**Section 310.60 Investigations**

a) Policy

All investigations instituted by a regional authority shall be conducted in a timely, thorough, impartial manner in order to assess the action or omission complained of and, if appropriate, to make recommendations based upon that assessment.

b) Jurisdiction

Upon recommendation of the Commission's HRA Committee and at a meeting of which Commissioners have received proper notification and with a quorum present, the Commission may vote to authorize a regional authority to initiate one or more investigations into alleged rights violations occurring outside its regional boundaries. In the absence of such express authorization, a regional authority may conduct an investigation into the violations of an eligible person's rights only if the violation is alleged to have occurred within its regional boundaries.

c) Approved Investigatory Methods

A regional authority may invoke any or all of the following investigative tools:

1) Site Visits, if the service provider is given advance notice of the visit except when there is reason to believe evidence may be concealed or destroyed;

2) Interviews with relevant parties;

3) Analysis of pertinent information;

4) Public Hearings:

5) Referral

A) Referral to an appropriate federal, state or local governmental unit to undertake or to assist in the investigation. Any relevant information obtained through such referral shall be included in the regional authority's final report.

B) The chairperson or regional authority member(s) assigned to a case may assign the regional coordinator to assist the member(s) in the investigation.

d) Hearings

A regional authority may conduct hearings when it is necessary to compel testimony or the production of documents relevant to an investigation by persons, service providers or agencies who otherwise decline or when more time or resources would be expended to collect facts relevant to an investigation through the other investigatory methods specified in subsection (c) supra. The purpose of a public hearing is to obtain information; the regional authority shall not take any formal action at a public hearing. Advance notice of hearings will be made to the Program Director 24 hours after the regional authority makes the decision to hold a hearing.

1) Calling a Hearing

A hearing may be called upon only a majority vote of a the members in attendance and constituting a quorum at a regularly scheduled or special meeting.

2) Notice of Hearing

Notice shall be given of the date, time, location and subject of the hearing in the same manner provided in Section 310.40(f) of this Part.

3) Witnesses

A regional authority may request any person with relevant information to testify at a hearing.

A) Requesting Witnesses to Appear

Witnesses shall be invited either by telephone, letter or personal invitation to attend. If informal methods are unsuccessful or a majority of a quorum determines that insufficient time exists to employ informal methods, then a witness may be subpoenaed pursuant to Section 310.60(f) of this Part.

B) Documents

A witness may be requested to bring with him any relevant documents provided that confidentiality requirements are met.

4) Conduct of Hearings

A) Hearings

All hearings conducted by a regional authority shall be open to the public except those parts of hearings at which the disclosure of information is contrary to Section 310.80 of this Part.

B) The hearing shall be conducted by such member or members as the regional authority may designate;

C) The hearing shall be conducted as an objective, informal, fact finding process;

D) Any questioning of witnesses shall be conducted by regional authority members;

E) Each witness shall have the right to be accompanied by a family member, friend or other representative, including counsel if desired, who shall be permitted to advise and counsel the witness at any time;

F) Each witness shall be permitted to make any oral statement he wishes at the conclusion of his testimony within reasonable time limitations;

G) Each witness shall be permitted to submit any type of written statement or document for the regional authority's consideration;

H) Prior to a hearing, any person may submit his own name or the name of other persons having information relevant to the investigation to the regional authority for consideration as possible witnesses; however, the decision as to who will be called as witnesses shall be in the sole discretion of the regional authority member or members thereof designated to conduct the hearing;

I) An accurate record, which may be taken by tape recording or other appropriate means, may be kept of the proceedings of any hearing. In any event, a summary or minutes of the proceedings shall be prepared and kept by the regional authority. Upon written request to the chairperson of the regional authority, a witness shall be furnished at a reasonable charge with a transcript of his testimony, if such transcript was made. The record need not be transcribed or printed, except as provided herein, unless the regional authority shall so determine; The witness may listen to the tape at the regional authority's offices, or purchase a duplicate tape at cost.

J) Any decisions to be made as to the mode of proceeding not covered by these Rules shall be the responsibility of the members designated by the regional authority to preside over such hearing;

K) All hearings shall be held in facilities accessible to the mentally and physically impaired.

e) Obtaining records

1) A regional authority will first attempt to obtain records containing data that identifies eligible persons with the written authorization of the eligible person, his guardian or other legal representative.

2) If written authorizations are not secured or an insufficient number of records are obtainable with written authorizations, then a regional authority shall request the production of masked records as provided under Section 18 of the Act and Section 8 of the Mental Health Developmental Disability Confidentiality Act.

3) Only if masked records do not permit the collection of facts relevant to an investigation will a regional authority request to inspect and copy records containing data that identifies an eligible person without written authorization as allowed under Section 18 of the Act and Section 8 of the Mental Health and Developmental Disabilities Confidentiality Act.

f) Subpoenas

 A regional authority may compel by subpoena a witness' attendance when informal attempts to obtain such attendance are unsuccessful or impractical as set forth in Section 310.60(d)(3)(A) of this Part. All subpoenas shall be prepared by the Commission's General Counsel or his designee to ensure proper legal form.

1) Subpoena Duces Tecum

Any subpoena requiring the attendance and testimony of a witness may also require that documents within the possession or control of that person be produced at the hearing.

2) Time of Service

Subpoenas shall be served upon a person personally or by certified mail. Unless the regional authority makes a finding that a witness may leave the jurisdiction or be unavailable in the future requiring the immediate testimony of a witness, then a subpoena personally served shall be served no less than seven days prior to the date for appearance and if served by mail, postmarked no later than ten days prior to the date for appearance.

3) Enforcement

Whenever any person knowingly fails or refuses to comply with a subpoena issued in accordance with these rules, a regional authority may request the Director to take such action or institute judicial proceedings to enforce the subpoena as necessary to secure compliance with the terms of the subpoena.

g) Notification of Status of Investigation

1) Acceptance

 If the regional authority decides to investigate a complaint, it shall notify the service provider of its intention to investigate the complaint unless it believes that the advance notice will unduly hinder the investigation or make it ineffectual. When a regional authority notifies the service provider of its intention to investigate, it shall send the service provider a written notice which states a belief summary of the complaint and the number assigned to it.

2) The service provider shall be given at least ten days prior written notice of each public meeting at which the service provider's complaint is on the agenda. Such notification shall also state that the service provider will be given an opportunity to comment.

3) Confidentiality

Whenever a complaint is reviewed at a regular or special HRA meeting, the name of the service provider shall not be made public until

A) the complaint has been officially accepted and

B) the facility has been notified of the investigation.

4) Status

During the course of an investigation, upon the request of the complainant, the provider or any eligible person, the regional authority or regional coordinator shall inform them of actions taken in the course of the investigation. Such status may be discussed at any regular or special meeting of the regional authority subject to Sections 310.70(c) and (d) of this Part. Any matter so discussed shall be considered discussion only and shall not be binding or regarded as a finding or recommendation of the regional authority.

5) Program Director

During the course of an investigation, the regional authority or regional coordinator shall inform the Program Director monthly of the status of an investigation.

(Source: Amended at 10 Ill. Reg. 7778, effective April 30, 1986)