

SECTION V

**COMPLAINT MANAGEMENT**

## **COMPLAINT MANAGEMENT**

This section discusses a variety of issues related to the management of complaints made by or on behalf of residents in long term care facilities. It provides a practical approach to handling complaints, in five parts:

- A. Complaint Receipt
- B. Complaint Investigation
- C. Complaint Resolution
- D. Complaint Follow-up
- E. Documentation of the Complaint Resolution Process

### A. **COMPLAINT RECEIPT**

This part stresses the various sources and types of complaints and the general approach that should be taken by the community advisory committee.

#### 1. Sources of Complaint

The community advisory committee will receive complaints via telephone, mail, or personal contact from a variety of sources, including:

- Residents in the long term care facility;
- Resident's family;
- Resident councils;
- Regional Ombudsmen
- Friendly visitor groups;
- Facility staff;
- Facility administrator (against a family member or guardian);
- Social work and human service agencies;
- Legislators and political leaders;

The most common sources of complaints are the relatives or residents. However, they may hesitate to complain for fear of retaliation against their loved ones. Families may also fear that once the facility staff has labeled them as "complainers" or "guilty children" their credibility will decrease.

Staff members are a frequent source of complaints. Staff complaints may be based on a variety of motives. On the one hand, many staff are concerned about residents and want to provide the best care possible. On the other hand, some staff become disgruntled with their employer due to low pay, poor working conditions or other disputes with management.

Another important source of complaints is from observation of community advisory committee members during official quarterly visits or friendly visits to the facility. These complaints might pertain to the general conditions of the facility that are in violation of all of the residents' rights or they might refer to the violation of a specific resident's right. Some of these complaints may be such that they can easily be verified and resolved "on the spot." (Examples: checking with staff to see if meals have been served, drugs administered, clothes washed, etc., are concerns that can easily be checked and answered). Other complaints might be sensitive and/or complex enough to necessitate consultation with the committee chairperson. You should use your own judgment in determining whether to attempt to resolve the complaint "on the spot." When making this decision, it might be helpful to weigh the positive and negative consequences of your action.

When a complaint is received from any of these five sources, it should be brought to the attention of the committee chairperson. The committee should then analyze the complaint and create a plan of action for investigation.

## 2. Complaint Resolution Procedures

Complaints received by the Office of State Long Term Care Ombudsman are referred to the appropriate Regional Long Term Care Ombudsman if the complaint is deemed appropriate for resolution by the Ombudsman Program. The State Ombudsman will provide technical assistance throughout the complaint resolution process if needed.

The following procedures will be followed by the regional long term care ombudsman and community advisory committees in the complaint resolution process.

- a. Complaints Received by Community Advisory Committee Members
  - (1) When a complaint is received by a community advisory committee member, it will be referred to the chairperson of the committee. The chairperson may consult with the regional long term care ombudsman to obtain technical assistance regarding the complaint.

If the chairperson does not disclose the identity of the resident, the community advisory committee members may attempt to resolve the complaint received. The chairperson is responsible for completion of the Case Record, maintaining confidentiality of the resident unless appropriate consent is obtained to disclose his/her identity. The Case Record will be completed and forwarded to the regional long term care ombudsman.

- (2) The regional long term care ombudsman is responsible for training community advisory committees in complaint resolution procedures, including timely response to complaints, use of appropriate consent forms, confidentiality requirements, procedures for reporting suspected cases of abuse, neglect and/or exploitation as well as possible licensure violations. S/he is also responsible for supplying copies of reporting and consent forms to the committee.
- (3) If the community advisory committee chairperson discloses the identity of the resident to the regional long term care ombudsman, the regional long term care ombudsman then assumes jurisdiction and oversight over the complaint. S/he may utilize the community advisory committee for grievance resolution if consent of the resident or resident's legal representative is obtained; however, s/he is responsible for ensuring appropriate procedures are followed, the appropriate consent forms are signed and that the Case Record is completed and kept in the regional long term care ombudsman's confidential locked files.
- (4) The regional long term care ombudsman is responsible for referring complaints which cannot be resolved through mediation, conciliation and persuasion with the facility administration to the appropriate licensure agency.

b. Complaints Received Directly by the Regional Long Term Care Ombudsman

- (1) When the regional long term care ombudsman receives a complaint directly, s/he retains jurisdiction and oversight over the complaint throughout the complaint resolution process. S/he is responsible for ensuring proper procedures are followed and appropriate consent forms are obtained.

