

TOOL: Abuse, Neglect and Exploitation Policy and Procedures Checklist

483.12: Freedom from abuse, neglect and exploitation

The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation, including freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident's medical symptoms.

Purpose and Intent of 483.12

To develop a comprehensive Abuse Prevention, Management and Reporting Program encompassing individual residents, facility resident population, resident representatives, facility staff, vendors and/or contractors as well as the facility environment.

To assure that the individual facility has followed all the required steps for the development and implementation of a comprehensive Abuse Prevention Management and Reporting Program in accordance with the new Requirements of Participation (RoP), the following checklist captures specific action items for successful completion. The left column represents the actual Requirements of Participation (RoP) language and the right column indicates specific leadership strategies for successful completion and implementation of the revised RoP. When preparing updated policies and procedures, it is recommended to include actual RoP language as applicable.

Suggested Checklist: Comprehensive Abuse Prevention Management and Reporting Program and Policy and Procedure

Regulation	Recommended Action
F660 Free from Abuse and Neglect, F602 Free from Abuse/Exploitation, and F603 Free from Involuntary Seclusion §483.12(a) The facility must— §483.12(a)(1) Not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;	☐ Review, revise and institute an Abuse Policy and Procedure in accordance with the new RoP. See regulatory requirements as well as template policy and procedure. ☐ Update all definitions and new terms in policies, procedures and education: abuse, verbal abuse, sexual abuse, physical abuse, mental abuse, involuntary seclusion, exploitation, misappropriation, mistreatment, neglect, injuries of unknown origin, immediately, resident representative, covered individual, person-centered care, serious bodily harm.

	☐ Update Abuse Prevention Postings outlining definitions, reporting and requirements. Update postings in accordance to the Elder Justice Act.
F604 Right to be Free from Physical Restraints and F605 Right to be Free from Chemical Restraints §483.12(a) The facility must— §483.12(a)(2) Ensure that the resident is free from physical or chemical restraints imposed for purposes of discipline or convenience and that are not required to treat the resident’s medical symptoms. When the use of restraints is indicated, the facility must use the least restrictive alternative for the least amount of time and document ongoing re-evaluation of the need for restraints.	☐ Review and update the Policy and Procedure for the use of Physical Restraints ☐ Review and update the Resident One to One Policy and Procedure as applicable. ☐ Review the Restraint/Device Assessment and re-evaluation Form. Review and revise the Restraint/Device Care Plan template and revise as needed. ☐ Review and update the Policy and Procedure for the use of Psychotropic Medications/Chemical Restraints outlining use, alternatives and reduction plans ☐ Review and update the Policy on Gradual Dose Reductions for Psychotropic Medications/Chemical Restraints. ☐ Review and update behavioral assessment and management policies and procedures.
F606 Not Employ Engage Staff with Adverse Actions §483.12(a) The facility must— §483.12(a)(3) Not employ or otherwise engage individuals who— (i) Have been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law; (ii) Have had a finding entered into the State nurse aide registry concerning abuse, neglect, exploitation, mistreatment of residents or misappropriation of their property; or (iii) Have a disciplinary action in effect against his or her professional license by a state licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property. §483.12(a)(4) Report to the State nurse aide registry or licensing authorities any knowledge it has of actions by a court of law against an	☐ Review policies and procedures for Pre-Employment Screening (Background checks and verification of certification, licensure, etc.) prior to employment and ongoing verification for all existing employees ☐ Review the process for documenting verification with the State nurse aide registry that nurse aides have no findings of abuse, neglect, exploitation, mistreatment or misappropriation ☐ Review the process for documenting verification with the State Licensing Board of valid professional licensure that there is no disciplinary action in effect because of a finding of abuse, neglect, exploitation, mistreatment or misappropriation for new and existing employees ☐ Review the process for verification of background checks for agency staff. ☐ Review the process for documenting how and when the facility will notify the State nurse aide



