

173-14-16**Complaint-handling protocol.**

Representatives shall identify, investigate, and resolve complaints made by, or on behalf of, consumers and relate to the action, inaction, or decisions of providers or representatives of providers of long-term care services, public agencies, or health and social services agencies that may adversely affect the health, safety, welfare, or rights of consumers (including the welfare and rights of consumers with respect to the appointment and activities of guardians and representative payees).

Except as otherwise provided in division (C) of section 173.19 of the Revised Code, representatives shall open a case and attempt to resolve all complex complaints according to the following protocol:

(A) Complaint intake:

- (1) Any representative may receive a complaint over the telephone, in person, or through postal or electronic mail. A complaint generated by the office itself shall be considered a received complaint.

The representative shall explain to a complainant who uses electronic mail that electronic mail may not be a secure mode for sharing confidential information and shall document the individual's consent to use electronic mail.

- (2) A representative shall explain to the complainant the ombudsman process generally and options for handling the specific complaint presented according to guidance presented by the SLTCO. The representative shall also gather information needed to determine response time and whether there is a conflict of interest and what, if any, steps have been taken previously.

- (3) A representative shall refer complaints to the SLTCO according to the protocol in rule 173-14-17 of the Administrative Code.

- (4) In determining the response time for initiating an investigation, the representative shall analyze the urgency of the complaint based upon the information received at the time of intake. The response time shall be commensurate with the potential harm posted to the consumer. If there is probable physical harm to the consumer, the program that received the complaint shall respond by the end of the next working day. If the next day is not a working day for the program and the representative is unable to respond before the next day, the representative shall notify the SLTCO immediately. In all other cases, the program shall respond as appropriate to the complaint.

(B) Investigation:

- (1) Representatives shall investigate complaints in order to determine if complaints are verified. The principle steps in an investigation shall include, but are not limited to, the following:
- (a) A face-to-face interview with the consumer.
 - (b) An on-site visit to where the services that are the subject of the complaint were provided.
 - (c) Direct contact, be it by face-to-face contact, a telephone call, or by letter, with the complainant if the complainant is different from the consumer.
 - (d) Obtaining consent from the consumer.
 - (e) Obtaining a clear statement of the problem(s).
 - (f) Informing the consumer of the ombudsman process and possible steps in the investigation, as described in paragraph (A)(2) of this rule, and developing an action plan.
 - (g) Revealing known any conflict(s) of interest.
 - (h) Obtaining a statement of the consumer's goals.
 - (i) Identifying the participants and relevant agencies.
 - (j) Identifying any steps already taken to handle or resolve the complaint.
 - (k) Determining gaps in the information.
 - (l) Gathering factual information through interviews with those persons with potential knowledge including, but not limited to, the complainant, the consumer, other agencies, and the provider's staff, management, or owners.
 - (m) Observing in a facility, in a location where services are delivered, or in a consumer's own home.
 - (n) Researching regulations and laws.
 - (o) Reviewing relevant consumer, provider, or government records.
 - (p) Engaging volunteer representatives when available.

(2) The investigating representative(s) need not exhaust one principal step before starting another, need not use only those principal steps necessary, and need not follow them in the order given in paragraph (B)(1) of this rule.

(C) Complaint resolution:

Strategies for the resolution of a complaint shall be established in action plans developed in conjunction with the consumer and may include, but are not limited to, the following:

(1) Consumer empowerment.

(2) Negotiation.

(3) Mediation.

(4) Referral to other agencies.

(5) Education.

(6) Advocacy for consumers at involuntary discharge hearings, navigating grievance and appeal processes, and appealing adverse benefit determinations, but not representation at a state hearing held according to Chapter 119. of the Revised Code.

(7) Legislative advocacy after consultation with the SLTCO.

(8) Public disclosure after consultation with the SLTCO.

(D) Complaint follow-up activities:

Representatives shall perform follow-up activities on complaints in a timeframe appropriate to the complaint and resolution.

