

# Mediation

## Defining mediation

Mediation is a form of conflict resolution that brings two parties together in a process conducted by an impartial third party (the mediator). It is a process that often results in increased satisfaction to the participants. It is not a binding arbitration. Participation is voluntary.

## Introduction of mediation to Medicare

Mediation has been successfully used in areas such as labor relations, environmental disputes, racial and ethnic conflicts, and personal disputes. Based on favorable results from a pilot study, the Centers for Medicare & Medicaid Services (CMS), an agency of the U.S. Department of Health & Human Services, decided to introduce mediation to the Medicare program nationwide in September 2003. Complaints that do not exhibit significant clinical quality of care concerns will be considered for mediation.

## Advantages of mediation

Mediation may help reduce the risk of malpractice claims. Mediation gives you and your patient the opportunity to discuss what happened and why. Both physicians and patients who participated in mediation during the pilot study reported satisfaction with the process and outcome as well as achieving a sense of closure. Participation in mediation will not cost you anything other than time.

## Logistics

Mediation sessions are best conducted face-to-face, but can also be effective over the telephone. You and the complainant will sign an agreement indicating that you will mediate in good faith. The mediation is confidential – no records are kept and whatever you say during the session cannot be used against either party in court. A mediation session takes about 2 to 4 hours.

## Other parties present during the mediation

A mediation session is focused on you and the person who has filed the complaint. If agreed to by the other party, a representative from your healthcare facility/system may also be present to consult with you if necessary. You and the complainant may also be provided with a mediation advisor – a trained professional who can answer your questions about the mediation process.

## Getting to the heart of the matter

Approximately 80 percent of Medicare beneficiary complaints are related to misunderstandings, lack of communication, or the patient's perception of treatment. These types of cases often have the potential of escalating into a malpractice suit. Many times, simply knowing that you are listening to his or her point of view assuages a complainant's concerns. Although a mediation session might take 2 to 4 hours, it may reduce the amount of time, frustration, and money spent on litigation later on.

## Understanding the role of the mediator

The mediator facilitates the discussion and assists both parties in reaching an agreement. The mediator does not make any decisions or decide the outcome of the mediation. A co-mediator, who has a healthcare background, often assists the mediator.

## Empowering yourself and other healthcare providers

Mediation promotes two-way communication between you and your patients. By participating in mediation, you demonstrate your commitment to your patients and continue fostering their trust and respect. Resolution of the complaint resides with you and the patient rather than a third party.

**For more information about mediation, call Judy Mask, RN, Manager, Medical Review Services at 678-527-3421, 1-800-982-0411 ext 3421; or 1-800 MEDICARE.**

This material was prepared by the *gmcf*, the Medicare Quality Improvement Organization for Georgia, under contract with the Centers for Medicare & Medicaid Services (CMS), a federal agency of the U.S. Department of Health and Human Services. The contents presented do not necessarily reflect CMS policy. Publication No. 8SOW-GA-T3-06-01

