, safety, welfare, or rights of a resident
- the concern requires LTCOP action

When a resident shares a problem or concern with you, ask questions to determine the cause and extent of the problem. Module 5 describes two situations regarding a resident named Barry. In the first situation, Barry made statements such as “most staff are nice to me” and “the food is okay if you eat in the dining room.” The representative paid no attention to these subtle statements that implied possible concerns.

In the second situation, the representative noticed a potential problem and asked more questions. Without having done so, Barry’s underlying concerns may not have been addressed.

Not all expressed problems are appropriate for Ombudsman program intervention if they do not directly impact a resident, are outside the scope of the program, or if the resident does not want Ombudsman program assistance. For example, a resident expressing concern because they believe the staff are underpaid is not a complaint for the LTCOP.

¹² NORS Table 1. Part B – Complaint Data Components. CD-04.
https://ltcombudsman.org/uploads/files/support/NORS_Table_1_Case_Level_10-31-2024.pdf

To determine if someone is simply expressing a concern or if they are seeking your help, ask such questions as:

- Is there anyone I can talk with about your concerns?
- Is there anything I can help you with today?
- Is this something you would like my help with?
- Is there anything I can do to help your situation?

Don't be surprised when residents decline your assistance. Give them materials about your program with the appropriate contact information and ask them to contact you if they change their mind and want assistance. Make sure to check on them during your next visit to see if their situation has improved or if they have decided they now want your help.

Not all concerns expressed are issues that the LTCOP works to resolve. Skillful listening, observation, and inquiries can determine when such expressions are actual requests for assistance and indicate a problem that needs to be pursued (i.e., complaints).

Figure 2

Complaint
Will you help me get more therapy?
The facility is going to kick me out, can you do something about it?
I want to be able to use the phone in private, is there anyone you can talk to about it for me?
Not a Complaint
One aide is rude to me, but I don't want you to say anything.
I don't want to get up so early in the morning, but it takes me so long to get ready. I've learned to accept it.
My kids put me in this home, and I wish I didn't have to live here.

Sources of Complaints

Complaints are received during facility visits or through contact with the program (e.g., phone calls, emails, website complaint form submissions, etc.). **A complainant is an individual who requests Ombudsman program complaint investigation services regarding one or more complaints made by, or on behalf of, residents; complainants are most often residents and family members.** However, complainants can be anyone, including facility staff, hospital staff, community members, clergy, legislators, persons who wish to remain anonymous, representatives of the Office, etc.

Residents as Complainants

Oftentimes residents do not realize they have the right to complain, or they feel complaining won't do any good. They may not understand what the LTCOP

offers. They may feel uncomfortable complaining to a stranger or have trouble believing that person will maintain confidentiality. For these and other reasons, it is important that you regularly visit the facility and become familiar, so that residents come to know and trust you.

Another source of resident-initiated complaints is through Resident Council meetings. Attending Resident Council meetings, per invitation of the residents, can be an opportunity for residents to reach out to the LTCOP when their efforts to resolve complaints directly with staff have been stalled.

Relatives as Complainants

Family members often reach out to the Ombudsman program for information and assistance as well as for complaint resolution. Sometimes the family member's concerns align with the resident's concern and sometimes they do not. Since the Ombudsman program follows resident direction, the needs and interests of family members are not the focus of your attention if they conflict with the resident's preferences.

Another source of family-initiated complaints is through Family Council meetings. Attending Family Council meetings, per invitation of the members, can be an opportunity for Council members to reach out to the LTCOP when their efforts to resolve complaints directly with staff have been stalled.

Facility Staff as Complainants

Staff complaints may be based on a variety of motives. Most staff are concerned about residents and want to provide the best care possible. When conditions in the facility are poor, staff may reach out to the LTCOP for outside help to address the issues. However, it is important to remember the role of the Ombudsman program, and ensure the focus is the impact on the quality of life and care for residents, not internal employee/employer issues.

Representatives as Complainants

Representatives of the Office may initiate a complaint based on observations that affect multiple residents or when they become aware of actions, inactions, or decisions by the facility such as response to natural disasters, evacuations, infection control, facility closures, etc. Sometimes representatives are the complainant in situations when the resident wants to remain anonymous, but the concern impacts more than one resident.

Unvoiced Concerns

Problems sometimes exist in a facility without anyone complaining to the LTCOP. One unique role of the LTCOP is to determine when and where there are problems experienced by residents, even when residents don't express them. An absence of complaints may not mean that all residents are receiving quality care or experiencing an

acceptable quality of life. There are many reasons why residents are reluctant to voice concerns, including fear of retaliation, as well as the issues related to trust.

Information Collected at Intake

Intake is the first step in the investigative process. Determining if a problem or concern is something the Ombudsman program can act upon requires gathering information at intake, reviewing LTCOP policies and procedures, and/or talking to your supervisor, and obtaining permission from the resident to proceed.

Whether through facility visits or through phone calls and emails to the Office, when a problem or concern comes to the LTCOP, it is important to explain your role as a resident-directed advocate and explain that the resident is the program's client. Any further action that you can take may only occur with the permission of the resident. When the complainant is not the resident, explain that permission from the resident is required to take action on the complaint and to share any information with the complainant or with anyone else.

