

TO BE RESCINDED

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

Representatives of the office shall identify, investigate and resolve complaints that are 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 decision (C) of section 173.19 of the Revised Code, representatives of the office shall open a case and attempt to resolve all complex complaints in accordance with the following protocol:

(A) Complaint intake:

- (1) Any representative of the office 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 complaint received.

The representative shall confirm that a complainant utilizing electronic mail that electronic mail may be a mode of communication through which confidential information is shared between the agency, provider, party, and person involved.

- (2) A representative of the office shall explain the role of the ombudsman program and gather information needed to determine response time, determine if there is any conflict of interest, and advise regarding options for handling the complaint that are available to the client or the program, including, but not limited to, encouraging and empowering the client to handle the complaint directly with the agency, provider, party, or person involved, if possible.
- (3) The office of the SLTCO program may decline to investigate any complaint if it determines any of the following:
 - (a) That the complaint is frivolous, vexatious, or not made in good faith;
 - (b) That the complaint was made so long after the occurrence of the incident on which it is based that it is no longer reasonable to conduct an investigation;
 - (c) That an adequate investigation cannot be conducted because of insufficient funds, insufficient staff, lack of staff expertise, or any other reasonable

factor that would result in an inadequate investigation despite a good faith effort; or,

(d) That an investigation by the office would create a real or apparent conflict of interest.

(4) In determining the response time for initiating an investigation, the program 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 client. If there is probable physical harm to the client, the appropriate program shall respond by the end of the next working day after receiving the complaint. 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. Where appropriate, all investigations shall include:

(a) A face-to-face interview with the client;

(b) An on-site visit to where the services that are the subject of the complaint were provided; and,

(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 client.

(2) The principal steps in an investigation shall include, but are not limited to:

(a) Obtaining consent from the client;

(b) Obtaining a clear statement of the problem(s);

(c) Informing the client of the ombudsman process and possible steps in the investigation;

(d) Revealing known conflicts of interest, if any;

(e) Obtaining a statement of the client's goals;

(f) Identifying the participants;

(g) Identifying the relevant agencies;

(h) Identifying any steps already taken to handle or resolve the complaint;

- (i) Determining gaps in the information;
 - (j) Gathering factual information through interviews with those persons with potential knowledge including, but not limited to, the complainant, the client, other agencies, and the provider's staff, management, or owners;
 - (k) Observing in a facility, in a location where services are delivered, or in a client's own home;
 - (l) Researching regulations and laws; and,
 - (m) Reviewing relevant client, provider, or government records.
- (3) The investigating representative(s) of the office need not exhaust one principal step before starting another, need use only those principal steps necessary, and need not follow them in the order given in paragraph (B)(2) of this rule.

(C) Complaint resolution:

Strategies for the resolution of a complaint may include, but are not limited to:

- (1) Consumer empowerment;
- (2) Negotiation;
- (3) Mediation;
- (4) Referral to other agencies;
- (5) Education;
- (6) Developing an action plan in conjunction with the client after taking into consideration the scope of the problem, the history of the provider, and pertinent laws and regulations;
- (7) Legislative advocacy; and,
- (8) Public disclosure.

(D) Complaint follow-up activities:

Representatives of the office shall perform follow-up activities on complaints as appropriate.

(E) Closing a case:

Prior to closing a case, the representative shall inform the client and/or 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 client's satisfaction;
- (2) The representative of the office determines that no further activity by the representative will produce satisfaction for the client;
- (3) The complaint is not a complaint a representative of the office should be handling;
- (4) The complaint has been withdrawn;

(F) Conflicts of interest:

- (1)
 - (a) For purposes of paragraph (F)(1)(b) of this rule, "relative" means a member of the immediate family, which consists of the spouse, parents, children, siblings, or household.
 - (b) A representative of the office who has been assigned a complaint shall reveal to the program director and the client 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 a relative or spouse who works for the provider, or having worked for the public agency involved in the complaint.
 - (c) A representative of the office who has a conflict shall disclose the conflict to the regional program director, or in the case where a representative of the state program has the conflict, to the SLTCO.
 - (d) 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 it is the director of the regional program has a conflict of interest, the review shall be completed by the executive director of the sponsoring agency, or the executive director's senior staff member or board member.

