

135C.38 Inspections upon complaints.

1. a. Upon receipt of a complaint made in accordance with section 135C.37, the department or certified volunteer long-term care ombudsman shall make a preliminary review of the complaint. Unless the department or certified volunteer long-term care ombudsman concludes that the complaint is intended to harass a facility or a licensee or is without reasonable basis, the department or certified volunteer long-term care ombudsman shall make or cause to be made an on-site inspection of the health care facility which is the subject of the complaint within the time period determined pursuant to the following guidelines, which period shall commence on the date of receipt of the complaint:

(1) For nursing facilities, an on-site inspection shall be initiated as follows:

(a) Within two working days for a complaint determined by the department or certified volunteer long-term care ombudsman to be an alleged immediate jeopardy situation.

(b) Within ten working days for a complaint determined by the department or certified volunteer long-term care ombudsman to be an alleged high-level, nonimmediate jeopardy situation.

(c) Within forty-five calendar days for a complaint determined by the department or certified volunteer long-term care ombudsman to be an alleged nonimmediate jeopardy situation, other than a high-level situation.

(2) For all other types of health care facilities, an on-site inspection shall be initiated as follows:

(a) Within two working days for a complaint determined by the department or certified volunteer long-term care ombudsman to be an alleged immediate jeopardy situation.

(b) Within twenty working days for a complaint determined by the department or certified volunteer long-term care ombudsman to be an alleged high-level, nonimmediate jeopardy situation.

(c) Within forty-five calendar days for a complaint determined by the department or certified volunteer long-term care ombudsman to be an alleged nonimmediate jeopardy situation, other than a high-level situation.

b. The complaint investigation shall include, at a minimum, an interview with the complainant, the alleged perpetrator, and the victim of the alleged violation, if the victim is able to communicate, if the complainant, alleged perpetrator, or victim is identifiable, and if the complainant, alleged perpetrator, or victim is available. Additionally, witnesses who have knowledge of facts related to the complaint shall be interviewed, if identifiable and available. The names of witnesses may be obtained from the complainant or the victim. The files of the facility may be reviewed to ascertain the names of staff persons on duty at the time relevant to the complaint. The department shall apply a preponderance of the evidence standard in determining whether or not a complaint is substantiated. For the purposes of this subsection, “*a preponderance of the evidence standard*” means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true. “*A preponderance of the evidence standard*” does not require that the investigator personally witnessed the alleged violation.

c. The department may refer to the certified volunteer long-term care ombudsman of a facility any complaint received by the department regarding that facility, for initial evaluation and appropriate action by the certified volunteer long-term care ombudsman.

2. a. The complainant shall be promptly informed of the result of any action taken by the department or certified volunteer long-term care ombudsman in the matter. The complainant shall also be notified of the name, address, and telephone number of the designated protection and advocacy agency if the alleged violation involves a facility with one or more residents with developmental disabilities or mental illness.

b. Upon conclusion of the investigation, the department shall notify the complainant of the results. The notification shall include a statement of the factual findings as determined by the investigator, the statutory or regulatory provisions alleged to have been violated, and a summary of the reasons for which the complaint was or was not substantiated.

c. The department shall mail the notification to the complainant without charge. Upon the request of the complainant, the department shall mail to the complainant, without charge, a

copy of the most recent final findings regarding compliance with licensing requirements by the facility against which the complaint was filed.

d. A person who is dissatisfied with any aspect of the department's handling of the complaint may contact the office of long-term care ombudsman, or may contact the protection and advocacy agency designated pursuant to section 135C.2 if the complaint relates to a resident with a developmental disability or a mental illness.

3. An inspection made pursuant to a complaint filed under section 135C.37 need not be limited to the matter or matters included in the complaint. However, the inspection shall not be a general inspection unless the complaint inspection coincides with a scheduled general inspection or unless in the course of the complaint investigation a violation is evident to the inspector. Upon arrival at the facility to be inspected, the inspector shall show identification to the person in charge of the facility and state that an inspection is to be made, before beginning the inspection. Upon request of either the complainant or the department or certified volunteer long-term care ombudsman, the complainant or the complainant's representative or both may be allowed the privilege of accompanying the inspector during any on-site inspection made pursuant to this section. The inspector may cancel the privilege at any time if the inspector determines that the privacy of any resident of the facility to be inspected would otherwise be violated. The protection and dignity of the resident shall be given first priority by the inspector and others.

4. If upon an inspection of a facility by its certified volunteer long-term care ombudsman pursuant to this section, the certified volunteer long-term care ombudsman advises the department of any circumstance believed to constitute a violation of this chapter or of any rule adopted pursuant to it, the certified volunteer long-term care ombudsman shall similarly advise the facility at the same time. If the facility's licensee or administrator disagrees with the conclusion of the certified volunteer long-term care ombudsman regarding the supposed violation, an informal conference may be requested and if requested shall be arranged by the department as provided in section 135C.42 before a citation is issued. If the department thereafter issues a citation pursuant to the certified volunteer long-term care ombudsman's finding, the facility shall not be entitled to a second informal conference on the same violation and the citation shall be considered affirmed. The facility cited may proceed under section 135C.43 if it so desires.

[C77, 79, 81, §135C.38]

87 Acts, ch 234, §430; 89 Acts, ch 241, §4; 91 Acts, ch 107, §5, 6; 99 Acts, ch 129, §7, 8; 2000 Acts, ch 1180, §2; 2007 Acts, ch 93, §2; 2010 Acts, ch 1062, §2; 2013 Acts, ch 18, §12 – 14

Referred to in §135C.16, 135C.39

[T] Subsection 1, paragraphs a and c amended

[T] Subsection 2, paragraphs a and d amended

[T] Subsections 3 and 4 amended