- (2) The regional long term care ombudsman will visit the resident in the facility within 1-4 working days from the date the complaint is received. The regional long term care ombudsman is responsible for obtaining information on the facility's visitor registration policy prior to visiting the facility and shall comply in full with that policy. The regional long term care ombudsman will proceed to the resident's room after registration with the facility if required. The regional long term care ombudsman shall identify himself to the resident. The resident has the right to refuse to communicate with the ombudsman. The resident also has the right to participate in planning any course of action to be taken on his behalf by the regional long term care ombudsman. In addition, s/he has the right to approve or disapprove any proposed action to be taken on his behalf by the regional long term care ombudsman. If the resident refuses to communicate with the ombudsman, the complaint will be referred to a regulatory agency for investigation if appropriate and no further action will be taken by the regional long term care ombudsman on this resident's behalf. If the complaint is filed by the resident's guardian or other responsible party, s/he will be informed of the resident's decision and alternative methods and options for complaint resolution will be discussed.

If the resident requests the services offered by the regional long term care ombudsman, then the ombudsman will inform the resident that either written consent, oral consent or a court order must be obtained in order to disclose the identity of the resident or complainant. Further, in order for the regional long term care ombudsman or representative of the ombudsman office to have access to the medical and social records of a resident, one of the following three conditions have to be met: (1) the representative has the permission of the resident or the legal representative of the resident; or (2) the resident is unable to consent to the review and has no legal representative; or (3) access to the records as is necessary to investigate a complaint if-(a) a legal guardian of the resident refuses to give permission; (b) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and (c) the representative obtains the approval of the State Long Term Care Ombudsman. If the resident gives permission for the regional long term care ombudsman to disclose his/her identity and to

review his medical and social records, the Resident Authorization Form (DHR-DOA-9113) shall be completed by the resident. If oral consent is obtained the Resident Oral Consent Form (DHR-DOA-9115) must be completed. The Consent to Review Medical/Social Records Form (DHR-DOA-9118) must also be completed in order to review records.

If the resident does not give permission for the regional long term care ombudsman to disclose his identity, but requests the regional long term care ombudsman to advocate on his behalf, the regional long term care ombudsman will attempt to resolve the complaint and not disclose the identity of the resident. If the resident gives permission to review his medical/social records, but does not give permission for his name to be disclosed, the Resident Authorization Form (DHR-DOA-9113) must be signed reflecting this decision, as well as the Consent to Review Medical/Social Records Form (DHR-DOA-9118). If the facility's policy requires disclosure of the name of the resident in order to access medical/social records and the resident requests that his/her name not be disclosed, the regional long term care ombudsman will inform the resident of the facility's policy and discuss alternative methods for facilitating resolution of the complaint by referral of the complaint to the appropriate regulatory agency for investigation or the regional long term care ombudsman can attempt to resolve the complaint without viewing the resident's records. If the regional long term care ombudsman utilizes any community advisory committee members for grievance resolution, permission must be obtained from the resident to utilize them for this purpose. The community advisory committee members may resolve the complaint, but the regional long term care ombudsman must maintain jurisdiction and oversight over the complaint since s/he received it directly. The regional long term care ombudsman is responsible for completing the Case Record and attaching the appropriate consent form(s).

