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Chapter 411@ DEPARTMENT OF HUMAN SERVICES, AGING AND PEOPLE WITH DISABILITIES AND DEVELOPMENTAL DISABILITIES

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Division 89@ NURSING FACILITIES/LICENSING - COMPLAINTS, INSPECTIONS, AND SANCTIONS

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Section 411-089-0140@ Letters of Determination

411-089-0140 Letters of Determination

Within 60 days of receipt by the Department of the investigation report, the Department shall issue a letter of determination.

(1)

CONTENT. The letter of determination shall: (a) Explain the nature of each allegation; (b) Include the date and time of each occurrence; (c) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated, or unable to substantiate; (d) For each substantiated allegation, state whether the violation was abuse or another rule violation; (e) For each substantiated allegation of abuse, explain the Department's determination of responsibility; (f) Include a copy of the complaint investigation report; (g) State that the complainant, any individual found responsible for abuse, and the facility have 10 days to provide additional or different information; and (h) Explain, when applicable, if sanctions (e.g., civil penalty, license revocation) are pursued, a formal appeal process shall be available.

(a)

Explain the nature of each allegation;

(b)

Include the date and time of each occurrence;

(c)

For each allegation, include a determination of whether the allegation is substantiated,

unsubstantiated, or unable to substantiate;

(d)

For each substantiated allegation, state whether the violation was abuse or another rule violation;

(e)

For each substantiated allegation of abuse, explain the Department's determination of responsibility;

(f)

Include a copy of the complaint investigation report;

(g)

State that the complainant, any individual found responsible for abuse, and the facility have 10 days to provide additional or different information; and

(h)

Explain, when applicable, if sanctions (e.g., civil penalty, license revocation) are pursued, a formal appeal process shall be available.

(2)

APPEAL RIGHTS, NURSING ASSISTANT. The letter of determination, in cases of substantiated abuse by a nursing assistant, shall explain the following: (a) The Department's intent to enter the finding of abuse into the Nursing Assistant Registry; (b) The nursing assistant may provide additional information for inclusion in the Nursing Assistant Registry if provided within 10 days; (c) The Nursing Assistant Registry; (d) The nursing assistant has 10 days to respond in writing with different or additional information, 30 days to request in writing a contested case hearing as provided in ORS 183.411 to 183.470, and the consequences of failure to respond; and (e) If the opportunity to request a contested case hearing expires without a request for hearing by the nursing

assistant, the nursing assistant shall be found responsible for the abuse and the finding shall be entered in the Nursing Assistant Registry.

(a)

The Department's intent to enter the finding of abuse into the Nursing Assistant Registry;

(b)

The nursing assistant may provide additional information for inclusion in the Nursing Assistant Registry if provided within 10 days;

(c)

The Nursing Assistant Registry;

(d)

The nursing assistant has 10 days to respond in writing with different or additional information, 30 days to request in writing a contested case hearing as provided in ORS 183.411 to 183.470, and the consequences of failure to respond; and

(e)

If the opportunity to request a contested case hearing expires without a request for hearing by the nursing assistant, the nursing assistant shall be found responsible for the abuse and the finding shall be entered in the Nursing Assistant Registry.

(3)

DISTRIBUTION. (a) The letter of determination shall be distributed to the facility, the complainant (if known), and the local APD or Type B AAA office; (b) The letter of determination shall be sent by certified mail or delivered in person to any nursing assistant found responsible for abuse. In the case of a nursing assistant, notice sent to the nursing assistant's last known address is sufficient to meet the requirements of this rule; (c) The letter of determination shall also be mailed to any health-related board or agency that certified or licensed an individual

determined to be responsible for abuse. However, if the party determined to be responsible is a nursing assistant, the letter may not be mailed to the State Board of Nursing until the nursing assistant has exhausted all his or her appeal rights; and (d) A copy of the letter of determination shall be placed in the Department's facility complaint file.

(a)

The letter of determination shall be distributed to the facility, the complainant (if known), and the local APD or Type B AAA office;

(b)

The letter of determination shall be sent by certified mail or delivered in person to any nursing assistant found responsible for abuse. In the case of a nursing assistant, notice sent to the nursing assistant's last known address is sufficient to meet the requirements of this rule;

(c)

The letter of determination shall also be mailed to any health-related board or agency that certified or licensed an individual determined to be responsible for abuse. However, if the party determined to be responsible is a nursing assistant, the letter may not be mailed to the State Board of Nursing until the nursing assistant has exhausted all his or her appeal rights; and

(d)

A copy of the letter of determination shall be placed in the Department's facility complaint file.

(4)

REVISION. (a) The Department may reinvestigate a complaint, issue a revised letter of determination, or both if the Department determines further information provided by the complainant, accused individual, or facility merits such action. (b)

If the Department issues a revised letter of determination, the letter shall be distributed to all individuals identified in section (3) of this rule.

(a)

The Department may reinvestigate a complaint, issue a revised letter of determination, or both if the Department determines further information provided by the complainant, accused individual, or facility merits such action.

(b)

If the Department issues a revised letter of determination, the letter shall be distributed to all individuals identified in section (3) of this rule.

(5)

FAILURE TO REQUEST HEARING OR TO APPEAR. (a) If the nursing assistant fails to request a contested case hearing in writing within 30 days of the letter of determination, or if the nursing assistant scheduled to attend the hearing fails to attend, the Department shall affirm the letter of determination and notify the State Board of Nursing of the Department's finding. The abuse finding shall be entered into the Nursing Assistant Registry. (b) If the nursing assistant is scheduled to appear at a contested case hearing, but fails to attend at the scheduled time, or within 15 minutes thereafter, the nursing assistant shall be considered to have waived the right to a hearing. The hearing may be rescheduled if: (A) A written request to reschedule the hearing is received by the Department within 10 days after the scheduled hearing; and (B) The causes for not attending at the scheduled time for the hearing and for not requesting a postponement of the hearing before the hearing were beyond the control of the nursing assistant.

(a)

If the nursing assistant fails to request a contested case hearing in writing within 30 days of the letter of determination, or if the nursing assistant scheduled to attend the

hearing fails to attend, the Department shall affirm the letter of determination and notify the State Board of Nursing of the Department's finding. The abuse finding shall be entered into the Nursing Assistant Registry.

(b)

If the nursing assistant is scheduled to appear at a contested case hearing, but fails to attend at the scheduled time, or within 15 minutes thereafter, the nursing assistant shall be considered to have waived the right to a hearing. The hearing may be rescheduled if: (A) A written request to reschedule the hearing is received by the Department within 10 days after the scheduled hearing; and (B) The causes for not attending at the scheduled time for the hearing and for not requesting a postponement of the hearing before the hearing were beyond the control of the nursing assistant.

(A)

A written request to reschedule the hearing is received by the Department within 10 days after the scheduled hearing; and

(B)

The causes for not attending at the scheduled time for the hearing and for not requesting a postponement of the hearing before the hearing were beyond the control of the nursing assistant.

(6)

JUDICIAL REVIEW. The nursing assistant found to be responsible for abuse shall be provided notice of the opportunity for judicial review pursuant to ORS 183.482. This notice shall accompany or be incorporated within the Department's final order regarding the nursing assistant's responsibility for abuse.