Regardless of the source of the complaint, attempt to learn as much as possible during the intake to determine if the concern could be a complaint.

Try to find out:

- what has occurred or is occurring
- when the problem occurred and whether it is ongoing
- where the problem occurred or occurs
- who was or is involved
- how resident(s) are affected
- why the problem is occurring or has occurred
- what steps have been taken to resolve the problem
- who has been contacted about the concern
- what the facility has done in response to the problem
- what is the resident's perspective of the problem
- what the resident's wishes are regarding complaint resolution

Obtaining this information will help you clarify the problem from the complainant's point of view. If the complainant is not the resident, you will need to communicate with the resident and possibly ask the resident the same questions that you asked of the complainant to obtain the resident's perspective of the situation.

Resident Consent



Watch the video [How to Obtain Consent \(Long-Term Care Ombudsman\)](#)¹³ and consider the following questions:

1. What does the narrator mean when he says to “set the resident up for success”?
2. What does the narrator say about obtaining consent from residents who experience dementia?
3. What is the LTCOP’s objective?

As a resident-directed advocate, you may not act on an individual concern without resident consent. If the resident is not the complainant, you must contact the resident to obtain their perspective of the problem and determine if the resident wants LTCOP involvement.

What if the resident refuses to consent to the LTCOP addressing an individual concern?

- Determine why
- Explain the resident’s options for addressing the concern
- Do not proceed with opening a complaint investigation
- Provide your contact information if they want assistance in the future
- Determine if the concern is systemic in nature

What if the resident asks for LTCOP assistance, then withdraws consent?

- Determine why
- If the problem is recurring, provide other options for the resident to consider, such as expressing their concerns at the Resident Council meeting, talking with family or a trusted staff member
- Stop all advocacy efforts on behalf of the individual resident
- Provide your contact information for future assistance
- Determine if the concern is systemic in nature

If a resident refuses to consent or withdraws consent, determine if the issue affects multiple residents and find out if other residents want your assistance. To do so, you will need to interview other residents without disclosing the identity of any resident or complainant without their permission.

¹³ Empowered Aging <https://youtu.be/enjd8qQ5bjk>

Informed Consent and Decision-Making Capacity

Module 3 provides detailed information on when a resident is unable to communicate informed consent and what to do when decisional capacity is unclear. When you receive a complaint on behalf of a resident who has limited decision-making capacity, advocate for the resident's wishes to the extent that the resident is able to express them.

Otherwise, follow the direction of the resident representative and follow your program's policies and procedures as discussed in Module 3.

Develop an Initial Plan of Action with the Resident

When a resident shares a complaint with you, you can immediately develop an initial plan of action with the resident. However, when a complaint is from a source other than the resident, you must reach out to the resident to confirm the resident shares that complaint (or has others), to explain their rights, and then begin to develop an initial plan of action.

- Confirm the resident's perspective of the problem and determine if the concern is a complaint.
- Consider information gathered during the intake process.
- Discuss applicable residents' rights with the resident and the complainant.
- Determine if the resident wants LTCOP assistance and if so, engage them in developing an initial plan of action.

When developing the plan, discuss with the resident their perspective of the problem and their desired outcome(s). In addition, explain options and possible solutions. Before putting the plan into action, you must obtain consent to act and consent to identify the resident when speaking with involved parties. Determine who is responsible for all required actions within the plan; the resident and/or a family member may want to complete some of the actions.

If during the investigation you are unable to complete the agreed-upon tasks, go back to the resident and revisit the plan (a step in Stage Two of complaint processing).

Complaint Intake Dilemmas

It is inevitable that you will be presented with several complaint situations that pose questions or even ethical dilemmas. The fundamental point to remember is you are resident-directed, meaning you represent the resident. Knowing how to initially respond to these circumstances will avoid future misunderstanding and miscommunication.

RESPONDING TO COMMON DILEMMAS

Figure 3

Common Dilemmas	Suggested Responses
A family member complains about a resident's care, but the resident says everything is fine and asks you not to proceed.	Don't proceed in this situation. However, if other residents express the same problem and want your assistance, you may advocate on their behalf.
The resident complains and wants your help, but a family member urges you "not to rock the boat."	The resident has requested assistance, and you should honor that request. Explain to the family that you are resident-directed.
Relatives want you to investigate their complaint, but do not want the resident to know what you are doing.	Remind the family you are resident-directed and cannot proceed without first discussing the issue with the resident.
A resident unable to communicate informed consent asks the LTCOP to help with a concern.	The concern cannot be dismissed just because it comes from someone who is unable to communicate informed consent. However, the resident's condition should be considered as one factor in determining whether the complaint is valid. Try to understand what the resident is expressing and determine if there is an underlying message or unmet need.
A resident will not give you permission to reveal her identity but wants your assistance.	Discuss the reasons the resident does not want her identity revealed. If this will limit your ability to resolve the issue, discuss this with the resident and tell her you will do as much as possible without revealing her identity. If you cannot resolve the issue without revealing her identity, tell her what you've done and why you cannot take the case further. If appropriate, encourage the resident to discuss her concern with the Resident Council.
A complainant, other than a resident, insists on remaining anonymous and will not give you any identifying information.	Respect the anonymity of the complainant. Determine if the complaint can be investigated without revealing the identity of the complainant.



