



Ohio Revised Code Section 3721.23 Investigations.

Effective: October 16, 2009

Legislation: House Bill 1 - 128th General Assembly

(A) The director of health shall receive, review, and investigate allegations of abuse or neglect of a resident or misappropriation of the property of a resident by any individual used by a long-term care facility or residential care facility to provide services to residents.

(B) The director shall make findings regarding alleged abuse, neglect, or misappropriation of property after doing both of the following:

- (1) Investigating the allegation and determining that there is a reasonable basis for it;
- (2) Giving notice to the individual named in the allegation and affording the individual a reasonable opportunity for a hearing.

Notice to the person named in an allegation shall be given and the hearing shall be conducted pursuant to rules adopted by the director under section 3721.26 of the Revised Code. For purposes of conducting a hearing under this section, the director may issue subpoenas compelling attendance of witnesses or production of documents. The subpoenas shall be served in the same manner as subpoenas and subpoenas duces tecum issued for a trial of a civil action in a court of common pleas. If a person who is served a subpoena fails to attend a hearing or to produce documents, or refuses to be sworn or to answer any questions, the director may apply to the common pleas court of the county in which the person resides, or the county in which the long-term care facility or residential care facility is located, for a contempt order, as in the case of a failure of a person who is served a subpoena issued by the court to attend or to produce documents or a refusal of such person to testify.

(C)(1) If the director finds that an individual used by a long-term care facility or residential care facility has neglected or abused a resident or misappropriated property of a resident, the director shall notify the individual, the facility using the individual, and the attorney general, county prosecutor, or other appropriate law enforcement official. The director also shall do the following:



(a) If the individual is used by a long-term care facility as a nurse aide, the director shall, in accordance with section 3721.32 of the Revised Code, include in the nurse aide registry established under that section a statement detailing the findings pertaining to the individual.

(b) If the individual is a licensed health professional used by a long-term care facility or residential care facility to provide services to residents, the director shall notify the appropriate professional licensing authority established under Title XLVII of the Revised Code.

(c) If the individual is used by a long-term care facility and is neither a nurse aide nor a licensed health professional, or is used by a residential care facility and is not a licensed health professional, the director shall, in accordance with section 3721.32 of the Revised Code, include in the nurse aide registry a statement detailing the findings pertaining to the individual.

(2) A nurse aide or other individual about whom a statement is required by this division to be included in the nurse aide registry may provide the director with a statement disputing the director's findings and explaining the circumstances of the allegation. The statement shall be included in the nurse aide registry with the director's findings.

(D)(1) If the director finds that alleged neglect or abuse of a resident or misappropriation of property of a resident cannot be substantiated, the director shall notify the individual and expunge all files and records of the investigation and the hearing by doing all of the following:

(a) Removing and destroying the files and records, originals and copies, and deleting all index references;

(b) Reporting to the individual the nature and extent of any information about the individual transmitted to any other person or government entity by the director of health;

(c) Otherwise ensuring that any examination of files and records in question show no record whatever with respect to the individual.

(2)(a) If, in accordance with division (C)(1)(a) or (c) of this section, the director includes in the



nurse aide registry a statement of a finding of neglect, the individual found to have neglected a resident may, not earlier than one year after the date of the finding, petition the director to rescind the finding and remove the statement and any accompanying information from the nurse aide registry. The director shall consider the petition. If, in the judgment of the director, the neglect was a singular occurrence and the employment and personal history of the individual does not evidence abuse or any other incident of neglect of residents, the director shall notify the individual and remove the statement and any accompanying information from the nurse aide registry. The director shall expunge all files and records of the investigation and the hearing, except the petition for rescission of the finding of neglect and the director's notice that the rescission has been approved.

(b) A petition for rescission of a finding of neglect and the director's notice that the rescission has been approved are not public records for the purposes of section 149.43 of the Revised Code.

(3) When files and records have been expunged under division (D)(1) or (2) of this section, all rights and privileges are restored, and the individual, the director, and any other person or government entity may properly reply to an inquiry that no such record exists as to the matter expunged.