

Complaint Response Times

Question

In the Final Rule 1327.11 (v) Standards to assure prompt response to complaints by the "Office" and/or local Ombudsman entities which prioritize abuse, neglect, exploitation and time sensitive complaints in which consider the severity of the risk to the resident, the imminence of the threat of harm to the resident and the opportunity for mitigating harm to the resident through provision of Ombudsman program services.

What are other State Ombudsman policy and procedures response time is to complaints? For example; 2 business days, 24 hours, 3 business days, 72 hours etc.

Response

In the preamble to the new rule in which the Administration on Aging responds to comments on the proposed regulation, AoA said the following regarding response time (see page 7728 of the [rule](#)):

Comment: Five commenters indicated a need for a national standard or additional guidance for what is considered a "prompt response."

Response from AoA: We believe creating one national standard of promptness would be unrealistic, given the extremely different variables among States. Some States have developed standards of promptness related to complaint response that are responsive to the realities in that State. We strongly encourage the development of minimum standards to provide consumers, providers and others with an expectation of what constitutes a timely response to a complaint. We note that these standards provide an important mechanism for Ombudsman program accountability. We are available to provide technical assistance to States and Ombudsmen as they develop these standards.

Until ACL/AoA provides additional guidance on this section of the Rule and has the Q&A posted, we (NORC) are not in a position to recommend "model" policies that comply with the Rule. However, NORC does have numerous resources and state documents which may provide assistance as you review your policies. For this question, we looked through the current state policies (collected before the 2015 Rule was published) we have on file. From these we found complaint response times varied between the next working day to within seven working days, depending on the severity and urgency of the complaint, with the average falling between two and three business days when responding to routine complaints. Many states provided different response times based on defined levels of a complaint's "urgency". Those ranged from next business day in the case of abuse or gross neglect and if LTCO has reason to believe that a resident may be at risk, to seven working days in the case of routine complaints. Your draft policy looks to be in line with these examples.

The below information lists the Final Rule language, preamble comment and examples from seven states that address the issue of complaint response time in their current policies and procedures. Note that although these can provide a good reference point, as AoA stated in its response to the comment regarding response time, it is up to each state program to develop standards "that are responsive to the realities in that State".

Final Rule Language

1327.11 (v) Standards to assure prompt response to complaints by the "Office" and/or local Ombudsman entities which prioritize abuse, neglect, exploitation and time sensitive complaints which consider the severity of the risk to the resident, the imminence of the threat of harm to the resident and the opportunity for mitigating harm to the resident through provision of Ombudsman program services.

Preamble Comment and Response by AoA

The page number below refers to the version of the LTCOP Rule that was published in the Federal Register / Vol. 80, No. 28 / Wednesday, February 11, 2015 / Rules and Regulations (3 columns)

Comment: Five commenters indicated a need for a national standard or additional guidance for what is considered a "prompt response." (p. 7728)

Response: We believe creating one national standard of promptness would be unrealistic, given the extremely different variables among States. Some States have developed standards of promptness related to complaint response that are responsive to the realities in that State. We strongly encourage the development of minimum standards to provide consumers, providers and others with an expectation of what constitutes a timely response to a complaint. We note that these standards provide an important mechanism for Ombudsman program accountability. We are available to provide technical assistance to States and Ombudsmen as they develop these standards.

Example State Policies and Procedures

Note: The Policies and Procedures excerpts included in this document were developed before the 2015 LTCOP Final Rule was published. We encourage states to carefully and review the 2015 LTCOP Final Rule for compliance in considering adapting existing policies for future use.

Example 1 - Georgia

01/2014

101. Complaint Processing

c. standard of promptness

- i) A LTCO shall use his or her best efforts to initiate investigations of complaints in a timely manner in order to resolve the complaint to the satisfaction of the resident.
- ii) The date on which the first action is taken to investigate the complaint by the assigned ombudsman (reported as the "action date") is considered timely as follows:

TABLE III-A

COMPLAINT RESPONSE IF a complaint involves...	THEN the standard of promptness for LTCO response (i.e. the action date) is...
i) abuse or gross neglect, and ii) the LTCO has reason to believe that a resident may be at risk	* within the next working day
i) abuse or gross neglect, and ii) the LTCO has no reason to believe that a resident is a risk	within three days, but not to exceed three calendar days*
actual or threatened transfer or discharge from a facility	whichever occurs first: i) 5 working days, ii) the last day of bed-hold period (if resident is hospitalized), or iii) the last day for filing an appeal for an administrative hearing
other types of complaints	within 7 working days
IF a complaint involves...	THEN the standard of promptness for LTCO response (i.e. the action date) is...
i) abuse or gross neglect, and ii) the LTCO has reason to believe that a resident may be at risk	within the next working day*
i) abuse or gross neglect, and ii) the LTCO has no reason to believe that a resident is a risk	within three days, but not to exceed three calendar days*
actual or threatened transfer or discharge from a facility	whichever occurs first: i) 5 working days, ii) the last day of bed-hold period (if resident is hospitalized), or iii) the last day for filing an appeal for an administrative hearing
other types of complaints	within 7 working days

*When all LTCO staff are out of the office (e.g., due to a required training conference or because the provider agency office is closed), then the response shall be within the next working day that any LTCO staff are in the office.

- iii) Where the LTCOP will be unable to initiate investigations in a timely manner (e.g., due to a planned vacation or extended illness), the LTCO Coordinator shall develop a plan for temporary coverage in order to meet the standard of promptness. Such plan shall be communicated to the provider agency, the area agency on aging, and the SLTCO to assure appropriate and timely case referrals.

- iv) The LTCOP shall provide adequate telephone coverage to receive complaints promptly and confidentially during business hours. Where a message is left for the ombudsman, the community LTCOP shall attempt to make contact with the complainant during the same day the contact was made whenever possible and, in all cases, within two working days. Adequate coverage may include: LTCO program staff or volunteers providing constant phone service, frequent checks of confidential telephone voice mail by staff, and/or use of pagers or cell phones.
- v) The LTCOP is not designed to serve as an emergency response system; emergency situations should be referred to “911” for immediate response.

Example 2 - Colorado

Colorado DHS Policy and Procedure Manual, Division of Aging & State Unit on Aging

EFFECTIVE DATE: 02-12-13

ORIGINAL DATE: 12-01-05

504.1 LOCAL LONG-TERM CARE OMBUDSMAN COMPLAINTS

D. Upon acceptance of a complaint, the Ombudsman shall immediately determine the type of complaint and appropriate time frame for response.

1. Urgent

- a. A complaint alleging abuse or gross neglect, in which the Ombudsman has no reason to believe that a resident is at imminent risk; or
- b. A complaint involving the threat of immediate transfer or discharge from a facility; or
- c. A complaint that indicates a resident(s) is at immediate risk of losing life or limb, including fire, natural disaster, medical emergency, and/or criminal activity. The Ombudsman shall call or direct the reporter to call emergency responders, facility administrator, and/or other appropriate agencies. Ombudsman response to urgent complaints shall be made within one (1) working day after receipt of the complaint.

2. Routine

- a. A complaint that poses no immediate danger to the health or safety of the resident, including but not limited to:
 - i. Access to or misuse of personal needs funds;
 - ii. Failure to accommodate individual preferences for care or activities;
 - iii. Autonomy, dignity, and/or respect complaints; or
 - iv. Intermittent staffing shortages or care concerns.
- b. Ombudsman response to routine complaints shall be made within five (5) working days after receipt of the complaint.

E. In rare instances weather, illness, or other unforeseen, serious circumstances may delay on-site investigation. Should delay occur, the Ombudsman shall consult with the CLTCO regarding an alternate resolution, and shall:

- 1. Implement the written coverage plan, as outlined in the Roles and Responsibilities of the Area Agencies on Aging policy, or

2. Initiate a telephone response:
 - a. Contact with the resident and/or complainant shall be attempted;
 - b. Resolution of the complaint may be sought, in accordance with the resident's wishes, through calls to persons that may be able to resolve or mitigate the situation, such as the facility administrator or other facility staff or another agency, such as Health Facilities Division; and
3. Complete comprehensive documentation regarding the cause(s) for delay and the response to the complaint:
 - a. In hard copy case notes, if used;
 - b. In Ombudsmanager as a journal entry titled "Delayed Response" that shall document, in detail:
 1. The date;
 2. The delaying factor(s);
 3. Whether the coverage plan or telephone response was initiated; and
 4. The steps taken to resolve the complaint either through the coverage plan or telephone response.
4. Make an on-site visit with the resident, even if the complaint was resolved by telephone.
 - a. The follow up visit shall occur immediately following the unforeseen circumstance;
 - b. Comprehensive documentation of the follow-up visit shall be completed:
 1. In hard copy case notes, if used in Ombudsmanager as a journal entry titled "Delayed Response Follow Up" that shall document, in detail:
 - i. The date of the follow up;
 - ii. Any remaining issues or additional complaints to be resolved; and
 - iii. The complainant's satisfaction with the resolution.

Example 3 - Texas

Texas Department of Aging and Disability Services
 Ombudsman Policies and Procedures Manual
 Revision: 11-3
 Effective: August 15, 2011

602 Opening a Case: Intake and Response

602.3 Timeliness of Responses

Revision 09-1; Effective September 14, 2009

The local LTCOP ensures access to ombudsman services and timely response to requests and complaints by providing office coverage and visiting facilities. Office coverage may include a CO or designated person providing office-based telephone coverage, frequent checks of voicemail or use of mobile devices. A certified volunteer ombudsman (CVO) may provide office coverage.

Initiate a response to a complaint within two business days or sooner when the circumstances appear urgent. A case with the resident as the complainant takes priority over other cases. Initiation includes contact with the resident or complainant and other sources of investigative information; it does not require a facility visit within two business days. Complaints initiated by a CO are assumed to be initiated

immediately while the CO is on-site in a facility. There is no required period for final disposition of a case.

The local LTCOP does not serve as an emergency responder. Refer emergencies to 9-1-1 for immediate response and allegations of abuse, neglect or exploitation to DADS Consumer Rights and Services at 1-800-458-9858 if the alleged perpetrator is facility staff or to Adult Protective Services at 1-800-252-5400 for all others.

Example 4 - Ohio

Ohio LTCO Policies and Procedures
04/2007

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.

Example 5 - North Carolina

Visit the resident in the facility within 1-4 working days from the date the complaint is received.

Note: It is recognized that occasionally this timeframe cannot be met by a Regional Ombudsman. When more than four (4) days elapse before a visit with the resident, the Regional Ombudsman will document the reason under the Case Record Closing Details in the field entitled **Deviations in Complaint-Handling Practice/Policy** in the Ombudsman Program documentation and information system.

Example 6 - ArkansasArkansas LTCOP Operation Manual

Complaint response time

The complaint is the highest priority received by the Long-Term Care Ombudsman Program for action.

Each complaint received will be investigated **within two working days** when the Ombudsman has reason to believe that **the resident is at risk of harm. Other complaints will be investigated within 5 working days.**

Example 7 - Alabama

Alabama LTCO Complaint response chart

1. Complaints with care issues	Respond within two (2) business days not to exceed three (3) calendar days
Other types of complaints	Within seven (7) calendar days
Actual or threatened transfer or discharge from a facility	Whichever occurs first: i) five (5) working days, ii) the last day of bed-hold period if resident is hospitalized), or iii) the last day for filing an appeal for an administrative hearing