Watch the video, [Anne Walker - Intake and Initial Plan](#)¹⁴ and answer the following questions.

1. What does Gloria do before she enters Ms. Walker's room?
2. What concerns does Ms. Walker express in this scenario?
3. Does Gloria explain Ms. Walker's rights pertaining to her concerns? If so, which rights are explained?
4. Do Gloria and Ms. Walker develop an initial plan of action together? What is the plan?
5. Gloria obtains consent to act, but what parameter does Ms. Walker impose on Gloria?
6. What examples of empowerment did you observe?
7. Is there anything you would have done differently?
8. Gloria used both open-ended and closed-ended questions during her complaint intake. What are some examples of each and what information is Gloria trying to gain from asking these questions?

¹⁴ This video series was 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 (https://ltcombudsman.org/uploads/files/support/Texas_Video-Trainee_Doc-Answers-FINAL.pdf) and the Illinois State Long-Term Care Ombudsman Program Level 1 Training manual.

Section 4:

Complaint Investigation

Investigation

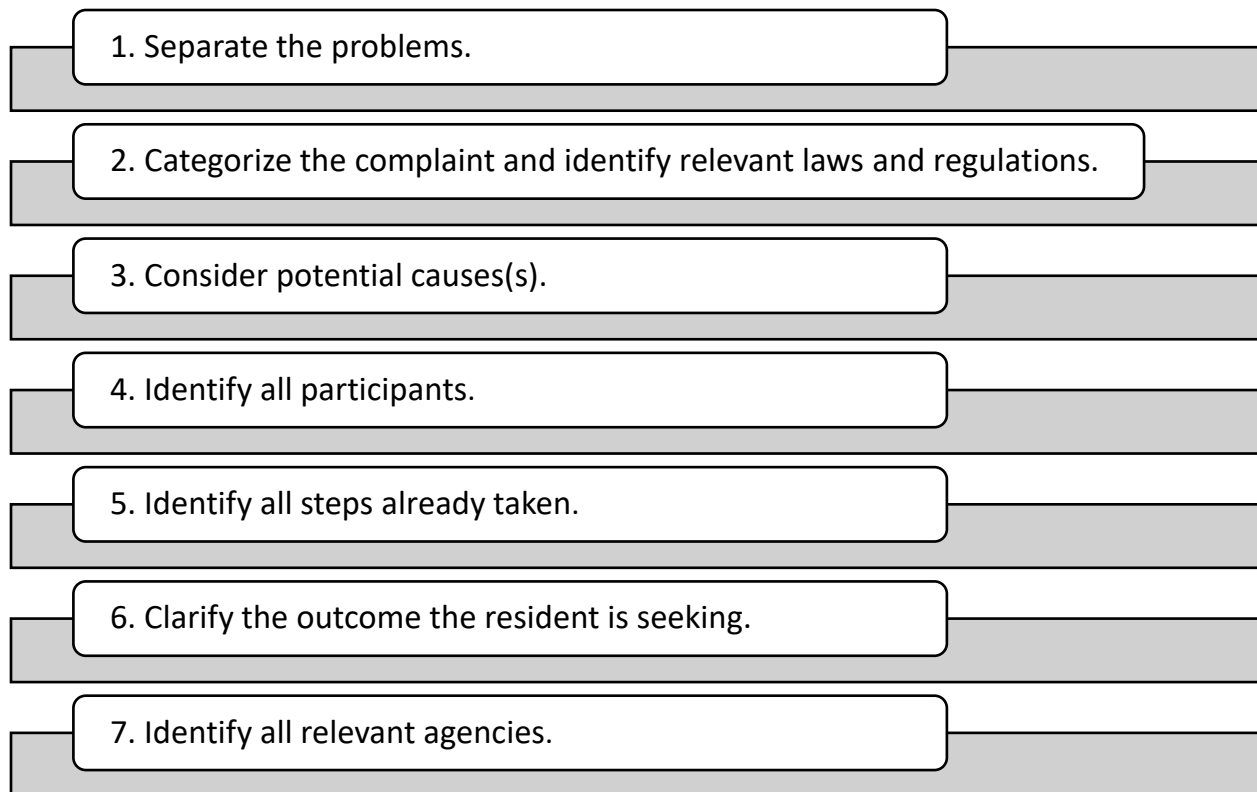
Before you can resolve most complaints, you will need to gather additional information about the situation from a variety of sources. This process, which is the last step in Stage 1 of the Ombudsman Program Problem-Solving Process, is frequently referred to as *investigation*.

The purpose of the Ombudsman program's investigation is to gather the information necessary to determine whether the complaint is verified. **Complaint verification (verification) is confirmation that most or all facts alleged by the complainant are likely to be true.**¹⁵ It is important to be objective when gathering information.

