

CHAPTER 7. FILING COMPLAINTS AGAINST HEALTH FACILITIES

7.1. RIGHT TO FILE A COMPLAINT

Any person who believes that a health facility or agency has violated a state licensure law or rule, or a federal certification requirement, may file a complaint with the Bureau of Health Systems (BHS). The Bureau is responsible for investigating complaints against the following facility types:

- Nursing homes (including county medical care facilities and hospital long-term care units).
- Hospitals and psychiatric facilities/units.
- Hospices and hospice residences.
- Home health agencies.
- Outpatient rehabilitation facilities.
- Portable x-ray providers.
- Freestanding surgical outpatient facilities and ambulatory surgery centers.
- End-stage renal dialysis facilities.
- Rural health clinics.
- Clinical laboratories.

A. Freedom From Retaliation

Sections 20201(4) and 21771(6) provide that a nursing home shall not discharge, harass, retaliate or discriminate against a resident because the resident has exercised his or her rights under the Public Health Code. Violations are referred to the Complaint Investigation Unit.

B. Complainant's Right to Contest Bureau Actions

A complainant who is dissatisfied with a Bureau determination or investigation involving a nursing home may request a hearing in accordance with Section 21799(a)(9) of the Public Health Code.

Pursuant to Section 20176(2) of the Code, complaint findings involving facilities other than nursing homes may be appealed to the Director.

C. Nursing Home Complaints

State legislation regarding the filing of nursing home complaints is found in Section 21799a of the Public Health Code shown below:

- (1) A person who believes that this part, a rule promulgated under this part, or a federal certification regulation applying to a nursing home may have been violated may request an investigation of a nursing home. The request shall be submitted to the department as a written complaint or the department shall assist the person in reducing an oral

request to a written complaint within 7 days after the oral request is made.

- (2) The substance of the complaint shall be provided to the licensee no earlier than at the commencement of the on-site inspection of the nursing home which takes place pursuant to the complaint.
- (3) The complaint, a copy of the complaint, or a record published, released, or otherwise disclosed to the nursing home shall not disclose the name of the complainant or a patient named in the complaint unless the complainant or patient consents in writing to the disclosure or the investigation results in an administrative hearing or a judicial proceeding, or unless disclosure is considered essential to the investigation by the department. If disclosure is considered essential to the investigation, the complainant shall be given the opportunity to withdraw the complaint before disclosure.
- (4) Upon receipt of a complaint, the department shall determine, based on the allegations presented, whether this part, a rule promulgated under this part, or a federal certification regulation for nursing homes has been, is, or is in danger of being violated. The department shall investigate the complaint according to the urgency determined by the department. The initiation of a complaint investigation shall commence within 15 days after receipt of the written complaint by the department.
- (5) If, at any time, the department determines that this part, a rule promulgated under this part, or a federal certification regulation for nursing homes has been violated, the department shall list the violation and the provisions violated on the state and federal licensure and certification forms for nursing homes. The violations shall be considered, as evidenced by a written explanation, by the department when it makes a licensure and certification decision or recommendation.
- (6) In all cases, the department shall inform the complainant of its findings unless otherwise indicated by the complainant. Within 30 days after the receipt of a complaint, the department shall provide the complainant a copy, if any, of the written determination, the correction notice, the warning notice, and the state licensure or federal certification form, or both, on which the violation is listed, or a status report indicating when these documents may be expected. The final report shall include a copy of the original complaint. The complainant may request additional copies of the documents listed in this subsection and shall reimburse the

department for the copies in accord with established policies and procedures.

- (7) A written determination, correction notice, or warning notice concerning a complaint shall be available for public inspection, but the name of the complainant or patient shall not be disclosed without the complainant's or patient's consent.
- (8) A violation discovered as a result of the complaint investigation procedure shall be reported to persons administering sections 21799c to 21799e. The violation shall be assessed a penalty as described in this act.
- (9) A complainant who is dissatisfied with the determination or investigation by the department may request a hearing. A request for a hearing shall be submitted in writing to the director within 30 days after the mailing of the department's findings as described in subsection (6). Notice of the time and place of the hearing shall be sent to the complainant and the nursing home.

7.2. Time Limit for Filing Nursing Home Complaints

Nursing Home and Nursing Facility Rule R325.20114(1)(a)(b) specifies that a complaint against a nursing home must be filed:

- Within 12 months of the alleged violation, or
- If a complainant has first been filed with a nursing home, within 12 months of the determination of the nursing home.

7.3. CONTENT OF COMPLAINT

A complaint must include:

- The name and address of the facility or agency.
- The resident name, if applicable.
- The nature of the complaint and the dates of any specific events.
- The complainant's name, address and telephone number.

7.4. ANONYMOUS COMPLAINTS

The Bureau may investigate anonymous complaints that lack the complainant's name, address and telephone number. However, such complaints are often more difficult to thoroughly investigate and substantiate because of the inability to contact the complainant for additional information, and, of course, the Bureau is unable to report its findings to the complainant. Priority will be given to credible allegations of harm.

7.5. CONFIDENTIALITY OF COMPLAINANT'S NAME

Section 21799a of the Public Health Code provides that a complaint, a copy of the complaint, or a record published, released, or otherwise disclosed to the nursing home shall not disclose the name of the complainant or a resident named in the complaint involving unless:

- The complainant or resident consents in writing to the disclosure, or
- The investigation results in an administrative hearing or a judicial proceeding, or
- The Bureau considers disclosure essential to the investigation.

If disclosure is considered essential to the investigation, the complainant is given the opportunity to withdraw the complaint before disclosure. MCL 333.21799a of the Public Health Code also provides that the substance (but not a copy) of the complaint must be provided to the facility no earlier than the start of the on-site inspection of the facility that takes place pursuant to the complaint.

In addition, Section 21743(1)(d) of the Code provides that a complaint or complaint investigation report shall not be disclosed by the Bureau to a person other than the complainant or complainant's representative before it is disclosed to the nursing home.

7.6. METHODS FOR FILING COMPLAINTS

A. Internet

Complaints may be filed online via the Internet through the Bureau website <http://www.michigan.gov/bhs>, [Complaints]. The pamphlet, *A Citizen's Guide to Filing A Complaint* (Appendix A), is also posted on the website.

B. Telephone

The Department operates a toll free complaint hotline that may be reached from anywhere in the United States and Canada by dialing 1-800-882-6006 anytime. Business hours for the hotline are from 8 a.m. to 5 p.m. Monday through Friday. A voice mail system is available to record calls at other hours. Calls received outside of business hours are returned the next business day. The *Resident/Patient Care Complaint* (BHS-OPS-361) form (Appendix F) or the *Nursing Home Complaint Form* (BHS-OPS-361a, Appendix D) are available on request from the Complaint Investigation Unit at 517 241-4712.

C. Mail Service

Written complaints should be mailed to the Michigan Department of Community Health, BHS, Complaint Investigation Unit, P.O. Box 30664, Lansing, MI 48909.

D. Facsimile

Complaints may also be faxed to the Complaint Investigation Unit at 517 241-0093.

E. Referrals

Complaints from other agencies may be accepted provided the referral contains the information prescribed in Section 7.3 of this chapter and provided the complainant confirms the complaint should be accepted.

7.9. ACKNOWLEDGMENT OF COMPLAINTS

The Bureau sends an acknowledgment letter to the complainant with the assigned complaint number when a complaint is received.

Please refer to Chapter 4 of this manual and Appendix B of this manual for Bureau processing, investigation and reporting of complaint findings.