(E) Closing a case:

Before closing a case, the representative shall inform the consumer and, if appropriate, the complainant, that ombudsman activity will cease. A representative may cease activity when any of the following occurs:

(1) The complaint has been resolved or explained to the consumer's satisfaction.

(2) The representative determines that no further activity by the representative will produce satisfaction for the consumer.

(3) The complaint has been withdrawn.

(F) Conflict of interest:

(1) Representatives shall comply with Ohio's ethics laws and this rule when handling complaints.

(a) A representative who has been assigned a complaint shall reveal to the program director and the consumer and/or complainant any other relationship with the provider, public agency, or person involved that may call into question the representative's objectivity or effectiveness in handling the complaint. These types of relationships may include, but are not limited to, having previously worked for or with a current employee of the provider, having an immediate family member who works for the provider, or having worked for the public agency involved in the complaint.

(b) A representative who has a conflict of interest shall disclose the conflict to the regional program director, or if a representative of the state office has the conflict of interest, to the SLTCO.

(c) Upon receiving notice of the potential conflict of interest, the SLTCO or the regional program director involved shall review the facts of the relationship to determine whether the representative is able to handle the complaint in an objective and effective manner.

If the director of the regional program has a conflict of interest, the review shall be completed by the SLTCO.

When the SLTCO has a conflict of interest, the review shall be completed by ODA's director or the director's designated senior staff member.

(2) The regional programs shall develop policies and procedures consistent with rule 173-14-22 of the Administrative Code to prohibit any representative of a regional program from handling a complaint involving a service directly delivered by the program's sponsoring agency. The policy shall provide that when the regional program is part of an AAA and the complaint concerns screening, assessments, care coordination, case management, or other decisions on consumer-specific services made by the AAA, the representative shall reveal the relationship to the consumer and/or complainant and obtain the approval of the SLTCO. The decision to permit a representative to handle such a complaint shall be documented in the case record. The consumer and/or complainant shall

be informed of any decision to refer the complaint to the SLTCO and shall be informed of the reasons for the referral.

(G) Confidentiality:

- (1) The regional programs shall develop policies and procedures to maintain complaint and advocacy and general information records, including, but not limited to, volunteer reports, in a confidential manner. The policies and procedures shall address the storage, maintenance, and physical access to all written and electronic complaint and advocacy and general information records and shall assure that such records are in a secure location and that access to the files is limited to those personnel authorized to review records. All authorized personnel shall treat records in a confidential manner. Regional program policies shall be consistent with paragraph (B)(6)(d) of rule 173-14-22 of the Administrative Code.
- (2) No employee or representative who has a conflict of interest may review a complaint case record if the conflict of interest is of a type which would have kept a representative from handling the complaint.
- (3) Representatives shall not reveal identifying information about individuals providing information about a complaint without their consent unless facilitated by state legal counsel in response to a court order.
- (4) Any representative who receives a subpoena or other request for ombudsman records, to attend a deposition, or to give testimony in court shall notify the SLTCO immediately. The SLTCO shall engage legal counsel to take appropriate legal action to protect the confidentiality of information, the persons who provided information, public entities, and the confidential records of consumers and of providers.
- (5) Except as otherwise provided by rule 173-14-15 of the Administrative Code, at the request of the provider, person, or parties against whom the complaint has been filed, and subject to paragraphs (G)(1), (G)(2), and (G)(4) of this rule, representatives shall state the verification status of the complaint in question and whether or not the case has been opened or closed.

(H) Consent:

- (1) Representatives shall conduct ombudsman services in a manner that protects the identity of the consumer, complainant, or individual providing information about a complaint, unless the consumer, complainant, or individual providing

information about a complaint has provided consent to reveal their identity. Consent may be given:

(a) In writing by the complainant, for the complainant, or by the consumer, for the consumer. Representatives shall use a written consent form provided by the SLTCO.