Investigations involve preparation, deciding what information is relevant, and then using various techniques to collect evidence. As stated earlier, the most common techniques the LTCOP uses are interviewing, observation, and record review.

STEPS TO PREPARE FOR AN INVESTIGATION

Figure 4



¹⁵ Table 1: NORS Parts A, B, and C – Case and complaint codes, values, and definitions
https://ltcombudsman.org/uploads/files/support/NORS_Table_1_Case_Level_10-31-2024.pdf



Example: Mr. Richards

Mr. Richards has been in a nursing facility for several months when his wife starts to notice a change in his health. During a visit, Mrs. Richards tells you, “He became chronically sleepy, started losing weight, and the facility has done nothing about it.” She believes that her husband was placed on an improper diet. “How could he be given an appropriate diet when the doctor never sees him? He loves milk, but it’s always warm. I am still trying to get them to replace the hearing aid they lost two months ago! Can you help me?”

Every time you attempt to visit Mr. Richards, you observe that he is sleeping. Mrs. Richards is his agent under a power of attorney. You ask additional questions to determine the facts of the complaint.

Step 1: Separate the Problems

As described in the Intake Section, gather as much specific information as possible during your first contact with the complainant. Separate the problems in clear statements and rank the problems in order of importance to the resident or the complainant. This ranking will set the priority for which problems you address first. After you have a clear list of all the concerns, ask additional questions to fill in the details.

Here are the problems separated out that include all information gathered during intake.

- a. *Mr. Richards became chronically sleepy about one week ago.*
- b. *Mr. Richards lost 10 pounds in three weeks.*
- c. *The facility did not address the sleepiness or the weight loss in the care plan.*
- d. *The last time Mr. Richards was seen by a doctor was three months ago.*
- e. *Mr. Richards’ hearing aid is missing. The complainant last saw it in its usual place on his bedside table a week ago when she left after dinner at about 6:00 p.m.*
- f. *Mr. Richards’ milk is always warm. This is true at all meals. The milk is served in a plastic glass on the tray with a plastic wrap covering it. Mr. Richards cannot remove the cover without assistance.*

Make sure the problems are clear and agreed upon by you, the resident, and the complainant.

Step 2: Categorize the complaint and identify relevant laws or regulations

Categorize the complaint, or in the case of a complex complaint, each of the individual elements. Know what kind of complaint you are dealing with. For the purposes of this case example, we will focus on the most important issues as related by the complainant.

Example: *Mr. Richards has had a change in his medical condition and a new care plan should be developed.*

The federal nursing facilities regulations require a facility to develop a comprehensive assessment of a resident when there is a significant change in the resident's physical or mental condition and to revise the care plan to meet his needs and preferences.

In other words, the facility is required to assess Mr. Richards and modify his care plan based on his current symptoms.

Step 3: Consider Potential Cause(s)

Based on your knowledge of the complaint, the resident, and the facility, create a list of possible reasons for the concern(s). This list can help you determine which information will provide a sense of direction for the remainder of the investigatory process.

Example: *What are the possible reasons that Mr. Richards' new medical conditions have not been addressed in his care plan?*

- *The facility is not aware of the new medical conditions.*
- *Some staff are aware of the concerns but have not communicated the concerns to prompt an assessment.*
- *The facility does not regularly weigh Mr. Richards.*
- *The facility does not have consistent staff assignments and the staff caring for him are not familiar with his past health status.*
- *Mr. and Mrs. Richards are not aware of his right to request a care plan and do not understand the purpose of a care plan.*
- *The facility views Mrs. Richards as a frequent complainer and ignores her concerns.*
- *An assessment was completed, and a care plan conference was held but the Richards were not informed.*

Step 4: Identify All Participants

Who is responsible and who has the power to do something about it? It may be important to gather names and contact information of everyone who has some role in the situation. A complaint about resident care could include: the complainant, the resident, the facility nursing staff, the facility administrator, and the resident's physician. In short, identify anyone who knows anything about the complaint or related circumstances and identify anyone who has the power to do something about the problem.

Example: *Mr. and Mrs. Richards, the Care Plan Coordinator, the Director of Nursing, the charge nurse, the certified nursing assistants (CNAs) who cared for Mr. Richards two months ago and currently, and Mr. Richards' physician all have information that is relevant.*

Step 5: Identify Steps Already Taken

Determine if the complaint is new or recurring. What, if anything, has been done to resolve the concern? If anyone has acted, what was the action and what was the outcome? Determine if the resident or complainant has spoken to anyone about the complaint. What was the response? If no actions were taken, suggest possible steps that could be taken to encourage self-advocacy. If actions were taken, what was the result?

Example: *Mrs. Richards said that "the facility has done nothing about it." Who did she talk to at the facility? What was their response? Has Mrs. Richards spoken with Mr. Richards' physician? What was their response? Ask Mrs. Richards when the last care plan conference was held and if the facility is following the current plan. What changes does she believe need to be made to the care plan?*

Step 6: Clarify the Result the Resident is Seeking

What outcome does the resident want? If the complainant and the resident do not want the same outcome, make sure you work on behalf of the resident's wishes.

