

CHAPTER 15 GRIEVANCE PROCESS FOR COMPLAINTS AGAINST THE LONG-TERM CARE OMBUDSMAN PROGRAM

I. Introduction

This chapter explains the process for handling complaints against the Long-Term Care Ombudsman Program, its staff, and volunteer Ombudsman representatives. Complaints may be received from residents, family members of residents, facility staff and/or other individuals who are affected by the actions and activities of the Ombudsman Program.

The requirements of this chapter do not preclude the informal resolution of complaints by the local Ombudsman Program Coordinator, which are permitted when the complaint can be resolved quickly either by telephone or through personal contact. A complaint which cannot be resolved informally may be resolved through the formal Area Agency on Aging (AAA) grievance process or the local Ombudsman Program grievance process.

II. Legal Authority

STATE Title 22 California Code of Regulations sections 7400-7404

III. Complaints Against the Ombudsman Program

A complaint is an expression of dissatisfaction, resentment, discontent or grievance. Any formal or informal expression of dissatisfaction about Ombudsman Program services by a member of the public is a complaint. All complaints should be given serious and immediate attention. Complaints against the Program may be generated for a variety of reasons including but not limited to the following examples:

- A facility administrator who feels the services provided by the Program have impacted his/her business activities in a negative or unfair manner.
- A client (or client's representative) who is dissatisfied with access to services or the quality of service received from the Ombudsman Program.
- Another department, program, agency or organization that is dissatisfied with the activities of the Program.
- A certified Ombudsman or Ombudsman applicant who has a complaint regarding the local Program.

IV. Complaints Made by or on Behalf of Older Individuals

The California Code of Regulations, Title 22, sections 7400-7404 define requirements for response to complaints made by older individuals and their representatives regarding services provided by the AAAs. All AAAs and Ombudsman Programs must follow these procedures when responding to complaints.

A. Complaints Made Against Contracted Service Providers

If Ombudsman services are provided by a contracted service provider (contractor), the service provider shall have a written grievance process. The service provider shall be the first level of resolution.

If a complainant is dissatisfied with the results of the contracted service provider's grievance process, he or she can request in writing that the complaint be elevated to the AAA for administrative review.

B. Complaints Made Against AAA Direct Service Providers

Complaints made by or on behalf of an older individual, against a local Ombudsman Program or its certified Ombudsman representatives, must be submitted in writing using the grievance process established by the AAA.

1. AAA Administrative Review

Each AAA shall establish an informal administrative review process for the resolution of complaints received from older individuals or persons authorized to act on their behalf. This process will be the first level of complaint resolution when the AAA is the Ombudsman service provider.

All complaints shall be in writing to the director of the AAA. If a complainant cannot submit a written complaint, the AAA will accept a verbal complaint, prepare the complaint in writing, and have the complainant sign it.

The written complaint shall include:

- The name, mailing address and telephone number of the older individual or person authorized to act on his or her behalf.
- The type of service and provider involved.
- The names of the individuals involved.
- The issue of concern or dispute.
- The date, time, and place of the concern or dispute.
- The names of any witnesses.

The AAA will complete an impartial investigation of the complaint and attempt to informally resolve the issues. A written report of the results

shall be prepared and copies sent to the parties involved. The report shall advise the complainant of his or her right to an administrative hearing at the AAA level if dissatisfied with the results contained in the report. The report shall also include a process for ensuring the fulfillment of any agreements reached during the administrative review. The total time from the receipt of the complaint to the issuance of the report shall not exceed 45 days.

Any complaints relating to local Ombudsman Programs received by the California Department of Aging will be forwarded to the appropriate AAA for resolution.

2. AAA Administrative Hearing

If a complainant is dissatisfied with the results of the administrative review and wishes to appeal the decision, he or she can request in writing that the complaint be elevated to an administrative hearing.

The hearing request must be made within 30 days of the receipt of the written report of the results of the administrative review. The AAA will notify the complainant of the hearing and the notification shall include:

- The date, time, and location of the hearing.
- The right of the complainant and other parties (or other person acting on his or her behalf) to be present at the hearing and to have legal counsel present.

The hearing shall be held no later than 45 days from the receipt of the hearing request.

The hearing shall be conducted by an impartial officer or panel. Testimony shall be restricted to the issues requiring resolution. The complainant has the right to:

- Be present at the hearing.
- Present evidence and witnesses.
- Examine evidence and witnesses.

The hearing shall be recorded verbatim, either electronically or stenographically. The technical rules of evidence and procedures shall not apply. All persons testifying at the hearing shall be placed under oath or affirmation.

A proposed decision shall be prepared no later than 30 days after the date of the hearing and shall contain:

- A description of each issue with a citation of applicable laws and regulations.
- A statement as to whether the complaint was upheld or denied.

If upheld, the proposed decision should also include an explanation of the remedy for the complaint. If denied, the proposed decision should include the basis for the denial.

The proposed decision shall be forwarded to the director of the AAA (or chairperson of the governing board when the complaint is against the director of the AAA). No later than 30 days after its receipt, the decision shall either be accepted as is or amended and adopted as the final decision. The final decision shall include procedures to ensure that any remedies are implemented and it shall be immediately transmitted to the parties involved. The final decision is not subject to appeal.

V. Complaints Made by Others

California Code of Regulations requirements for a grievance process in the AAAs apply only to complaints made by or on behalf of older individuals. This process does not apply to complaints filed by long-term care facilities, other agencies, or individuals.

Each local Ombudsman Program is encouraged to develop procedures to address complaints against the Ombudsman Program from facilities, other agencies, or individuals.

VI. Confidentiality

While responding to a complaint against the Program, it is important to abide by all confidentiality requirements.

- Ombudsman representatives must not divulge the identity of a resident, complainant and/or witness without prior written consent from the resident, complainant, or witness.
- All files and records of the Ombudsman Program relating to a case investigation are confidential and may not be disclosed without the resident's consent or a court order.
- Complaints that can be handled without specific case information should be handled accordingly.

For more information on confidentiality requirements, see Chapter, 5, Confidentiality, and Chapter 6, Standards of Professional Conduct.

VII. Maintenance of Records

Records of complaint investigations, findings, and responses shall be maintained in accordance with the law. A complaint log that identifies the date of the complaint, the complainant, and the resolution shall also be maintained by the local Program for review as necessary.

VIII. Conclusion

Complaints filed against the Ombudsman Program should be considered a priority at all times. It is essential to maintain the integrity of the program by responding to complaints in an objective, thorough manner. The Office of the State Long-Term Care Ombudsman is available to provide technical assistance as needed.