



Mediation

A New Option for Medicare Beneficiaries
To Resolve Complaints Filed through a QIO





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If you have additional questions about the Medicare Mediation Program please contact the QIO in your state.

Background: Quality Improvement Organizations (QIOs)

The Centers for Medicare & Medicaid Services (CMS) funds and regulates Medicare, the country's largest health insurance program. In 1982, Congress established Utilization and Quality Control Peer Review Organizations (“PROs”, now known as Quality Improvement Organizations, or “QIOs”). The Quality Improvement Organizations are tasked, under the Social Security Act, with ensuring that medical care paid for under the Medicare program is reasonable and medically necessary, the quality of services meets professionally recognized standards of health care, and the medical care is provided in the most economical setting.

Quality Improvement Organizations focus on health initiatives identified by CMS to improve care for Medicare beneficiaries. The QIOs are responsible for quality healthcare improvement in each state. They perform two broad functions:

- (a) Promote quality health care services for Medicare beneficiaries
- (b) Determine appropriate utilization of services rendered

QIOs are staffed with physicians, nurses, and experts in health communication and data analysis. These experts implement clinical quality improvement programs that impact the quality of care received by Medicare members in hospitals, nursing homes, physician offices, home health settings, and managed care.

Beneficiary Complaint Response Program

The Beneficiary Complaint Response Program focus is on clinical quality of care concerns raised by individual Medicare beneficiaries. The impact of the program has been strengthened through a four-pronged approach to be more service-oriented and responsive to beneficiaries. Improvements to the process include:

- A case manager approach to handle beneficiary complaints
- Revised Response Determination Categories (RDC) and subsequent actions to be taken upon determination
- Offering mediation as an alternative to the medical record review process for resolving clinical quality of care complaints
- A satisfaction survey for beneficiaries to express their level of satisfaction upon completion of the complaint process

Specifically, the Beneficiary Complaint Response Program:

- Handles Medicare beneficiaries or their representatives complaints initiated in writing or by telephone
- Provides a case manager who works with the beneficiary from start to finish to keep the beneficiary informed throughout the review process about the status of their complaint
- Utilizes physician peer review to assess *clinical* quality of care issues in a patient’s record of care (referred to as Medical Record Review)
- Focuses on individual-based quality improvement efforts whereby an index case (e.g. an initiating concern) can lead to systems level quality improvements in future care rendered

Some of the typical complaints that beneficiaries file with a QIO may be for issues such as:

- Received the wrong medication
- Underwent inappropriate surgery
- Received erroneous dose of medication
- Experienced an error in treatment
- Received inadequate care or treatment by any healthcare professional
- Was discharged too soon
- Change in the condition was not treated
- Received inadequate discharge instructions

New Option for Medicare Members with Complaints

Beginning mid September 2003, QIOs will have two methods for resolving clinical quality of care beneficiary complaints. The first is through the previously existing process of Medical Record Review and the second is through Mediation.

When a case is reviewed for quality issues a determination is made:

- No Substantial Improvement Opportunities are Identified
or
- Care Could Have Been Better

For cases where “care could have been better,” the reviewer then determines if

- Care Was Grossly and Flagrantly Unacceptable
- Care Failed to Follow Accepted Guidelines or Usual Practice
- Care Could Reasonably Have been Expected to be Better

Cases falling into either “No Substantial Improvement” or “Could Reasonably Have Been Expected to be Better” can then be considered for mediation, and the beneficiary can be contacted to see if there is interest in pursuing the mediation option. Cases that are **not** suitable for mediation are those where care was “Gross and Flagrant” or where “Care Failed to Follow Guidelines/Usual Practice.”

While mediation conceivably can be used to resolve any type of healthcare issue, mediation in the Medicare setting will initially deal with perceptions of clinical quality of care issues and communication.

If the beneficiary or their representative declines the offer of mediation, the case will revert to the traditional medical record review process. Both methods of resolving beneficiary complaints will be offered free of charge.

Examples of cases for which mediation is suitable:

- The beneficiary says they were given the wrong medicine, and the medical record shows the medicine was correct, but the instructions given were not clear or completely understood.
- The beneficiary's representative states his or her parent was discharged before he or she was able to walk. The medical record shows that the patient could walk with assistance, physical therapy in the home was ordered, but the family did not understand what arrangements had to be made to start the care at home.
- The beneficiary states that the care received from an orthopedist for neck pain did not help her. The medical record shows that the physician discussed a variety of available options for care. However, the beneficiary did not make a choice and did not return for a follow-up visit.