Example: *The complainant in this case is the resident's wife and agent under a power of attorney. After several attempts by the LTCOP, the resident has not been able to communicate informed consent. Once verifying that Mrs. Richards has the right to speak for Mr. Richards when he is unable to communicate informed consent, the Ombudsman program follows the direction of Mrs. Richards. She indicates that her wishes are for Mr. Richards to have a comprehensive assessment and a care plan meeting that includes his physician to find out what is causing her husband's change in condition. She also wants the facility to provide consistent staffing for her husband and to be listened to when she expresses her concerns.*

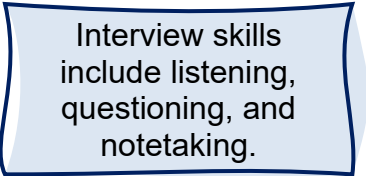
Step 7: Identify Relevant Agencies

Is there an outside entity involved or another agency that needs to be involved? Such entities could be legal services, law enforcement, or the survey agency. If so, they may have information or insights that are helpful.

Example: *At the direction of Mrs. Richards and with her consent to disclose resident identifying information, the Ombudsman program may refer the complaint to the survey agency to investigate the facility's compliance with state and federal regulations.*

Interviewing

Interviewing is the most frequently used method of gathering information. Most often interviews are more conversational and less formal. Interviews are used to investigate the concern, determine facts, and assist with complaint resolution. With permission of the resident, you may interview residents, facility staff, and/or family members of residents and anyone else with knowledge of the complaint. Regardless of who you are interviewing, there are several factors to consider when preparing for an interview. Following these guidelines will increase your likelihood of success. Be skillful in listening, questioning, and note-taking.



Interview skills include listening, questioning, and notetaking.

There are factors beyond your control. You may not be able to see an administrator at a time and place of your choosing. Set your goals beforehand. Know what questions you need answered and what specific information you need. Consider what information is needed to move forward with the complaint resolution. Along with the skills learned in Module 5, use the guidelines below when conducting interviews.

DURING INVESTIGATIVE INTERVIEWS

Figure 5

Be yourself. Use words, skills, and body language appropriate to the situation in a way that fits your personality.
Maintain objectivity. Do not make assumptions about the validity of the information.
Establish a rapport before addressing the problem.
Explain the purpose of the interview.
Use open-ended questions when seeking the perspective of the person being interviewed.
Use closed-ended questions to obtain specific details and facts.
Use language that is easy to understand. Explain any technical terms.
Guide the interview toward the desired goals, yet be flexible enough to follow-up on any new, relevant information received.
When relevant, let the interviewee know when the conversation is nearing the end to ensure all questions are addressed.
Summarize what has been discussed or accomplished to confirm understanding.
Explain how the information will be used and other steps anticipated in conducting the investigation and resolving the complaint.

Interview Skill #1: Listening



Activity

How often do you use the following ten important skills of effective listening? Check yourself carefully on each one.

LISTENING SELF-EVALUATION

Name	Almost Always 10 pts.	Usually 8 pts	Sometimes 6 pts.	Seldom 4 pts.	Never 2 pts.
<i>I review mental outlines as I listen, so I don't forget important points.</i>					
<i>I encourage others to talk by listening instead of speaking.</i>					
<i>I give others my full attention when they speak to me.</i>					
<i>I assume everyone has something worthwhile to say</i>					
<i>I use questions to guide speakers so they will make their message clear to me.</i>					
<i>I respond to speakers nonverbally with actions and facial expressions.</i>					
<i>I give verbal feedback to tell speakers how they are getting through to me.</i>					
<i>I relay messages for clarity, e.g., "This what I heard you say..."</i>					
<i>I am aware of voice tone and body language that give away unstated messages.</i>					
<i>I draw mental images as I listen to capture important points.</i>					
TOTAL =					

A score of 70 or below means you need to work on your listening. A score between 71 and 90 means you listen well. Over 90 means you are a great listener.

INTERVIEWS

Be an active listener. Acknowledge statements either non-verbally or verbally to confirm understanding.

Be alert to more than spoken words when you listen. Notice inflection of speech, qualities and tone of voice, facial expressions, body language, gestures, and general behavior. See if you can detect gaps or omissions in what the person is saying. Sometimes more can be learned from what is *not said* than from what *is said*.

Determine whether the complainant is glossing over some fact because they think it detracts from their position. Explain that you are interested in all facts and that you can only be of help if you know the whole situation.

Be comfortable with silence. Don't rush to fill the gap. Use silence to organize what you've heard. Be patient.

Never completely believe or disbelieve everything a person says. Differentiate facts from someone's opinion. You will have to sort out the difference between the "truth" and fiction. If someone labels a resident as "hostile," for example, find out what led them to that opinion.

Remember that you are the interviewer. Don't let yourself be interviewed or drawn in personally. Turn questions into statements and reflect them back. A complainant may ask, "Don't you think they are short staffed here?" Your reply could elicit more information, "It sounds like you think there is not enough staff. I'd like to know what leads you to that conclusion."