- (3) The regional long term care ombudsman shall meet with the facility administrator or designated person in charge in an exit conference before any action is taken to allow the facility the opportunity to respond, provide additional information or take appropriate action to resolve the complaint. The regional long term care ombudsman will utilize techniques of mediation, conciliation and persuasion in attempting to resolve the complaint with the administrator of the facility. If these efforts are unsuccessful and the regional long term care ombudsman

determines that the complaint has not been resolved, it will be referred by the end of the next working day of the regional long term care ombudsman to the appropriate licensure agency pursuant to G.S.131E-100 through 110 and G.S.131D-2.

If the regional long term care ombudsman determines that the complaint is unsubstantiated, s/he will explain why it was not substantiated and indicate that no further action will be taken by the regional long term care ombudsman.

- (4) Complaint information will be recorded on the Case Record (DHR-DOA-004). The appropriate consent form(s) must be attached to the Case Record. This information is confidential and shall be kept in the regional long term care ombudsman's locked files.

When the regional long term care ombudsman refers a complaint to a regulatory agency, s/he will request a written follow-up report on the findings of the investigation and/or whether it was substantiated.

Upon completion of the complaint resolution process, the regional long term care ombudsman will provide follow-up information on the findings to the appropriate individual(s), (i.e. resident, resident's guardian and/or legal representative).

- c. Regional Long Term Care Ombudsman Receives Complaint Directly/Resident or Legal Representative Does Not Give Consent for Involvement of Community Advisory Committee in Complaint Resolution Process

- (1) When the regional long term care ombudsman receives a complaint directly, s/he will visit the resident in the facility within 1-4 working days from date the complaint is received. The regional long term care ombudsman is responsible for obtaining information on the facility's visitor registration policy and shall comply in full with this policy. The regional long term care ombudsman will proceed to the resident's room after registration with the facility if required. The regional long term care ombudsman shall identify himself to the resident. If the resident or resident's legal representative requests the services of the regional long term care ombudsman, but does not give permission for other individuals to be involved in the complaint resolution process, the regional long term care ombudsman cannot involve the community advisory committee in the complaint resolution process. The regional long term care ombudsman is responsible for obtaining appropriate

consent of the resident or resident's legal representative on the appropriate consent form(s) (see Forms) to review the resident's medical/social records and the appropriate consent to disclose the identity of the resident.

- (2) The resident or resident's legal representative has the right to participate in planning any course of action to be taken by the regional long term care ombudsman on the resident's behalf. In addition, s/he has the right to approve or disapprove any proposed action to be taken on his/her behalf.
- (3) The regional long term care ombudsman will gather as much relevant information as possible in an effort to resolve the complaint locally.
- (4) The regional long term care ombudsman shall meet with the facility administrator or person in charge in an exit conference before any action is taken to allow the facility the opportunity to respond, provide additional information or take appropriate action to resolve the concern. The regional long term care ombudsman will utilize techniques of mediation, conciliation and persuasion in attempting to resolve the complaint with the administrator or the facility. If these efforts are unsuccessful and the regional long term care ombudsman determines that the complaint has not been resolved, it will be referred by the end of the next working day of the regional long term care ombudsman to the appropriate licensure agency pursuant to G.S. 131E-100 through 110 and G.S. 131D-2.

If the regional long term care ombudsman determines that the complaint is not substantiated, s/he will explain to the complainant and the resident or resident's legal representative why it was not substantiated and indicate that no further action will be taken by the regional long term care ombudsman.

- (5) Complaint information will be recorded on the Case Record (DHR-DOA-004). The appropriate consent form(s) must be attached to the Case Record. This information is confidential and must be kept in the regional long term care ombudsman's locked files.

When the regional long term care ombudsman refers a complaint to a regulatory agency, s/he will request a written follow-up report on the findings of the investigation and/or whether it was substantiated.

Upon completion of the complaint resolution process, the regional long term care ombudsman will provide follow-up information on the findings to the appropriate individual(s).

d. General Concerns Regarding Problems Observed While in a Facility

- (1) While visiting a facility, if the regional long term care ombudsman/community advisory committee member observes any problems, s/he can address these concerns with the facility administration even if a formal complaint has not been filed.
- (2) If the regional long term care ombudsman/community advisory committee member is unable to resolve the issue with the facility administrator and it involves possible licensure violations it will be referred to the appropriate licensure agency.
- (3) The regional long term care ombudsman/community advisory committee member is responsible for completion of the Case Record and maintaining confidentiality of the resident(s).

e. Anonymous Complaints Received by the Regional Long Term Care Ombudsman/Community Advisory Committee Member.

- (1) When the regional long term care ombudsman/community advisory committee member receives an anonymous complaint s/he will attempt to resolve the complaint as a concern or issue with the facility administration utilizing techniques of mediation, conciliation, and persuasion.
- (2) If the regional long term care ombudsman/community advisory committee member is unable to resolve the issues or concerns, s/he will refer it to the appropriate licensure agency for investigation.
- (3) The regional long term care ombudsman/community advisory committee member is responsible for completion of the Case Record and maintaining confidentiality of the resident(s).

- (4) If the regional long term care ombudsman/community advisory committee member receives an anonymous complaint about a specific complaint resolution, procedures discussed under Section VI shall be followed.

### 3. Confidentiality

Frequently, the complainant will request that his/her name and/or name of a resident be kept confidential during the resolution process. Many people will only make a complaint if they are assured of this confidentiality.

You should explain the requirement for confidentiality required by law (G.S. 131D-31 and G.S. 13E-128) and Division of Aging Policies and Procedures to the complainant before initiating the complaint resolution process. If individuals insist that their names be kept confidential, they should be told that even though you will do everything possible to protect their identity, there is the possibility that the facility may be able to determine who made a complaint. You should also explain that certain types of complaints are virtually impossible to investigate without revealing the identity of the resident. You should discuss with the complainant the risks involved in being identified. A guarantee that retaliation will not occur should never be offered to obtain the complainant's permission to use his/her name. In cases where complainants agree to have their names revealed, the community advisory committee should have the appropriate consent form(s) signed authorizing the disclosure of names.

### 4. Anonymous Complaints

Anonymous complaints pose similar problems to maintaining complainant or resident confidentiality. There are two types of anonymous complaints. One involves a complaint so general you may be unable to document the complaint.

Visiting the facility to observe the general conditions as well as discussions with residents will better enable the committee and/or the regional long term care ombudsman to determine the quality of care being provided.

Licensure records and any complaint investigation records available should be reviewed also. (Check with the regional long term care ombudsman on how to obtain).

If no investigation is made, then the complaint should be noted on the complaint form. In the event the facility is investigated in the future, the allegations of the anonymous complaint can be included in the inquiry.

The second type of anonymous complaint is specific and surrounded by supporting data. For example: In a phone conversation an unidentified resident made the charge that a home had no air-conditioning and the food was inadequate; the food service was not the same as described in the menu plan. The caller provided the name and address of the home and hung up.

Because there is specific information about the general conditions in this complaint, an investigation can be made.

## B. COMPLAINT INVESTIGATIONS

Investigation is at the heart of any complaint resolution process. The investigation determines whether the complaint is valid and gathers information necessary to resolve it. This section will cover classifying and analyzing the complaint, organizing a strategy for investigation techniques, and assessing the facts uncovered in the investigation.

### 1. Clarify and Analyze the Complaint

#### a. Get a clear statement of the complaint.

After a complaint has been received, the complaint will need to be clarified in order to determine how to pursue complaint resolution effectively. The following objectives should be met during this phase: Contact the person who made the complaint. Try to get as many facts as possible. Most people who make a complaint about conditions in long-term care facilities need help focusing on the actual problem. Often people will call or write about a complaint that involves several problems. These need to be stated separately and ranked in order of importance. Also, problems often are stated in sweeping terms ("the food there is terrible") and you will need to work with the complainant to pinpoint what it is about the food that makes it unacceptable. Be sure that you have clearly defined the complaint and that it is mutually understood by you and the complainant. Be aware of how the complainant's physical, mental, and emotional condition can affect or relate to the complaint. Some of the more seriously ill residents may be taking medication that could affect their thinking processes. Also, there may be complainants with severe memory lapses, fears of retribution from staff, or a very weak understanding of their own problems. It is frequently necessary to assist the complainant in stating and clarifying the complaint. However, try to remain unbiased. Be an objective listener. Do not assume that the complaint is valid or the resident is too ill to know what he is talking about without a thorough investigation into all the facts of the complaint.

b. Categorize the Complaint

The community advisory committee should now determine what type of complaint this is. Does this complaint involve the rights of a specific resident, or is it a complaint about the general conditions of the home? Who is the complainant and has the complainant requested his/her name be kept confidential? Is the complaint anonymous? Is the complaint vague or specific? Answering these questions will help you determine how to proceed with your investigation. The community advisory committee is responsible for determining which of the complaints it receives it can properly investigate. If the community advisory committee elects not to pursue complaint resolution, the complaint should be referred to the regional long term care ombudsman, the Division of Facility Services or the county department of social services. G.S. 108A-105 mandates that complaints received that appear to involve an immediate threat to the health, welfare, or safety of any resident(s) must be referred immediately to the county department of social services director (or his/her designee). It is the responsibility of the county department of social services to designate one person to whom the community advisory committee should refer complaints.

c. Identify the Significant Persons/Resources

You should ask yourselves: Who is responsible and who has the power to do something about it? It is important to gather names, phone numbers and addresses of all people who might have some role in the situation including physicians, pharmacists, social workers, etc. A complaint about resident care could include the complainant, the resident, the facility staff, and the facility administrator.

d. Identify Relevant Agencies

Complaints may involve a public or private agency. Complaints about resident care, for example, may involve a hospital or other health care facility. A problem concerning Medicaid, Supplemental Security Income or State/County Special Assistance for Adults most likely would involve the county department of social services. You will need to identify any other agencies that may play a role in the problem and become familiar with their areas of responsibilities. The regional long term care ombudsman can provide technical assistance in identifying appropriate agencies.

e. Identify Steps Already Taken by the Complainant

If the complainant has taken some action, you will need to know this. For example, has the complainant talked with anyone at the facility, such as the administrator or supervisor in charge. Have there been any meetings with staff? Has there been any correspondence regarding the case to local or state agencies responsible for monitoring the homes or to others? If the complainant has not attempted to deal with the complaint yet, the community advisory committee is then in a position to suggest possible steps that the complainant can take. Advice of this nature helps the complainant to learn self-advocacy.

f. Identify Information Gaps that Might Require Research

Determine what regulations or records need to be reviewed. Determine who needs to be interviewed to obtain more information. Decide what should be observed when you visit the facility.

2. Organizing a Strategy for Investigation

A plan of action for investigating complaints should be developed. This involves determining who will be involved in the complaint resolution process. This activity should be coordinated by the committee chairperson and the chairperson should be kept informed at all times of the results of the investigation as it is carried out.

3. Investigation Techniques

a. Observation in the Facility

Investigative observation is more than casually looking at something. It is a method of obtaining information, which uses the senses to receive information which is not available through other techniques and which supplements other techniques of collecting information. It is a planned, disciplined approach to using the five senses.

Many complaints can only be understood and verified by sharing in the experience of the complainant. Complaints that have to do with items such as staffing, sanitary conditions, and food often can only be fully checked out through observation. You should approach a situation requiring investigative observation with an open mind and understanding of what is observed. Having an open mind means that the observation will be interpreted without emotional bias.

Having an understanding of what is observed means the ability to recognize the implications of what is observed and concentrating on the relevant data. During an investigative observation it is crucial for you to be as impartial as possible. If the observer only looks for evidence that fits a preconceived notion or theory, other evidence may be missed or much of the evidence may be misinterpreted. Also, keep in mind that simply by being there you may have an effect on what's going on. Plan your visit for a time when you may have less of an effect and try to maintain the objective observer role. Any attempts to cover up or evade issues should be noted.

Finally, be aware of your personal reactions to your observations, and control them, i.e., you don't show approval or censure of any particular occurrence. Hold an exit conference with administrator(s) or his/her representative(s) specifying allegations and findings (if conclusive), and indicating if the investigation is concluded or will continue.

b. Interview

Interviewing is a primary component of complaint investigation. In order to discover the facts of a case (who, what, when, where, why, and how), you might interview a resident, an administrator, the facility staff, or an employee of another agency or institution. One of the elements that you must remember is that the interview itself is a social situation, and the relationship between you and the interviewee will affect what is said. Although you will want to direct the interview in order to achieve its goals, most of the time will be spent listening. You should be alert to more than spoken word. Facial expressions, voice inflection, eye contact, gestures and general behavior should be noted. More may be learned from an interviewee's body language than from his/her comments. In many cases, more can be learned from what is not said than from what is said.

During all interviews observe the following guidelines:

- maintain objectivity;
- try to establish rapport before addressing the problem;
- explain the purpose of the interview and the function of the community advisory committee;
- encourage a response about the problem area by using open-ended questions, (such as, "Can you tell me more about the food here?");
- attempt to obtain specific details and facts through the use of closed-ended questions (such as, "Are you getting enough to eat?");
- use language that is easy to understand and explain any technical terms;

- guide the interview toward the desired goals, yet be flexible enough to adjust the goals according to any new information received;
- listen carefully in order to be able to distinguish between fact and fiction;
- let the interviewee know when the interview is about to end and summarize what has been accomplished; and
- explain how the information will be used and other steps anticipated in conducting the investigation. Also explain what, if any, future involvement the person being interviewed can expect.

At the beginning of a resident interview, inform the resident of the confidentiality requirements regarding written consent for disclosure of names of the complainant(s). In addition, it is extremely important to avoid making promises to the resident regarding resolution of the problem. At the conclusion of the interview secure the resident's consent to the planned course of action before proceeding.

The interview should be written up as quickly as possible after its conclusion.

NOTE: The administrator or, in his/her absence, the supervisor-in-charge should be interviewed first in every complaint investigation. This is sometimes called the entry conference. He/she may not be aware of every problem in the home and may not be able to provide information. However, he/she should be included in each investigation for the following reasons:

- to seek the administrator's assistance in identifying individuals who can contribute information regarding this case;
- he/she is ultimately responsible; and
- to develop and maintain a relationship with the administrator which may be useful in future work.

c. Examine Records and Official Documents

Some of the records and documents that might provide information to verify or discredit a complaint are:

- The resident's health records with written consent.
- Copies of bills, letters, written agreements, house rules, etc. (e.g. an admission contract, grievance procedures).
- Inspection reports, license applications, and complaint investigation reports (maintained by the Division of Facility Services and the county department of social services).

Although health records are useful there are two problems which may arise regarding them. First, health records are confidential. The resident or the legal guardian if one has been appointed, must sign a written statement authorizing release of the records.

Second, health records are often not totally complete and/or accurate. Records are sometimes filled out hurriedly. If the records are available to review there may be portions that you do not understand. You must determine if an interpretation of medical information is needed. Committee members may decide that the complaint should be referred to the regional long term care ombudsman or the appropriate licensure agency for action if there are no appropriately licensed professionals on the committee, (i.e. nurses, dietitians, etc.) to interpret medical information.

#### 4. Assess all Information Collected to either Verify or Discredit the Complaint

A complaint is verified if it is shown that the alleged problem does exist or did occur. Verifying a complaint does not involve repeating the investigatory process. It is the final step in the investigating process.