Mediation to Resolve Healthcare Complaints

Nature of Mediation

Mediation is a form of conflict resolution that brings two parties together in a process conducted by an impartial third party (the mediator). Mediation is a process that often results in increased satisfaction to the participants. It is not a binding arbitration. Participation is voluntary. By its very nature, mediation is a process in which the parties willingly decide to participate. One or more of the parties may need to be persuaded, but it is the eventual consent of the parties that gives the mediator the authority to work with them; there is no other basis for that authority.

Mediation vs. Arbitration

Arbitration and mediation are differing forms of conflict resolution, as is a trial in civil court. Arbitration is an adversarial process in which the arbitrator does fact-finding by hearing each of the parties and by examining any witnesses and/or documents that the parties may present. During a designated period of time, usually 15 to 30 days, the arbitrator weighs the evidence and decides the case in a written award. The award is usually binding and enforceable by a court. Sometimes parties prefer a non-binding or advisory award.

Collaborative Problem Solving

Experience has shown in many instances that mediation can forestall other, more adversarial means of dealing with a complaint or a conflict such as litigation, appeals to public officials, or attempts at media publicity. A high percentage of beneficiaries become convinced that collaborative problem solving, by way of mediation, is a desirable alternative to adversarial confrontation.

Relation to Internal Grievance Process

The fact that health care providers may be using mediation, and/or arbitration in their internal grievance process is not the same thing as an external intervention. There will always be cases that will not respond to an internal process because of a perception of bias resulting in some sort of adversarial negotiation. Mediation has been found to be one of the most effective means that care providers can use to work through problems cooperatively with their patients instead of using other types of conflict resolution.

Participant Satisfaction

A major reason for the growing use of mediation as a way of dealing with conflicts is the satisfaction that many individuals experience when they find that they have the opportunity to communicate directly with the responding party. It gives the complainant the opportunity to be heard as well as address their emotional issues. Under such circumstances, it is not unusual for a complaining party to be satisfied by a reasonable explanation of why the events occurred the way they did. Many times the complainant's anger is defused through personal interaction and the process can lead to a sense of closure about a disturbing event. Furthermore, an apology (if appropriate), as well as assurances that other beneficiaries will not experience the same situation, can also add to the success of a mediation. Repeated experience demonstrates that even a fragmentary meditative intervention can achieve understanding, foster positive relationships for the future, and lead to resolution of problems before they escalate into adversarial confrontations.

Medicare Mediation Roles

The essential participants in the Medicare mediation are:

- The person with a complaint
- The person the complaint is against
- The professional mediator

Optional roles may also be present at a mediation session:

- A co-mediator
- A mediation advisor

The parties themselves decide whether either auxiliary person will be present. The co-mediator is typically a volunteer with a professional background in healthcare, such as a physician, nurse, or health care professional. The co-mediator assists the mediator with medical issues during the mediation hearing.

The mediation advisor is a volunteer who is available to support the beneficiary or representative throughout the mediation process. This role is intended to help "balance the power" at the mediation session. The mediation advisor can help prepare the beneficiary/complainant to participate fully and actively in the mediation. He/she will answer questions about the process, help the beneficiary clarify the issues in his/her complaint, and to think about what their desired outcomes are. This is a facilitating role, not a directive one.

Agreement

Once both parties have reached an understanding and decided how to settle the conflict, the mediator writes up an agreement based on what has been said. He/she reviews the agreement with both parties and then all participants sign it. If the two parties do not come to a resolution, the patient can then choose to let the case go into the traditional medical record review process.

Time and Resources

The time and resources spent on mediation are relatively minimal and are certainly worth investing in for the potential rewards of generating good will, understanding, and the constructive resolution of a complaint. A mediation session typically takes two to four hours, significantly less time than traditional medical record review and/or legal proceedings. Every effort is made to schedule a mediation session at a neutral location, convenient for both parties. Mediation can also take place via telephone.

Confidentiality

Confidentiality is a key component of mediation. In order for mediation to be successful, both parties must feel as free and open as possible in their attempts to work through their conflict. No record is kept of the proceedings and any notes taken during the session are destroyed. Nothing said during the mediation can be used against either party in a court of law. All parties, including the mediator, need to agree that all statements made during the process will be kept confidential unless the parties agree otherwise. If and when the parties reach an agreement, however, that agreement and its particulars are released to the QIO in order to monitor any terms that relate to quality improvement efforts. The QIO handles agreements according to the federal regulations governing the confidentiality of QIO documents and materials.