Be alert to problems that may be unintentionally revealed. The resident may have a limited notion of what help is available or may not want to burden you with too many problems. Listen for "the problem behind the problem." There is always the possibility that what the complainant is saying is not what is bothering them, and they are instead voicing feelings that reflect a general sense of hopelessness.

Stick to your interview agenda. Don't be deflected or distracted by other issues. Avoid debates.

Stay focused on the current issue. Avoid discussing prior grievances.

Know and be prepared to cite your investigative authority as a representative of the Office.

Interview Skill #2: Questioning

When conducting an interview, think about the information you need and then develop questions to help you obtain the information. Get the facts by asking who, what, where, how, when, and why.

Ask additional questions to get to the root of the problem and to find appropriate solutions to the concern, such as:

- "Help me understand why..."

- “What would happen if...?”
- “How do you feel about...?”
- “What do you think about...?”
- “What can you tell me about...?”
- “Why do you think...?”
- “Are you saying...?”

Interview Skill #3: Note taking

When taking notes during an interview the following tips will be helpful for complaint resolution and state and federal documentation requirements. Module 8 covers additional information on documentation.

TIPS FOR EFFECTIVE NOTE TAKING

Maintain rapport and a good conversational flow during an interview even if it is necessary for you to take notes.

If you will be taking notes in person, explain the reasons why to relieve any anxiety or fear on the part of the person being interviewed. Some examples include “what you are saying is really important to me. I need to take notes because it helps me remember.” Or “I’m not allowed to share my notes without your permission to anyone outside of the Ombudsman program. Taking notes helps me to correctly record your point of view.”

Take notes of responses that are especially significant and/or that you think are important to remember accurately.

Write only information that you are prepared for the interviewee or someone else to see.

Keep your notes short, factual, and to the point. It is acceptable to include your personal observations and judgments; however, *back them up with facts*. For example, if you indicate that the floor was dirty, state that you noticed coffee and juice stains in the day room on Wing C, and that it felt sticky to the touch.

Avoid judgmental statements such as “Resident is obviously a chronic complainer,” or “Administrator can’t be trusted.”

Describe behaviors, do not label them. For example, if an administrator is unresponsive to your questions write, “Administrator said he had no comment when I asked about the training and supervision that CNAs receive. After I asked other questions related to the complaint, the administrator said the interview was over and escorted me to the door.”

Observation During an Investigation

Observation is the second most common method of gathering information. Complaints that have to do with staffing, sanitary conditions, and food often can be checked through

observation. In addition to sensory observations discussed at the beginning of this Module, the tips below will help you to be successful when using observation during an investigation.

Tips

Approach a situation requiring investigative observation with an open mind and an understanding of what is observed.

Be as impartial as possible. If you only look for evidence that fits a preconceived notion or theory, other evidence may be missed or much of the evidence may be misinterpreted.

Document your observations as soon as possible to ensure accuracy and thoroughness.

Accessing Records During an Investigation

During Module 5, the Ombudsman program authority to access records was explained.

Follow program policies and procedures and state and federal regulations regarding accessing resident records. You may come across a situation where someone other than the resident or complainant offers to show you the resident's record. Unless you have permission to access the record according to the LTCOP procedures, do not look at the record.

Though most investigations will not require access to resident records, there are important points to remember when the need arises.

At what point during an investigation might you need to access records? The following are some situations when accessing resident records may be appropriate:

- A resident wants to know information that the records contain such as what is written in the care plan, what the physician ordered, or what financial transactions have been made.
- You receive conflicting or vague information from staff. Looking at the record will provide another data source that may be helpful to understand the issue.
- You need to verify the information you have received regarding the resident's complaint.

- You need facts from the record such as information about guardianship, power of attorney, contact information, the number of times the physician visited the resident, etc.

Further considerations when deciding whether to look at a resident's record are that records are sometimes not complete, not accurate, and may be difficult to understand.

Because of confidentiality provisions, staff may be apprehensive about allowing you access. When you ask to see a resident's records, staff may wonder why you want the information and what you are trying to determine. You might encounter some resistance or a lot of questions due to defensiveness and concerns you are "checking up" on them. If you are denied access to records, follow your program's policies and procedures.

When preparing to access records, have the following information before you ask for a resident's record:

- ✓ A firm knowledge of the basis for your request.
- ✓ The appropriate completed release of information form.
- ✓ Ideas about what to say if you encounter resistance or questions about the request. Depending upon the circumstances you might give a response like the ones below.
 1. *The resident has a right to authorize me to look at their medical record. I've given you the consent form. Please give me the record now.*
 2. *If I need help understanding the record, I'll let you know. I just need to review the record by myself right now.*
 3. *At this point, I'm looking for information. I haven't determined if there is a problem.*
 4. *Due to Ombudsman program confidentiality policies, I cannot discuss specific details with you. If there is an issue that needs your attention, I'll let you know.*

Accessing Records for Residents with a Resident Representative or no Representative

Residents who have a legal representative with decision-making power still retain some ability to participate in their care and exercising of their rights. For example, a resident with a durable power of attorney for health care still has a voice in their care unless they are unable to communicate informed consent. Residents with guardians still have a right to have their desires and preferences considered even if the guardian has the legal responsibility over that area.

