

173-14-16

Complaint-handling protocol.

An ombudsman shall identify, investigate, and resolve complaints made by, or on behalf of, clients 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 clients (including the welfare and rights of clients with respect to the appointment and activities of guardians and representative payees).

This rule establishes the requirements for handling complaints that are not listed under division (C) of section 173.19 of the Revised Code.

(A) Complaint intake:

- (1) Any ombudsman may receive a complaint over the telephone, in person, or by letter or electronic communication. A complaint generated by the office itself is considered to be a received complaint. The mode of communication in which a complaint is received is deemed consent to communicate with the complainant through that mode of communication.

The ombudsman shall explain to a complainant who uses email that email is not always a secure mode for sharing confidential information.

- (2) According to guidance provided by the SLTCO, an ombudsman shall explain to the complainant the general ombudsman process and options for handling the specific complaints) presented and gather information needed to determine the response time, whether there is a conflict of interest, and what, if any, steps have been taken previously.

- (3) To ensure timely access to facilities, residents, and records, the ombudsman may also request the names and contact information of residents and their legal representatives or sponsors from long-term care facilities.

- (4) An ombudsman shall refer complaints identified in rule 173-14-17 of the Administrative Code to the SLTCO.

- (5) The ombudsman program shall analyze the urgency of the complaint based on the information received at the time of intake and prioritize response times that reflect the severity of each complaint, with more urgent response times for complaints that indicate potential harm to the client. A program that receives a complaint that indicates probable physical harm shall respond by the end of the next business day. The program shall notify the SLTCO immediately if a complaint indicates probable physical harm to the client and an ombudsman cannot respond before the end of the next business day. The program shall then

prioritize all abuse, neglect, and exploitation complaints and other complaints that are time sensitive.

(B) Investigation:

(1) Representatives shall investigate complaints to determine if those complaints are verified. The steps in an investigation include, but are not limited to, the following:

- (a) An in-person interview with the client.
- (b) An on-site visit to where the services that are the subject of the complaint were provided to make observations.
- (c) Direct contact by in-person contact, a telephone call, video conference, email, or by letter with the complainant if the complainant is different from the client.
- (d) Determining capacity and obtaining consent from the client.
- (e) Obtaining a clear problem statement and goal statement from the client.
- (f) Informing the client of the ombudsman role, process, and possible steps in the investigation, as described in paragraph (A)(2) of this rule, and developing an action plan.
- (g) Revealing any known conflict(s) of interest to the client and/or complainant's goals.
- (h) Identifying the participants and relevant agencies.
- (i) Identifying action already taken to handle or resolve the complaint.
- (j) Determining gaps in the information.
- (k) 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.
- (l) Researching regulations and laws.
- (m) Reviewing relevant client, provider, or government records.
- (n) Engaging volunteer ombudsman staff when available and as appropriate.

- (2) The investigating ombudsman does not need to exhaust one step before starting another or 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 client or the client's representative and may include, but are not limited to, the following:
 - (1) Client or complainant empowerment.
 - (2) Negotiation.
 - (3) Mediation.
 - (4) Referral to other agencies.
 - (5) Education.
 - (6) Advocacy for clients 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: The ombudsman shall perform follow-up activities on complaints in a time frame appropriate to the complaint and resolution.
- (E) Closing a case: Before closing a case, the ombudsman shall inform the client and, if appropriate, the complainant, that ombudsman activity will cease. an ombudsman may cease activity when any of the following occurs:
 - (1) The complaint has been resolved or explained to the client's satisfaction.
 - (2) The ombudsman determines that no further activity by the ombudsman will produce satisfaction for the client.
 - (3) The complaint has been withdrawn.
- (F) Conflict of interest:
 - (1) An ombudsman shall comply with Ohio's ethics laws and this rule when handling complaints.