Verification provides an opportunity for you to review what has been done on the complaint and to determine whether you have sufficient reason to proceed with complaint resolution. Throughout the complaint investigation the community advisory committee should meet to analyze the case in order to try to answer the following questions:

- Is there a problem?
- Why did the problem occur?
- What evidence is available to show what happened?
- What justification or explanation does the facility give for the situation?
- Who, if anyone, is at fault in causing the problem?

Answering these questions will help you to verify or discredit the complaint, and provide the information you need to select a resolution strategy.

After the community advisory committee has investigated the complaint and attempted to substantiate it, there may appear to be no basis for the complaint. At this point, you should explain the situation to the complainant and encourage the complainant to contact you if there are any further developments. The fact that you investigated the case may help the complainant to get some resolution of the problem. You should also explain that not substantiating the complaint does not mean that you question the honesty or

sincerity of the complainant. Finally, you should discuss any alternative steps that might be available.

For example, there may be another agency better suited to deal with the complainant's concern. In some cases there may be a reason for suggesting that the resident consider moving to another home or a different type of facility.

## C. COMPLAINT RESOLUTION

### 1. Factors to Recognize and Respect in Pursuit of Resolution

The community advisory committee cannot expect to resolve every complaint. Some complaints are unreasonable. You must have a realistic understanding of what changes the committee can or cannot effect. Don't be surprised if you discover there is nothing you can do about a complaint even when the data indicates it is both verified and valid. You may refer the problem to other sources/agencies for assistance in negotiating/solving.

The second factor you should keep in mind is that a resolution is not always clear cut and decisive. Many complaints are so complex that pieces of the total complaint pass through periods of relative states of resolution. Each one of the items of a complaint can be resolved for a time, but can be thwarted by chronic reoccurrence of the problems.

### 2. Complaint Negotiation

Negotiation is bargaining with another party in an effort to arrive at an agreement. However, while negotiation is often thought of as a tense encounter between two hostile parties, it is in many cases a peacemaking activity. However, in any negotiation, no matter how amiable, both sides are attempting to realize or achieve their particular and usually opposite agenda.

You will usually not be negotiating from a position of power; that is, you do not possess something that the opposing party (usually the administrator) wants or desires. However, with the knowledge of the law and regulations, adequate preparation, and understanding of the facts of the situation, you will be able to convince the opposing party of the soundness and correctness of your position.

#### a. Preparing for the Negotiation

Adequate preparation for negotiation can never be minimized. Before the negotiation session, an agenda should be prepared so that the discussion does not get sidetracked. Remember that you will not be able to develop your case during the negotiation but must have it fully outlined and prepared in advance of the actual session. Keep the materials which you take to the negotiation session as brief as possible so that you do not become tangled up in trying to find materials which you have brought along.

It is critical that you know whom you are representing, what changes the client wants, and in what areas you will consider a compromise.

Negotiations should not be entered into without knowing what can and cannot be done by all parties to achieve the desired results. This means that you will have to prepare both sides of the argument; knowing your weak points and theirs will enable you to maneuver creatively around them. Be prepared to concede points that will not affect the ultimate outcome of the negotiation and have clearly in mind the range of settlement positions that would be acceptable. This kind of preparation will give you the confidence resulting in control of the agenda and the flow of the discussion itself.

b. Negotiation Strategies

(1) Be Reasonable

Being reasonable never requires you to give up more than you want to. It is simply a matter of showing the other side that you are willing to listen and respond to their issues and that you expect them to do the same.

A reasonable attitude helps to diffuse an atmosphere of tension that might have built up as the problem neared the negotiation state. It also can be a disarming strategy when the other side expects you to come in shouting threats.

Another facet of being reasonable is avoiding highly rhetorical arguments of polarized positions. Rather than accusing a facility operator of being "cruel" or "heartless," explain the position of the resident in a cool but articulate manner. Let the facts speak for themselves.

A third part of being reasonable is to show a certain amount of empathy with the other side. While you obviously want to represent the resident, it is first necessary to fully understand the other side's position. This will reveal possible areas of compromise and at the same time prepare you to better oppose those positions with which you disagree. An empathetic attitude also encourages one's opponent to divulge information more freely. (See Appendix E for "Key Points in Persuading").