When considering a record review, be sure it is necessary to investigate or resolve a complaint or to protect the rights, health, safety, and welfare of the resident. Follow your

program policies and procedures; use all state-required forms for access; and follow the procedures as prescribed in the OAA¹⁶ and the LTCOP Rule¹⁷ for access in the chart below.

Figure 6

Situation	Procedures for Accessing Records
Resident can communicate informed consent .	1. Exercise good judgement about the resident's ability to provide informed consent (e.g., the resident can express wishes and opinions on how to resolve the problem). 2. Obtain and document consent from the resident. Consent may be obtained in writing, verbally, or through auxiliary means of communication. 3. Document consent according to policies and procedures.
Resident is not able to communicate informed consent and has a resident representative .	1. Confirm the resident representative has authority to grant access. 2. Obtain and document consent from the resident representative. Consent may be obtained in writing, verbally, or through auxiliary means of communication. 3. Document consent according to policies and procedures.
Resident is not able to communicate informed consent and the resident representative refuses to consent to the access and the resident representative is not acting in the best interests of the resident or the resident representative cannot be located despite a reasonable effort.	1. Notify your supervisor and explain why you believe the resident cannot communicate informed consent and why you believe you need to access their records. 2. Document why you believe the resident cannot communicate informed consent. 3. Follow program policies and procedures regarding consent from the State Ombudsman to access records and document the permission.

¹⁶ <https://acl.gov/sites/default/files/about-acl/2020-04/Older%20Americans%20Act%20Of%201965%20as%20amended%20by%20Public%20Law%20116-131%20on%203-25-2020.pdf>

¹⁷ <https://www.govinfo.gov/content/pkg/CFR-2017-title45-vol4/xml/CFR-2017-title45-vol4-part1324.xml>

Situation	Procedures for Accessing Records
Resident is not able to communicate informed consent and does not have a resident representative.	1. Notify your supervisor and explain why you believe the resident cannot communicate informed consent and why you believe you need to access their records. 2. Document why you believe the resident cannot communicate informed consent. 3. Follow program policies and procedures regarding consent from the State Ombudsman to access records and document the permission.



Example: Mr. Farley

Mr. Farley, a resident, shares a concern and asks you to intervene with the facility on his behalf. He gives you permission to use his name and to talk to any staff who can help resolve the problem. Access to his records is not discussed since you do not anticipate needing to examine his records to deal with the issue. As you are gathering information about Mr. Farley's concern, the charge nurse tries to show you his record to prove the truthfulness of her response. How do you respond?



Watch the video [Anne Walker – Investigation](#)¹⁸ and answer the following questions.

1. Why is it important for Gloria to contact her supervisor, Diane, after speaking with Ms. Walker?
2. After talking to her supervisor, what does Gloria do to begin her investigation?
3. Why does Gloria visit during the morning shower time?
4. How does Gloria use her senses to gather evidence during her visit and complaint investigation related to Ms. Walker's concerns?

¹⁸ This video series was 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 (https://ltombudsman.org/uploads/files/support/Texas_Video-Trainee_Doc-Answers-FINAL.pdf) and the Illinois State Long-Term Care Ombudsman Program Level 1 Training manual.

5. What challenges might you encounter when visiting early morning, evenings, or weekends?
6. How does Gloria protect Ms. Walker's confidentiality during the investigation?
7. Why doesn't Gloria review Ms. Walker's care plan to check her preferences about showers?
8. What interviewing tips did you pick up from watching Gloria?

Section 5:

Verification

The investigation may reveal that the actual problem is not the concern that was reported to you. For example, you may have been told that articles of clothing are being stolen. During your investigation you may learn that clothing is simply not being returned from the laundry room.

Accurately determining the cause of the problem is essential to finding a lasting solution. Examine the information you gained by interviewing, observing, and reviewing documents. Ask yourself, “What is the problem?” Be clear about the underlying problem before you try to resolve the issue.

Verifying the Complaint(s)

Verification is the last step in Stage 1 Intake, Planning, Investigation, and Verification. A complaint is verified if it is determined after interviews, record inspection, observation, etc., that you can confirm “that most or all facts alleged by the complainant are likely to be true.”¹⁹

Verification is simply a matter of:

- reviewing the facts;
- ensuring that you have proper documentation; and
- deciding if the information supports the allegations in the complaint.

The amount of documentation and verification you need will be determined by the complexity of the issue, the willingness of the facility to accommodate the resident, and in some cases, the resident’s cognitive and communication abilities.

Sometimes complaints cannot be verified, but the resident’s perception of the problem still exists. For example, a resident with dementia may believe that someone stole their jewelry and reports the theft daily when they never had that jewelry in the facility. The LTCOP can work with the resident, facility, and a family member to come up with a solution for the resident to not feel the stress of having their jewelry stolen. It could be that the family agrees to bring the jewelry in for the resident to see during their visits or that the resident is provided with inexpensive jewelry to wear. These types of responses can provide a solution which resolves the resident’s concern to their satisfaction, even though the complaint is not verified.

