**Section 100.6 Hearings Requested by Complainants** **Pursuant to Section 3-702 of the Nursing Home Care Act, Section 3-704 of the MC/DD Act, or Section 3-704 of the ID/DD Community Care Act**

Pursuant to Section 3-702(g) of the NHCA, Section 3-704 of the MC/DD Act, and Section 3-704 of the ID/DD Act, *a complainant who is dissatisfied with the determination or investigation* of his or her complaint *by the Department* *may request a hearing.* (Section 3-702(g) of the NHCA, Section 3-704 of the MC/DD Act, and Section 3-704 of the ID/DD Act). Any complainant requesting a hearing shall be deemed to have consented in writing to disclosure of their name and may further agree to accept service of all documents in this matter by email, provided that the complainant has an email address and consents to receiving service by email.

a) The parties to administrative hearing pursuant to this Section are the Department and the Complainant. *The facility shall be given notice of any such hearing and may participate in the hearing as a* third *party* (Section 3-702(g) of the NHCA, Section 3-704 of the MC/DD Act, and Section 3-704 of the ID/DD Act). A request to participate as a third party must be filed in accordance with Section 100.3(b)(5) of this Part.

b) For the purposes of this Section, a Complainant is an individual who has filed a complaint pursuant to the NHCA, the MC/DD Act, Section 3-704 of the MC/DD Act, and Section 3-704 of the ID/DD Act. If the individual filing the complaint indicates that she or he is acting as the agent of an organization or another individual, and so requests, the organization or other individual will be the Complainant for the purposes of this Section. In that case, the individual who acted as agent for the organization or other individual will be a "referring agent". Unless objected to by the Complainant, the referring agent shall be entitled to receive Notice of Complaint Determination and any request for hearing made pursuant to this Part.

c) In accordance with Sections 3-703 through 3-712 of the NHCA, Section 3-704 of the MC/DD Act, and Section 3-704 of the ID/DD Act, the Director shall designate an administrative law judge to conduct hearings requested by dissatisfied Complainants. All hearings shall be conducted pursuant to the provisions of this Part.

d) The Department shall not release or produce copies of any record containing the personal health information of any individual to a Complainant, as defined in this Section, unless the Complainant possesses legal authority under a written power of attorney, guardianship, certified copy of a court order, or other written HIPAA compliant authorization.

e) Dissatisfied Complainants pursuant to this Section shall have the opportunity to contest the adequacy of the Department's investigation and its determination as to whether the complaint was valid, invalid, or undetermined and also the Department's determination as to whether to issue any violation as a result of the determination. Whenever "determination" is used in this Section, it shall include any investigation resulting in the determination.

f) Dissatisfied Complainants pursuant to this Section do not have the opportunity to contest any other determinations or decisions of the Department regarding the adequacy and completeness of the investigation.

g) Nothing contained in this Section shall be deemed to entitle a dissatisfied Complainant to additional hearings or to a rehearing of a case that has already been the subject of a formal administrative hearing or a Final Order.

h) Complainants pursuant to this Section shall carry the burden to prove, by a preponderance of the evidence, that the aforesaid determinations of the Department were improper.

i) At the conclusion of the hearing, the administrative law judge shall prepare a report in accordance with Section 100.15, and make a recommendation to the Director specifying whether the complaint should be reinvestigated and/or any invalid or undetermined finding should be changed to a valid finding or the Department should reconsider the failure to cite a facility with any violation.

(Source: Amended at 46 Ill. Reg. 8158, effective May 5, 2022)