(b) Verbally, when the urgency of the complaint makes receiving written consent before an investigation impracticable. Verbal consent shall be documented in the case record.

(2) When the complainant or consumer is unable to give consent due to diminished capacity or death, consent may be given:

(a)

(i) In writing by the legal representative of the complainant or consumer on a written consent form provided by the SLTCO, or through the use of auxiliary aids and services;

(ii) Verbally, by the legal representative of the complainant or consumer, when receiving written consent from the appropriate person is not practicable. Verbal consent shall be documented in the case record.

(b) When there is no legal representative, when the legal representative is unknown to the representative or the provider, when the legal representative cannot be reached within three business days after the date upon which a complaint was received, or when the estate of a deceased consumer has no legal representative, consent may be given by the sponsor the representative determines the consumer would have chosen. If there is no sponsor, the representative may proceed with the approval of the SLTCO.

(3) In the event that the legal representative or the sponsor refuses to authorize an investigation and the representative has reasonable cause to believe the legal representative or the sponsor is not acting in the best interest of the consumer, the representative may proceed with the investigation if approved by the SLTCO.

(4)

(a) A representative shall obtain consent to review consumer medical records. Consent may be given in any of the following ways:

- (i) In writing by the consumer.
 - (ii) Verbally by the consumer, witnessed in writing at the time it is given by one other person, and, if the records involved are being maintained by a long-term care provider, also by an employee of the long-term care provider designated under division (E) of section 173.20 of the Revised Code.
 - (iii) In writing by the guardian of the consumer.
 - (iv) In writing by the attorney-in-fact of the consumer, if the consumer has authorized the attorney in fact to give such consent.
 - (v) In writing by the executor or administrator of the estate of a deceased consumer.
 - (vi) Through the use of auxiliary aids or services.
- (b) If consent to access records is not refused by a consumer or the consumer's legal representative, but cannot be obtained, a representative, on approval of the SLTCO, may inspect the consumer's records, including medical records, if reasonably necessary to investigate a complaint in any of the following circumstances:
 - (i) The consumer is unable to express written or verbal consent and there is no guardian or attorney-in-fact.
 - (ii) The consumer has a guardian or attorney-in-fact, but the guardian or attorney-in-fact cannot be contacted within three business days.
 - (iii) The consumer has a guardianship or durable power of attorney, but its existence is unknown by the long-term care provider and the representative at the time of the investigation.
 - (iv) There is no executor or administrator of the estate of a deceased consumer.
- (c) The representative shall demonstrate to the SLTCO that the representative consulted with a sponsor chosen by the consumer about access to records whenever possible.
- (5) When the SLTCO or representative personally witnesses suspected abuse, gross neglect, or exploitation of a consumer, the SLTCO or representative shall seek

informed consent from such consumer to disclose identifying information to appropriate agencies.

(a) If the consumer is able to communicate informed consent, or has a sponsor chosen by the consumer available to provide informed consent, the SLTCO or representative shall follow the direction of the consumer or sponsor.

(b) If the consumer is unable to communicate informed consent, and has no sponsor available to provide informed consent, the SLTCO or representative shall open a case with the SLTCO or representative as the complainant, follow the complaint-handling protocol and refer the matter and disclose identifying information to the management of the long-term care provider and/or to the appropriate investigative entity in the following circumstances:

(i) The SLTCO or representative has no evidence indicating the consumer would not want a referral to be made.

(ii) The SLTCO or representative has reasonable cause to believe disclosure would be in the best interest of the consumer.

(iii) The representative obtains the approval of the SLTCO.

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Five Year Review (FYR) Dates:

Certification

Date

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Rule Amplifies: 173.15, 173.19, 173.20, 173.22; 42 U.S.C. 3058g; 45 C.F.R. 1324.11(e)(2), 1324.11(e)(3), 1324.11(3)(4), 1324.19(b)

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