A complaint is not verified when, after investigation, the circumstances of the complaint are found to be untrue. For example, a family member complains that the resident is not getting good care, but the resident is satisfied with the care received and there is no evidence to indicate otherwise. Based on the resident’s perspective and the representative’s observations this complaint cannot be verified.

In summary, the purpose of the LTCOP’s investigation is to determine whether the complaint is verified and to gather the information necessary to resolve it.

¹⁹ NORS Table 1: Part B – Complaint Data Components. CD-07.
https://ltcombudsman.org/uploads/files/support/NORS_Table_1_Case_Level_10-31-2024.pdf

Representatives use interviews, observations, and documents to gather factual, objective information about a problem.

Section 6:

Common Complaints

National Data

Ombudsman programs are required to report their activities such as facility visits, complaints received and investigated, information and assistance provided, systems advocacy, and community education to the Administration for Community Living (ACL) to be summarized in the National Ombudsman Reporting System (NORS).

Nationally, nursing facilities average about 100 beds per facility while residential care communities average 25 beds per RCC. The number of nursing facilities has slowly declined over the last five years while the number of RCCs has steadily increased. Even so, for various reasons, most complaints received and investigated are about nursing facilities. Reasons for variations in complaints may include state visit requirements, larger numbers of RCCs, and not enough representatives to provide frequent visits. Other factors may include a lack of awareness of resident rights in RCCs and differences in the care needs of residents.



Learn more about the National Ombudsman Reporting System (NORS) [data](#).²⁰

State Data

Most Common Complaint

During your work as a representative, you will hear the term “discharge.” A discharge is 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.²¹

States may have another term for discharges in RCCs, such as an “involuntary discharge,” “move out,” or “eviction.”

Throughout the training, you have learned the Ombudsman program addresses a variety of complaints, often involving residents’ rights violations; however, complaints involving discharges are the most common.

A complaint about a discharge is when a resident:

- receives a discharge notice and does not want to leave;
- is discharged without notice or due process;
- is transferred to the hospital and not advised of the facility’s bed-hold policy;
- is not allowed back to the facility after hospitalization; or

²⁰ The National Long-Term Ombudsman Resource Center *NORS Data*
https://ltombudsman.org/omb_support/nors/nors-data

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

- is discharged to an unsuitable setting (e.g., homeless shelter).

Other situations include when the facility fails to provide a written notice of discharge, the notice is incomplete or incorrect, or the reason for the discharge is not in compliance with federal and/or state regulations.

There are significant challenges when it comes to investigating cases involving discharge complaints. Discharge complaints are discussed in more detail in Module 8.

Ongoing training and supervision are necessary to become successful at navigating such cases. The National Ombudsman Resource Center (NORC) has several tools to assist representatives when helping a resident face an inappropriate discharge.



Learn more about [discharges](#).²²

²² The National Long-Term Care Ombudsman Resource Center *Transfer/Discharge*
<https://ltcombudsman.org/issues/transfer-discharge>

Section 7:

Conclusion

Module 7 Questions

Case Study: Mrs. Bronner's Purse

You are visiting Peaceful Acres Assisted Living. You stop in to see Mrs. Bronner and during your visit she tells you her purse is missing.

1. What are some potential reasons that Mrs. Bronner says her purse is missing?
2. Because there are many possible explanations for Mrs. Bronner's complaint, how would you determine why Mrs. Bronner said her purse is missing? What would you say to Mrs. Bronner?

Mrs. Bronner tells you her purse is a brown handbag containing her wallet and special pictures. She keeps it on the chair next to her bed. Mrs. Bronner says she looked everywhere in her room. Mrs. Bronner tells you both her daughter, Stephanie, and the Social Services Director, Anita, are aware of her missing purse. Mrs. Bronner gives you permission to talk to her daughter and to facility staff about her missing purse and to use her name when addressing her concern.

3. Before you contact Stephanie and Anita, what observations could be made?

Mrs. Bronner gives you permission to get staff to see if the purse is somewhere in her room. The staff and Mrs. Bronner check her room, but the purse is not found. You don't observe anything in her room related to this complaint.

4. You call Mrs. Bronner's daughter, Stephanie; what do you ask her?

Stephanie tells you that when her mother first came to Peaceful Acres, she gave her mom an inexpensive purse with an empty wallet and special family pictures. Mrs. Bronner looks at the pictures every night before bed. Stephanie says she is aware of her mother's concern but hasn't had a chance to visit and find out what is really going on. Stephanie says her mother has a habit of misplacing her purse and not remembering where she leaves it.

5. What do you ask the Social Services Director, Anita?

Anita tells you that she is aware of the missing purse and that Mrs. Bronner is always misplacing it. Anita has not attempted to look for it. Anita said Mrs. Bronner usually leaves it in the dining room or the activity room. All misplaced items go into a lost and found box. She assures you she will look for it sometime today.

6. The complaint is about a missing purse. Have you confirmed that the purse is missing (in other words, is the complaint verified)?

This case study illustrates Step 1 of complaint processing. While there is more work to be done, the representative has gathered enough information to verify the problem and work towards resolution.