

64-13-14 Inspections and Investigations

14.1.

Regular Inspections. 14.1.1. The director shall make or cause to be made inspections by his or her authorized representatives as necessary to carry out the intent of W. Va. Code §§ 16-5C-1, et seq., and this rule. 14.1.2. All licensed nursing homes shall be inspected annually, or in accordance with the provisions of this rule, to determine the nursing homes' compliance with applicable statutes and rules. Nursing homes with the greatest number of deficiencies shall be investigated with greater frequency as determined by the director. 14.1.3. The director shall provide a nursing home with a written description of its deficiencies within 10 working days of the last day of the inspection.

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14.2.

Complaint Investigation. 14.2.1. Any person may register a complaint with the director alleging violation of applicable statutes and rules by a nursing home.

Nursing homes with the greatest number of deficiencies shall be investigated with greater frequency as determined by the director. 14.2.2. A complaint that the director determines is willfully intended to harass a nursing home or is without any reasonable basis shall not be investigated. The director shall notify a complainant presenting a complaint determined either as intended to harass a nursing home or as without reasonable basis that no further investigation will be conducted. 14.2.3.

The director shall conduct an unannounced inspection of the nursing home to determine the validity of the complaint. The director shall provide the nursing home with general notice of the substance of the complaint only at the time of the inspection. 14.2.4. The director shall conduct other investigations necessary to determine the validity of the complaint. 14.2.5. No later than 20 working days after investigating and completing a complaint, the director shall notify the complainant and the nursing home in writing of the results of the investigation. 14.2.6. The names of a complainant or of any person named in a complaint shall not be disclosed by the department without that person's written authorization. If a complaint becomes the subject of a judicial proceeding, nothing in this section shall be construed to restrict disclosure of information that would otherwise be disclosed in a judicial proceeding. 14.2.7. Before any complaint is disclosed to a nursing home or the public pursuant to the provisions of this rule, the director shall redact any information in the complaint that could reasonably identify the complainant or a resident. 14.2.8. A director shall make investigations of complaints involving

immediate jeopardy to resident health or safety within 24 hours of the date of receipt of the complaint. 14.2.8.a. A director shall make investigations of complaints involving harm that does not present immediate jeopardy, within 10 days of the date of the complaint. 14.2.8.b. A director shall make investigations of complaints involving no harm, but with potential for greater than minimal harm, that are not immediate jeopardy, within 45 days of the date of the complaint. 14.2.8.c. A director shall make investigations of complaints involving no harm with potential for minimal harm and all other complaints at the time of the next inspection. 14.2.9. If within 120 days of an inspection or a complaint investigation, a nursing home fails to comply with the requirements of this rule, the director shall inform all residents of the nursing home's non-compliance. 14.2.9.a. If the non-compliance results in an action against the license of the nursing home, the director shall notify residents of the time period during which residents may relocate if they wish prior to the deficient nursing home being reported to the Social Security Administration if the nursing home is certified under the Medicare or Medicaid programs. 14.2.9.b. The director shall provide all residents with a list of nursing homes and agencies to assist them in moving if they wish to relocate. 14.2.10. Upon written request, any person shall have the right to request the most recent and past state and federal inspection and complaint reports with the nursing home's plan of correction. The director shall treat any inspection or complaint report as public information from the time an acceptable plan of correction is submitted. Before releasing an inspection or complaint report considered to be public information, the director shall delete any confidential information regarding a resident that reasonably permits identification of the resident. The director shall make copies of all inspection reports available to the State Long-Term Care Ombudsman, the local office of adult protective services, and the Social Security

regional offices. 14.2.11. Within 210 days of an inspection or complaint investigation after which deficiencies are not timely corrected, the director shall send the name and address of the deficient nursing home to the appropriate regional office of the Social Security Administration and identify it as a deficient nursing home. 14.2.12. The director shall provide the State Long-Term Care Ombudsman with the following within 90 days: 14.2.12.a. A statement of deficiencies reflecting nursing home noncompliance; and 14.2.12.b. Reports of adverse actions imposed on a nursing home.

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A complaint that the director determines is willfully intended to harass a nursing home or is without any reasonable basis shall not be investigated. The director shall notify a complainant presenting a complaint determined either as intended to harass a nursing home or as without reasonable basis that no further investigation will be conducted.

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The director shall conduct other investigations necessary to determine the validity of the complaint.

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No later than 20 working days after investigating and completing a complaint, the

director shall notify the complainant and the nursing home in writing of the results of the investigation.

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The names of a complainant or of any person named in a complaint shall not be disclosed by the department without that person's written authorization. If a complaint becomes the subject of a judicial proceeding, nothing in this section shall be construed to restrict disclosure of information that would otherwise be disclosed in a judicial proceeding.

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A director shall make investigations of complaints involving no harm with potential for minimal harm and all other complaints at the time of the next inspection.

14.2.9.

If within 120 days of an inspection or a complaint investigation, a nursing home fails to comply with the requirements of this rule, the director shall inform all residents of the nursing home's non-compliance. 14.2.9.a. If the non-compliance results in an action against the license of the nursing home, the director shall notify residents of the time period during which residents may relocate if they wish prior to the deficient nursing home being reported to the Social Security Administration if the nursing home is certified under the Medicare or Medicaid programs. 14.2.9.b. The director shall provide all residents with a list of nursing homes and agencies to assist them in moving if they wish to relocate.

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Upon written request, any person shall have the right to request the most recent and

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14.3.

Dispute Resolution. The director shall offer a nursing home an opportunity for an informal dispute resolution process and an independent informal dispute resolution process so a nursing home may contest a cited deficiency.14.3.1. Informal Dispute

Resolution.14.3.1.a. Documentation for an informal dispute resolution shall be

submitted with, but separate from, the plan of correction for existing deficiencies.

14.3.1.b. The request for an informal dispute resolution shall be submitted at the time the plan of correction is submitted for existing deficiencies. 14.3.1.c. The director shall write policy and procedures addressing the manner in which an informal dispute resolution shall be conducted. 14.3.1.d. The policy and procedures for an informal dispute shall be available to the public upon written request.

14.3.1.e. If the director fails to complete an informal dispute resolution in a timely manner, it does not delay the effective date of any enforcement action against the nursing home. 14.3.1.f. If during the informal dispute resolution process a nursing home is successful in demonstrating that deficiencies should not have been cited, the director shall remove the deficiencies from the statement of deficiencies and rescind any enforcement action imposed solely as a result of those cited deficiencies.

14.3.1.g. All communications during an informal dispute resolution are confidential and cannot be used by or against the license or the director in the event a formal hearing takes place. 14.3.2. Independent Informal Dispute Resolution. The independent informal dispute resolution process shall be implemented as defined in W. Va. Code §§ 16-5C-1, et seq.

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