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

- (2) The regional programs shall develop policies and procedures that are consistent with rule 173-14-21 of the Administrative Code to ensure that no representative of a regional program handles a complaint involving a service directly delivered by the program's sponsoring agency, or when the regional program is part of an AAA and the complaint concerns screening, assessments, care coordination, case management, or other decisions on client-specific services made by the AAA without revealing the relationship to the client and/or complainant and without the approval of the SLTCO. The decision to permit a representative to handle such a complaint shall be documented in the case record. The client 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. This does not preclude a regional program from assigning filing tasks to non-representative staff and volunteers as long as those individuals sign a confidentiality agreement. All authorized personnel shall treat records in a confidential manner. Regional program policies shall be consistent with paragraph (B)(7)(d) of rule 173-14-21 of the Administrative Code.
- (2) Except as otherwise provided by rule 173-14-15 of the Administrative Code, persons authorized to review records include the executive director of the sponsoring agency, or one designated senior staff member or a designated policy board member. No employee or representative of the office or a regional program 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 of the office from handling the complaint.
- (3) Representatives of the office shall not reveal identifying information about individuals providing information about a complaint without their consent unless ordered to do so by a court.

- (4) Any representative of the office 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 take appropriate legal action to protect the confidentiality of information, the persons who provided information, public entities, and the confidential records of clients 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 of the office 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 of the office shall conduct investigations in a manner that protects the identity of the client, complainant, or individual providing information about a complaint, unless the client, complainant, or individual providing information about a complaint has provided consent to reveal their identity. With respect to clients and complainants, consent may be given:
 - (a) In writing by the complainant, for the complainant, or the client, for client. Representatives of the office shall use written consent forms approved by the SLTCO.
 - (b) Orally, when the urgency of the complaint results in a situation where receiving written consent prior to an investigation is not practicable. Oral consent shall be documented in the case record.
- (2) When the complainant or client 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 client;
 - (ii) Orally, when receiving written consent from the appropriate person is not practicable. Oral 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 working days of the date upon which a complaint was received, or when the estate of a deceased

client has no legal representative, consent may be given by the sponsor. 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 of the office has reasonable cause to believe the legal representative or the sponsor is not acting in the best interest of the client, the representative may proceed with the investigation if approved by the SLTCO.

(4)

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

(i) In writing by the resident or recipient;

(ii) Orally by the resident or recipient, 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 paragraph (E)(1) of section 173.20 of the Revised Code;

(iii) In writing by the guardian of the resident or recipient;

(iv) In writing by the attorney-in-fact of the resident or recipient, if the resident or recipient has authorized the attorney in fact to give such consent; or,

(v) In writing by the executor or administrator of the estate of a deceased resident or recipient.

(b) If consent to access to records is not refused by a resident or recipient or the resident's or recipient's legal representative, but cannot be obtained and any of the following circumstances exist, a representative of the office of the state long-term care ombudsman program, on approval of the SLTCO, may inspect the records of a resident or a recipient, including medical records, that are reasonably necessary for investigation of a complaint:

(i) The resident or recipient is unable to express written or oral consent and there is no guardian or attorney-in-fact;

(ii) There is a guardian or attorney-in-fact, but the guardian or attorney-in-fact cannot be contacted within three working days;

- (iii) There is a guardianship or durable power of attorney, but its existence is unknown by the long-term care provider and the representative of the office at the time of the investigation; or,
- (iv) There is no executor or administrator of the estate of a deceased resident or recipient.

Effective: 5/1/2018
Five Year Review (FYR) Dates: 1/30/2018

CERTIFIED ELECTRONICALLY

Certification

04/06/2018

Date

Promulgated Under: 119.03
Statutory Authority: 173.01, 173.02; 42 U.S.C. 3025(a)(1)(C), 3058g(a)(5) (D); 45 C.F.R. 1321.11, 1324.11(e)(2), 1324.11(e)(3), 1324.11(e)(4), 1324.13(b)(1), 1324.15(b)
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)
Prior Effective Dates: 07/11/1991, 12/27/2001, 12/28/2006