employee, which would indicate unfitness for service as a nurse aide or other facility staff.	registry or licensing authorities with any knowledge it has of actions by a court of law indicating unfitness for service as a nurse aide or licensed professional.
F607 Develop and Implement Abuse, Neglect, Misappropriation Policies §483.12(b) The facility must develop and implement written policies and procedures that: §483.12(b)(1) Prohibit and prevent abuse, neglect, and exploitation of residents and misappropriation of resident property, §483.12(b)(2) Establish policies and procedures to investigate any such allegations, and §483.12(b)(3) Include training as required at paragraph §483.95, §483.12(b)(4) Establish coordination with the QAPI program required under §483.75. [§483.12(b)(4) will be implemented beginning November 28, 2019 (Phase 3)]	☐ Abuse Policy and Procedure outlining all elements identified in 483.12(4)(b) Provide staff training on the revised Abuse Policy and Procedure. Update training for orientation, annual, agency staff, as needed. ☐ Conduct updated training for Management Personnel on supervising and monitoring for abuse per the new RoP requirements as indicated. ☐ Ensure evidence of training for Facility Management, Front-Line Staff and Residents and/or Resident Representatives about prohibition and prevention of retaliation as defined at section 1150B(d)(1) and (2) of the Act. ☐ Documentation of education about the facility's comprehensive dementia program ☐ Ensure a process for resident assessments to determine risk and/or vulnerability to include: • Preadmission assessment • Vulnerability Assessment, including Wandering and Elopement • Behavior Assessment • Cognitive Assessment • Comprehensive dementia assessment ☐ Review the policy and procedure for Resident to Resident Altercation ☐ Posting of notice of employee rights as defined at Section 1150B(d)(3) of the Act in a conspicuous place in the facility ☐ Incorporate Resident Abuse Prevention into QAPI program. Update QAPI P&P to reflect changes and requirements as indicated in the RoP Phase 3 implementation requirements.

F608 Reporting Reasonable Suspicion of a Crime §483.12(b)(5) Ensure reporting of crimes occurring in federally-funded long-term care facilities in accordance with section 1150B of the Act. The policies and procedures must include but are not limited to the following elements. (i) Annually notifying covered individuals, as defined at section 1150B(a)(3) of the Act, of that individual's obligation to comply with the following reporting requirements. (A) Each covered individual shall report to the State Agency and one or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime against any individual who is a resident of, or is receiving care from, the facility. (B) Each covered individual shall report immediately, but not later than 2 hours after forming the suspicion, if the events that cause the suspicion result in serious bodily injury, or not later than 24 hours if the events that cause the suspicion do not result in serious bodily injury. (ii) Posting a conspicuous notice of employee rights, as defined at section 1150B(d)(3) of the Act. (iii) Prohibiting and preventing retaliation, as defined at section 1150B(d)(1) and (2) of the Act.	☐ Review and update internal Abuse Prevention and reporting policies to include the provisions of the Elder Justice Act Requirements and general maltreatment reporting requirements as well as state specific requirements for notification, reporting and response. ☐ Ensure the policy gives examples of crimes, such as murder, assault and battery, theft, drug diversion/theft, fraud and forgery. ☐ Ensure the policy and procedure includes a process to verify reporting to the State Agency and local law enforcement of a reasonable suspicion of a crime in the required timeframes.
F609 Reporting of Alleged Violations and F610 Investigate/Prevent/Correct Alleged Violation §483.12(c) In response to allegations of abuse, neglect, exploitation, or mistreatment, the facility must: §483.12(c)(1) Ensure that all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident	☐ Update Abuse Policy and Procedure to include updated reporting requirements for immediate report to the Administrator and reporting to law enforcement according to the regulations. ☐ Conduct staff education with proof of annual notification of covered individuals of their obligation to comply with reporting requirements to include immediate notification of the facility Administrator and if suspicion of a crime resulting in serious bodily injury, reporting to the State

property, are reported immediately, but not later than 2 hours after the allegation is made, if the events that cause the allegation involve abuse or result in serious bodily injury, or not later than 24 hours if the events that cause the allegation do not involve abuse and do not result in serious bodily injury, to the administrator of the facility and to other officials (including to the State Survey Agency and adult protective services where state law provides for jurisdiction in long-term care facilities) in accordance with State law through established procedures. §483.12(c)(2) Have evidence that all alleged violations are thoroughly investigated. §483.12(c)(3) