

The Process of Complaint Investigations

A process that is mandated by State and Federal Government

Presented by: Sharon Won

Health Facilities Evaluator Manager II

District Office Manager

Licensing and Certification, East Bay Office



Goal of this presentation

- To show how the investigation is pursued
- Who is responsible
- What regulations are used
- What is a “substantiated” complaint allegation
- What are the repercussions when a provider is out of compliance with a requirement

Complaint Investigations

The hierarchy of the State Agency:

- California Health and Human Services Agency - Diana Dooley, Secretary
- California Department of Public Health –Dr. Ron Chapman, Director
- Licensing and Certification (L&C)– Kathleen Billingsley, Chief Deputy Director
Interim Deputy Director - Jean Iacino
- Field Branch: 7 Regions
- District Office: 15 District Offices

How do you lodge a complaint?

- On-line, go to:
<https://hfcis.cdph.ca.gov/LongTermCare/ConsumerComplaint.aspx>
- A complete list of District Office phone numbers:
<http://www.cdph.ca.gov/programs/LnC/Pages/LnCContact.aspx>
- For example, the toll free phone number for the East Bay District Office (for Alameda and Contra Costa County licensed providers) is
(866) 247-9100

What kind of providers can L&C help you with?

❖ All Licensed and Certified Providers:

Hospitals

Nursing Homes

Home Health Agencies

Hospice

Clinics

Intermediate Care Facilities for the Intellectually
Disabled

Adult Day Health Care

End Stage Renal Disease (dialysis centers)

What providers can L&C NOT help you with?

- Providers licensed and overseen by Community Care Licensing for the California Department of Social Services
- <http://www.cclid.ca.gov/PG408.htm>
- **Children's Residential Facilities:** Group Homes, Foster Family Homes, Small Family Homes, Transitional Housing, Crisis Nursery, Adoption Agencies, Foster Family Agencies
- **Adult Residential Facilities:** (includes Social Rehabilitation Facilities)
- **Residential Care Facilities for the Elderly**
Assisted Living Facilities fall under this umbrella

Another provider not licensed by L&C

Home Care Businesses

- Businesses that offer only companionship, help with housekeeping/cooking/bathing. These providers hold a business license with a city or county.
- These businesses are not licensed to provide skilled care, such as administration of medications, blood sugar checks, or dressing changes.
- When you contract with one of these businesses, you are legally responsible for the care provided because you are considered the trainer of these privately employed persons.

Who is the Ombudsman?

- The Ombudsman is available to assist a complainant with less than serious matters of concern. The organization, staffed by volunteers and some paid administrative employees, can assist in Skilled Nursing Facilities and in Assisted Living. They serve an important role in advocating for resident rights and can witness an Advance Directive.

Alameda County Ombudsman

- Working Hours Line 510-638-6878
- After Hours Crisis Line
1-800-231-4024
- http://www.alamedasocialservices.org/public/services/elders_and_disabled_adults/ombudsman.cfm

Contra Costa Ombudsman Tel: 925-685-2070

- <http://www.ccombudsman.org/>

When you make your call to L&C to lodge a complaint

- Be prepared with a succinct summary of your concern.
- If you telephone, please be willing to give the L&C staff person your name and contact information.
- In this first phone call, the L&C staff person will ask you questions to clarify your concern.
- You will receive a written notice of the receipt of your complaint.



Your complaint is assigned for investigation

- A district office supervisor will assign your complaint to a nurse for investigation.
- If this is a nursing home complaint, unless the concern is immediately life-threatening, the **investigation must begin within 10 calendar days** of the notice to the district office (a State law). If this is a hospital complaint, the investigation is to begin 45 calendar days after receipt. In the event of a life-threatening concern, all such complaints must be investigated **within 24 hours**.
- Computer program tracking of the progression of the investigation is kept and can be viewed by L&C Headquarters as well as the Federal Centers for Medicare & Medicaid.

The nurse assigned to investigate your complaint will contact you before the investigation.

- This is why it is so important to provide your contact information when lodging the complaint.
- You will be asked if there is additional information to assist in the investigation.
- You will be invited to attend the investigation...NOTE...if you are not the legal responsible party you cannot review the resident's medical record. And you may only attend interviews with the resident...you may not attend interviews with facility staff or review facility documents. Please understand that this invitation is very short notice as the nurse must meet the time requirement to open and close an investigation.

How will the L&C nurse maintain the anonymity of the complainant?

- Upon arrival at the facility, the general topic of the complaint (but not the resident's or complainant's name) will be shared with the facility administrator.
- A list of resident names that have the same care risks as the resident in the complaint will be requested. Three residents (including the one in the complaint) will be chosen from that list for review.
- If you accompany the nurse during investigation, it is assumed that anonymity is lost.



What regulation resources will be used to determine non-compliance?

- Federal Code of Regulations
- State Title 22
- State Welfare and Institutions Code
- State Health and Safety Code
- The Federal State Operations Manual contains the required process for complaint investigations using Federal Code.
- The State Health and Safety Code and L&C Policy and Procedure Manual contains the required process for a complaint process mandated by the State of California.

What evidence resources will be used to determine non-compliance?

- **Observations:** of the resident and care as appropriate for the complaint concern.
- **Interviews:** with the resident, the family, facility staff and any other person who may be familiar with the circumstances of the resident.
- **Record review:** the resident's medical record, and facility documents.

?substantiated?

- A violation of a regulation = substantiated.
- A complaint allegation may have actually occurred (a substantiated event) but the event may not have been the result of a violation of a regulation...the investigation of the allegation did not prove a violation. There is no substantiated violation.
- The facility has the right to appeal violations in court...the case must be strong for a violation.

Does the investigation need to continue?

- If the L&C nurse can make a determination of compliance after this gathering of evidence, the nurse will hold an exit conference with the facility's administrator to inform of the results of the investigation. The L&C nurse may consult with the L&C supervisor to make this conclusion. Continued investigation may be needed.
- The L&C nurse will attempt to contact the complainant with the results of the investigation. The formal document, form 2567, that serves official and final notice to the facility, must be mailed 10 working days after the exit conference with the facility. If unable to contact the complainant within this time frame, the document will be mailed to the facility without a discussion with the complainant.

If additional investigation is necessary

- The L&C nurse may continue to gather information as is necessary to determine whether there is a violation of a regulation.

The notice of violation of a regulation

- The notice to the facility, on form 2567, is mailed to the facility 10 working days after the exit conference. The facility has 10 calendar days to formulate a plan of correction for a violation.
- The plan of correction, and supporting documentation, is reviewed by the L&C nurse and supervisor to ensure that it is acceptable.

What if the facility's violation caused actual, and perhaps, serious harm to a resident?

- A plan of correction must be developed, but, there will may also be monetary penalties.
- If a State law is violated, a State Citation is issued. There are 3 levels...B, A, and AA. All result in fines.
- If a Federal law is violated, a Federal deficient practice document is issued. The facility may be fined, denied Medicare payment for new, or all residents, or decertified from the Medicare program. These are much more serious penalties than the State citation process.
- Federal violations of a serious nature also impact the facility's Federal 5-Star rating. It is expected that due to the Health Care Initiative, facilities with poor 5-Star ratings will not be considered for Medicare admissions by insurance companies.
- <http://www.medicare.gov/nursinghomecompare/search.html>

Medicare.gov

The Official U.S. Government Site for Medicare

Medicare.gov



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Nursing Home Compare

Nursing Home Compare has detailed information about every Medicare and Medicaid-certified nursing home in the country

Revisits

- If a State or Federal violation has resulted in harm to a resident, a paper review of the plan of correction is not sufficient.
- An L&C nurse returns to the facility to continue investigation to see that the facility actually implemented the plan of correction and that the plan of correction was effective in removing the risk of harm to all residents.



It's QUESTION TIME!!