- (a) An ombudsman 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 ombudsman'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) An ombudsman who has a conflict of interest shall disclose the conflict to the regional program director, or if an ombudsman of the state office has the conflict of interest, to the SLTCO.
- (c) On 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 ombudsman 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 AGE'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 ombudsman 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 client-specific services made by the AAA, the ombudsman shall reveal the relationship to the client and/or complainant and obtain the approval of the SLTCO. The decision to permit an ombudsman 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) In a manner that complies with 42 U.S.C. 3027(a)(12)(C), 3058d(a)(6)(C), 3058g(a)(5)(D), 3058g(d), and 3058i(e)(2); 45 C.F.R. 1321.9(a)(3), 1324.11(e)(3), 1324.13(e), 1324.15(f), 1324.17(b), and 1324.19(b); section 173.22 of the

Revised Code; and paragraph (B)(6)(d) of rule 173-14-22 of the Administrative Code, regional programs shall develop policies and procedures to maintain complaint, advocacy, and general information records, including, but not limited to, volunteer reports, in a confidential manner; to address the storage, maintenance, and physical access to all written and electronic complaint, advocacy, and general information records; and to assure that such records are in a secure location and that access to the files is limited to personnel authorized to review records.

- (2) No employee or ombudsman 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 an ombudsman from handling the complaint.
- (3) No ombudsman may reveal identifying information about an individual providing information about a complaint without the individual's consent unless facilitated by state legal counsel in response to a court order.
- (4) Any ombudsman 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 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, the ombudsman shall state the verification status of the complaint in question and whether the case has been opened or closed.

(H) Consent:

- (1) An ombudsman shall conduct ombudsman services 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. Consent may be given in the following ways:
 - (a) In writing or email by the complainant, for the complainant, or by the client, for the client. The ombudsman 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. The ombudsman shall indicate verbal consent 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 in the following ways:
 - (a) When there is a legal representative:
 - (i) In writing by the legal representative of the complainant or client 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 client, when receiving written consent from the appropriate person is not practicable. The ombudsman shall indicate verbal consent in the case record.
 - (b) When there is no legal representative, when the legal representative is unknown to the ombudsman or the provider, when the legal representative cannot be reached within three business days after the date on which a complaint was received, or when the estate of a deceased client has no legal representative, consent may be given by the sponsor the ombudsman determines the client would have chosen. If there is no sponsor, the ombudsman may proceed with the approval of the SLTCO.
- (3) If the legal representative or sponsor refuses to authorize an investigation and the ombudsman has reasonable cause to believe the legal representative or sponsor is not acting in the best interest of the client, the ombudsman may proceed with the investigation if approved by the SLTCO.
- (4)
 - (a) An ombudsman shall obtain consent to review a client's medical records. Consent may be given in any of the following ways:
 - (i) In writing by the client.
 - (ii) Verbally by the client, witnessed in writing at the time it is given by one other person as chosen by the client. If a witness chosen by the client is not available, the ombudsman shall document the verbal consent in the case record.
 - (iii) In writing by the guardian of the client

- (iv) In writing by the client's attorney-in-fact, if the client authorized the attorney-in-fact to give consent.
 - (v) In writing by the executor or administrator of the estate of a deceased client.
 - (vi) Through the use of auxiliary aids or services.
 - (b) If consent to access records is not refused by a client or the client's legal representative, but cannot be obtained, a ombudsman, on approval of the SLTCO, may inspect the client's records, including medical records, if reasonably necessary to investigate a complaint in any of the following circumstances:
 - (i) The client is unable to express written or verbal consent and there is no guardian or attorney-in-fact.
 - (ii) The client has a guardian or attorney-in-fact, but the guardian or attorney-in-fact cannot be contacted within three business days.
 - (iii) The client has a guardianship or durable power of attorney, but its existence is unknown by the long-term care provider and the ombudsman at the time of the investigation.
 - (iv) There is no executor or administrator of the estate of a deceased client.
 - (c) The ombudsman shall demonstrate to the SLTCO that the ombudsman consulted with a sponsor chosen by the client about access to records whenever possible.
- (5) When the SLTCO or ombudsman personally witnesses suspected abuse, gross neglect, or exploitation of a client, the SLTCO or ombudsman shall seek informed consent from the client to disclose identifying information to appropriate agencies.
- (a) If the client is able to communicate informed consent, or has a sponsor chosen by the client available to provide informed consent, the SLTCO or ombudsman shall follow the direction of the client or sponsor.
 - (b) If the client is unable to communicate informed consent, and has no sponsor available to provide informed consent, the SLTCO or ombudsman shall open a case with the SLTCO or ombudsman 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 ombudsman has no evidence indicating the client would not want a referral to be made.

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

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

(I) The SLTCO may establish special complaint-handling requirements for optional ombudsman services.

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Five Year Review (FYR) Dates:

Certification

Date

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