WEST VIRGINIA CODE: §16-5L-10

§16-5L-10. Investigation of complaints.

(a) Upon receipt of a complaint filed on behalf of a resident, or on his or her own initiative, a state or regional long-term care ombudsman shall investigate any act, practice, policy or procedure of any long-term care facility or government agency which affects the health, safety, welfare or rights of any resident.

(b) Investigative activities of the state or regional long-term care ombudsman shall include, but shall not be limited to: Information gathering, mediation, negotiation, informing parties of the status of the investigation, notification to any aggrieved party of alternative processes, reporting of suspected violations to a licensing or certifying agency, and the reporting of suspected criminal violations to the appropriate authorities.

(c) The state or regional long-term care ombudsman need not investigate any complaint upon determining that:

(1) The complaint is trivial, frivolous, vexatious or not made in good faith;

(2) The complaint has been too long delayed to justify present investigation;

(3) The resources available, considering the established priorities, are insufficient for an adequate investigation;

(4) The matter complained of is not within the investigatory authority of the long-term care ombudsman program; or

(5) A real or apparent conflict of interest exists and no other ombudsman is available to investigate the complaint in an impartial manner.

If a determination is made by a regional long-term care ombudsman not to investigate any complaint, then the complaint shall be referred to the state long-term care ombudsman who shall make a final decision as to whether the matter warrants further investigation.

(d) State and regional long-term care ombudsmen may institute actions on behalf of residents to obtain injunctive and declaratory relief, but not damages. In order to enable ombudsman to bring such actions, the Director of the Office of Health Facility Licensure and Certification shall either:

(1) Establish an administrative hearing process under the procedures for contested cases defined at article five, chapter twenty-nine-a of this code to be available to any state or regional ombudsmen bringing an action on behalf of a resident against a long-term care facility or governmental agency; or

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(2) Ensure that state and regional ombudsmen have sufficient access to legal counsel to bring actions on behalf of residents in civil court: *Provided*: That nothing in this subsection shall be construed to prevent a resident of a long-term care facility from filing directly, on his or her own behalf, a suit for relief of any sort in any state or federal court.

(e) The state commission on aging and other appropriate state governmental agencies shall establish and implement cooperative agreements for receiving, processing, responding to and resolving complaints involving state governmental agencies under the provisions of this section.

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