(2) Rebuttal

If you have adequately prepared your opponent's position you can be ready to challenge any statements he makes. But first, keep in mind how important it is not only to allow the opponent sufficient time to make his point but also to listen carefully to all that he says. It is helpful to restate the opponent's expressed position to confirm for yourself and the opponent your understanding of it. Many times your questioning of his position will show him the feebleness of his stand and assist in furthering your goal.

Another approach is to bring out points in opposition to an opponent's statement as follows:

- The facts as they know them are incorrect. (You should have supporting documentation of what the facts on behalf of your position are).
- The facts as they are applied are incorrect.
- The proposed action is opposed to general policy considerations.
- The proposed action is contrary to the best interest of the client.
- The opponent is mistaken in their interpretation of rules, regulations or the law.
- Your client is either an exception to or not included in the policy, regulation, or law being applied. (The reasons why this is the case should be set forth and be handy for your use).

Your statements will be convincing if you have a thorough knowledge of the issues. Be careful not to antagonize an opponent by an overly forceful presentation.

D. **COMPLAINT RESOLUTION FOLLOW-UP**

The community advisory committee should have a program to follow-up on complaint resolution. The purposes of the follow-up are to:

1. Verify that the resolution of the complaint has in fact occurred;
2. Assure the complainant that everything possible has been done;
3. Monitor the continued performance of the agreed upon action;
4. Report unresolved complaints to appropriate regulatory agencies.

Complaints should be followed up at one or two regular intervals, such as 30-90 days after resolution. At this point, the community advisory committee should determine if anything has gone wrong and take further action if necessary. Remember that no action should be taken without the permission of the complainant and/or the resident involved.

E. **DOCUMENTATION OF THE COMPLAINT RESOLUTION PROCESS**

Enough cannot be said about the importance of accurately documenting the events that occur in every step of the complaint process.

Documentation can prevent or reduce mistakes or misunderstandings and can be used to support claims filed in a court of law. Also, if you should have to refer the complaint to another agency for resolution, supportive evidence is crucial and should be reported in a logical, dated sequence.

All documentation should be dated and should ideally include:

1. The complaint statement
2. The investigation report, including:
  - the investigation plan
  - interview summaries
  - documents reviewed (or summaries of the significant data in those documents as it refers to the complaint)
  - results of observation of facility settings
  - witnesses' statements
  - committee members involved
3. Conclusions drawn from a review of data collected.
4. Results of the negotiation
  - who agreed to do what and when

- suggestions for follow-up plan to determine if the complaint has been, in fact, resolved.
5. Follow-up report to record effectiveness of complaint resolution strategy.

All data collected and recorded during the complaint resolution process is to be kept confidential. Do not talk to residents, staff of a facility, or anyone else about what other residents, staff of a facility, or other participants have told you, unless you're specifically directed by the committee chairman to do so. You should keep silent about all the specifics related to any case in which you are involved. This means that you are expected not to tell **ANYONE** (friends, relatives, general public, etc.) even the name of the facility or type of complaint you are investigating.

The community advisory committee must report all licensure violations that it substantiates to the appropriate regulatory agency. Complaints involving adult care homes are referred to the county department of social services. Substantiated complaints regarding care in nursing homes are referred to the Complaint Investigation Branch in the Division of Facility Services. You can contact the Complaint Investigation Branch directly at (919) 733-8499. You may also call (1-800-662-7030) CARELINE and ask for the Division of Facility Services' Complaint Investigation Branch. The complaint report is to include the nature of the substantiated violation of the Bill of Rights (including the name of the residents involved in the complaint if they have given written permission for the disclosure of this information), the name of the facility, the complainant's name and phone number if he/she has given written permission for the disclosure of this information, an indication whether the complainant desires a follow-up report, and any additional facts that may be of assistance resolving the complaint.