

3701-64-02

Investigations of abuse and neglect of residents or misappropriation of property; notice of hearing rights.

- (A) The director of health shall receive, review, and investigate allegations of abuse, or neglect, or exploitation of a resident, or misappropriation of the property of a resident by any individual used by a long-term care facility or a residential care facility to provide services to residents.
- (B) Allegations of abuse, neglect, exploitation, or misappropriation may be presented orally or in writing. Oral and written allegations may be made to the Ohio department of health's office of health assurance and licensing.
- (C) Allegations shall be investigated by appropriately qualified individuals, as determined by the director. No long-term care facility or a residential care facility shall do any of the following ~~in the course of an investigation by the director~~ knowing that an investigation is in progress, or is about to be or likely to be instituted under this rule:
- (1) Refuse to permit the director to enter the facility;
 - (2) Refuse to permit the director to interview employees or other personnel used by the facility, residents, or families of residents;
 - (3) Refuse to permit the director to review any record, ~~medical or otherwise~~, kept by the facility or their agents, including but not limited to: ~~or~~
 - (a) Medical records;
 - (b) Personnel records; or
 - (c) Records reviewed by the facility, including:
 - (i) Written statements;
 - (ii) Audio recordings, if available;
 - (iii) Video recordings, if available; and
 - (iv) Other materials gathered during the course of the investigation; or
 - (4) Destroy any records or documentation reviewed by the facility, to include the overwriting of audio or video recordings.
 - ~~(4)~~(5) Otherwise hinder the director's investigation of an allegation of abuse, neglect, or exploitation of a resident, or misappropriation of the property of a resident.

- (D) If, after investigation, the director determines that there is a reasonable basis for an allegation, the director shall provide written notice to the accused in accordance with paragraphs (E) and (F) of this rule. The director also shall send a copy of the notice to any long-term care facility or a residential care facility that the director knows currently is using the accused to provide services.
- (E) The written notice shall include all of the following items:
- (1) A statement of the nature of the allegation;
 - (2) A statement advising the accused of his or her right to a hearing on the allegation and of the manner in which and time within which a hearing may be requested;
 - (3) An explanation that the director will report any finding that the accused abused, ~~or neglected, or exploited~~ a resident or misappropriated a resident's property to the following entity, as applicable:
 - (a) The nurse aide registry established under section 3721.32 of the Revised Code, ~~if the accused is a nurse aide or otherwise not a licensed health professional;~~
 - (b) The appropriate ~~licensure~~licensing authority, if the accused is a licensed health professional; and
 - (c) Any other entity that holds authority or association with the accused.
 - (4) A warning that if the accused fails to submit a written request for a hearing within thirty days after he or she receives or was deemed to have received the notice, the director may do both of the following:
 - (a) Make a finding adverse to the accused; and
 - (b) Pursuant to rule 3701-64-05 of the Administrative Code, report the finding to the nurse aide registry, the appropriate ~~licensure~~licensing authority, or other relevant entity that would benefit from the notice, whichever is applicable, the long-term care facility or a residential care facility where the incident occurred, any other long-term care facility or a residential care facility known by the director to be using the accused to provide services to residents at the time of his or her finding, and the appropriate law enforcement official.
- (F) The director first shall provide the written notice to the accused by certified mail, return receipt requested, or by sending it by personal delivery to the accused's last known address.

- (1) If a certified mail notice is returned because the party fails to claim the notice, the director then may send the notice to the ~~accused's~~ accused's last known address by ordinary mail. The notice shall be deemed complete when the certificate of mailing is obtained unless the notice is returned showing failure of delivery.
- (2) If any notice sent by certified or ordinary mail is returned for failure of delivery, the director shall publish notice to the department's website. The notice shall be published for twenty one days, shall summarize the information required by paragraph (E) of this rule, and shall refer the accused to the Ohio department of health's office of health assurance and licensing for additional information. When notice is given by publication, a proof of publication affidavit, with a copy of the the notice set forth in the affidavit, shall be mailed by ordinary mail to the party at the party's last known address and the notice shall be deemed received as of the twenty first day of publication. An employee or agent of the agency may make personal delivery of the notice upon a party at any time.

Refusal of delivery by personal service or by mail is not failure of delivery and service is deemed to be complete. Failure of delivery occurs only when a mailed notice is returned by the postal authorities marked undeliverable, address or addressee unknown, or forwarding address unknown or expired.

Effective: 2/2/2019

Five Year Review (FYR) Dates: 4/15/2021

CERTIFIED ELECTRONICALLY

Certification

01/23/2019

Date

Promulgated Under: 119.03
Statutory Authority: 3721.26
Rule Amplifies: 3721.23
Prior Effective Dates: 01/10/1992, 06/11/2001, 08/01/2006, 08/01/2007,
04/18/2016