§9731. Complaint Process

A. Provisions for Complaints. In accordance with R.S. 40:2009.13 et seq., the following requirements are established for receiving, evaluating, investigating, and correcting grievances pertaining to resident care in licensed nursing homes. They also provide for mandatory reporting of abuse and neglect in nursing homes.

B. Nursing Home Complaints, Procedure, Immunity
1. Any person having knowledge of the alleged abuse or neglect of a resident of a nursing home; or who has knowledge that a state law, licensing requirement, rule, or regulation, or correction order promulgated by the department, or any federal certification rule pertaining to a nursing home has been violated; or who otherwise has knowledge that a nursing home resident is not receiving care and treatment to which he is entitled under state or federal laws, may submit a complaint regarding such matter to the secretary (Department of Health and Hospitals). The complaint shall be submitted to the Health Standards Section of DHH in writing, by telephone, or by personal visit where the complainant will complete and sign a form furnished by the member of the secretary’s staff receiving the complaint.
2. The secretary shall designate a staff member whose responsibility shall be to assure that all complaints received are referred to the appropriate office of the department (Health Standards Section).
3. If the complaint involves an alleged violation of any criminal law pertaining to nursing homes, the secretary shall refer the complaint to the appropriate office.
4. If the complaint involves any other matter, the secretary shall refer the complaint to the appropriate office for investigation in accordance with this Section.
5. Any person who, in good faith, submits a complaint pursuant to this Section shall have immunity from any civil liability that otherwise might be incurred or imposed because of such complaint. Such immunity shall extend to participation in any judicial proceeding resulting from the complaint.

C. Procedure for Investigation by the Office; Confidentiality of Complaints
1. The office of the department which has received the complaint from the secretary shall review the complaint and determine whether there are reasonable grounds for an investigation. No complaint shall be investigated if:
   a. in the opinion of the office, it is trivial or not made in good faith;
   b. it is too out dated and delayed to justify present investigation; or
   c. the complaint is not within the investigating authority of the office.
2. If the office determines that grounds for an investigation do not exist, it shall notify the complainant of its decision and the reasons within 15 work days after
receipt of such complaint.
3. If grounds for an investigation do exist, the office shall initiate an investigation of such complaint and make a report to the complainant on its findings within 30 work days after completion of the complaint investigation.
4. The substance of the complaint shall be given to the nursing home no earlier than at the commencement of the investigation of the complaint.
5. When the substance of the complaint is furnished the nursing home, it shall not identify the complainant or the patient unless he/she consents, in writing or in a documented telephone conversation with an employee, to the disclosure. If the disclosure is considered essential to the investigation or if the investigation results in a judicial proceeding, the complainant shall be given the opportunity to withdraw the complaint.

D. Investigation Report
1. The investigation report of the department shall state whether any nursing home licensing law, or any licensing requirement, rule, regulation, or correction order of the Department of Health and Hospitals, or any standard relating to the health, safety, care, or treatment of residents in nursing homes has been violated.
   a. If such violation is found to exist, the appropriate departmental staff shall immediately provide notice of such violation to the secretary.
   b. The report shall also contain a deficiency statement to the nursing home. A copy of the report shall be sent by certified mail or hand‐delivered to the complainant and to the nursing home.
2. The deficiency statement shall describe the violation; list the rule or law violated; and solicit corrective actions to be taken by the nursing home.
3. A nursing home which is ordered to correct deficiencies may file a written request that the department review the corrective action taken by the home and, if necessary, reinspect the home.
   a. The department shall comply with the request in a timely manner.
   b. If no such request is received, the department shall review the steps taken by the home in order to comply with the corrective order and, if necessary, reinspect the home on the final date fixed for completion of the correction of the violation.
4. If the violation is found to continue to exist on the correction date, the office shall notify the appropriate department to take further action as indicated applicable by state regulations.

E. Hearing
1. A complainant or nursing home who is dissatisfied with the department’s determination or investigation may request a hearing.
2. A request for a hearing shall be submitted, in writing, to the secretary within 30 days after the department’s report has been mailed in accordance with the provisions of R.S. 40:2009.15A(1).
3. Notice of the time and place fixed for the hearing shall be sent to the complainant and the nursing home.
4. All appeal procedures shall be conducted in accordance with the Administrative Procedure Act.

F. Prohibition Against Retaliation. No discriminatory or retaliatory action shall be taken by any health care facility or government agency against any person or client by whom or for whom any communication was made to the department or unit, provided the communication is made in good faith for the purpose of aiding the office or unit to carry out its duties and responsibilities.

G. Notice of the Complaint Procedure. Notice of the complaint procedure, complete with the name, address, and telephone number of the Health Standards Section of the Office of the Secretary of the Department of Health and Hospitals, shall be posted conspicuously in the nursing home at places where residents gather.

H. In accordance with R.S. 14:403.2, 14:93.3, 14:93.4, and 14:93.5, all nursing homes shall adhere to the adult protective services laws.

I. Duty to Make Complaints; Penalty; Immunity
1. Any person who is engaged in the practice of medicine, social services, facility administration, psychological or psychiatric treatment; or any registered nurse, licensed practical nurse, or nurse’s aid, who has actual knowledge of the abuse or neglect of a resident of a health care facility shall, within 24 hours, submit a complaint to the secretary or inform the unit or local law enforcement agency of such abuse or neglect.
2. Any person who knowingly or willfully violates the provisions of this Section shall be fined not more than $500; or imprisoned for not more than two months; or both.
3. Any person who, in good faith, submits a complaint pursuant to this Section shall have immunity from any civil liability that otherwise might be incurred or imposed because of such complaint. Such immunity shall extend to participation in any judicial proceeding resulting from the complaint.
4. Any person, other than the person alleged to be responsible for the abuse or neglect, reporting pursuant to this Section in good faith, shall have immunity from any civil liability that otherwise might be incurred or imposed because of such report. Such immunity shall extend to participation in any judicial proceeding resulting from such report.


§9733. Statement of Rights and Responsibilities
A. In accordance with R.S. 40:2010.8 et seq., all nursing homes shall adopt and make public a statement of the rights and responsibilities of the residents residing therein and shall treat such residents in accordance with the provisions of the statement.
The statement shall assure each resident the following:

...10. the right to be free from mental and physical abuse and from physical and chemical restraints, except those restraints authorized by the attending physician for a specified and limited period of time or those necessitated by an emergency:

a. in case of an emergency, restraint may only be applied by a qualified licensed nurse, who shall set forth, in writing, the circumstances requiring the use of the restraint, and, in case of a chemical restraint, the attending physician shall be consulted immediately thereafter;

b. restraints shall not be used in lieu of staff supervision or merely for staff convenience or resident punishment, or for any reason other than resident protection or safety;

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...F. Residents requiring restraints shall be restrained with standard types of devices, applied in a manner consistent with manufacturer's specifications, and that permits speedy removal in the event of an emergency. Each restrained resident shall be monitored every 30 minutes and released for 10 minutes every two hours. Restraints shall not be used for punishment nor convenience of staff.


HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:56 (January 1998).