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**CHAPTER 38: RESIDENTIAL OPTIONS WAIVER**

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**SECTION 38.11: INCIDENTS, ACCIDENTS AND COMPLAINTS**

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**INCIDENTS, ACCIDENTS AND COMPLAINTS**

The support coordination agency and direct service provider are responsible for ensuring the health and safety of the beneficiary. Support coordination and direct service staff must report all incidents, accidents, or suspected cases of abuse, neglect, exploitation, or extortion to the on-duty supervisor immediately and as mandated by law to the appropriate agency. Reporting an incident only to a supervisor does not satisfy the legal requirement to report. The supervisor is responsible for ensuring that a report or referral is made to the appropriate agency.

All suspected cases of abuse (physical, mental, and/or sexual), neglect, exploitation, or extortion must be reported to the appropriate authorities. (Refer to Appendix C for contact information).

If the beneficiary needs emergency assistance, the worker shall call 911 or the local law enforcement agency.

Any other circumstances that place the beneficiary's health and well-being at risk should also be reported.

Support coordination agencies and direct service providers are responsible for documenting and maintaining records of **all** incidents and accidents involving the beneficiary. The Office for Citizens with Developmental Disabilities' (OCDD) *Critical Incident Reporting, Tracking and Follow-up Activities for Waiver Services* procedures must be followed for all reporting, tracking, and follow-up activities of all critical incidents. Non-compliance shall result in administrative actions as indicated in this document. (See Appendix D for information on where to obtain a copy of this document).

**Note:** It is the policy of the Louisiana Department of Health (LDH), OCDD that all critical incidents for home and community-based services (HCBS) be reported, investigated and tracked. The statewide incident management system **MUST** be used for **ALL** critical incident reporting.

**Internal Complaint Policy**

Beneficiaries must be able to file a complaint regarding his/her services without fear of reprisal. The provider shall have a written policy to handle beneficiary complaints. In order to ensure that the complaints are efficiently handled, the provider shall comply with the following procedures:

1. Each provider shall designate an employee to act as a complaint coordinator to investigate complaints. The complaint coordinator shall maintain a log of all complaints received. The complaint log shall include the date the complaint was

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- made, the name and telephone number of the complainant, nature of the complaint, and resolution of the complaint;
2. If the complaint is verbal, the provider staff member receiving the complaint must obtain and send all pertinent information in writing to the provider complaint coordinator. If the beneficiary completes the complaint form, he/she will be responsible for sending the form to the provider complaint coordinator;
  3. The complaint coordinator shall send a letter to the complainant acknowledging receipt of the complaint **within five working days**;
  4. The complaint coordinator must thoroughly investigate each complaint. The investigation includes, but is not limited to, gathering pertinent facts from the beneficiary, the personal representative, the worker, and other interested parties. These contacts may be either in person or by telephone. The provider is encouraged to use all available resources to resolve the complaint at this level and shall include the on-site program manager. For issues involving medical or quality of care issues, the on-site program manager must sign the resolution;
  5. The provider's administrator or designee must inform the beneficiary and/or the personal representative in writing **within ten working days** of receipt of the complaint, the results of the internal investigation; and
  6. If the beneficiary is dissatisfied with the results of the internal investigation regarding the complaint, he/she may continue the complaint resolution process by contacting the appropriate ~~Human Services Authority or District~~local governing entity (LGE) in writing, or by telephone.

If the complainant's name and address are known, the ~~Human Services Authority or District~~LGE will notify the complainant **within two working days** that the complaint has been received and action on the complaint is being taken.

**Complaint Disclosure Statement**

~~La.~~Louisiana R.S. 40:2009.13 – 40:2009.21 sets standards for identifying complainants during investigations in nursing homes. The Bureau is mandated to use these standards for use within the Home and Community-Based Services waiver programs. When the substance of the complaint is furnished to the service provider, it shall not identify the complainant or the beneficiary unless he/she consents in writing to the disclosure. If the disclosure is considered essential to the investigation or if the investigation results in judicial proceeding, the complainant shall be given the opportunity to withdraw the complaint.

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The OCDD may determine when the complaint is initiated that a disclosure statement is necessary. If a Complainant Disclosure Statement is necessary, the complainant must be contacted and given an opportunity to withdraw the complaint.

If the complainant still elects to file the complaint, the OCDD will mail or FAX the disclosure form to the complainant with instructions to return it to the OCDD State Office.

**Definition of Related Terms Regarding Incidents and Complaints**

The following definitions are used in the incident and complaint process:

1. **Complaint** - an allegation that an event has occurred or is occurring and has the potential for causing more than minimal harm to a beneficiary (La. R.S. 40:2009.14);
2. **Minimal harm** - is an incident that causes no serious temporary or permanent physical or emotional damage and does not materially interfere with the beneficiary's activities of daily living. (La. R.S. 40:2009.14);
3. **Trivial report** - is a report of an allegation that an incident has occurred to a beneficiary or that causes no physical or emotional harm and has no potential for causing harm to the beneficiary. (La. R.S. 40:2009.14);
4. **Allegation of noncompliance** - is an allegation that an event has occurred or is occurring that has the potential for causing no more than minimal harm to a beneficiary. (La. R.S. 40:2009.14);
5. **Abuse** - is the infliction of physical or mental injury on an adult by other parties, including, but not limited to, such means as sexual abuse, abandonment, isolation, exploitation, or extortion of funds, or other things of value, to such an extent that his health, self-determination, or emotional well-being is endangered. (La. R.S. 15:1503);
6. **Exploitation** - is the illegal or improper use or management of an aged person's or disabled adult's funds, assets, or property, or the use of an aged person's or disabled adult's power of attorney or guardianship for one's own profit or advantage. (La. R.S. 15:1503);
7. **Extortion** - is the acquisition of a thing of value from an unwilling or reluctant adult by physical force, intimidation, or abuse of legal or official authority. (La.

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R.S. 15:1503);

8. **Neglect** - is the failure, by a caregiver responsible for an adult's care or by other parties, to provide the proper or necessary support or medical, surgical, or any other care necessary for his well-being. No adult who is being provided treatment in accordance with a recognized religious method of healing in lieu of medical treatment shall for that reason alone be considered to be neglected or abused. (La. R.S. 15:1503);
9. **Self-neglect** - is the failure, either by the adult's action or inaction, to provide the proper or necessary support or medical, surgical, or any other care necessary for his own well-being. No adult who is being provided treatment in accordance with a recognized religious method of healing in lieu of medical treatment shall for that reason alone be considered to be self-neglected. (La. R.S. 15:1503);
10. **Sexual abuse** - is any sexual activity between a beneficiary and staff without regard to consent or injury; any non-consensual sexual activity between a beneficiary and another person; or any sexual activity between a beneficiary and another beneficiary or any other person when the beneficiary lacks the capacity to give consent. Sexual activity includes, but is not limited to kissing, hugging, stroking, or fondling with sexual intent; oral sex or sexual intercourse; insertion of objects with sexual intent; request, suggestion, or encouragement by another person for the beneficiary to perform sex with any other person when beneficiary is not competent to refuse;
11. **Disabled person** - is a person with a mental, physical, or developmental disability that substantially impairs the person's ability to provide adequately for his/her own care or protection; and
12. **Incident** - any situation involving a beneficiary that is classified in one of the categories listed in this section, or any category of event or occurrence defined by OCDD as a critical event, and has the potential to impact the beneficiary or affect delivery of waiver services.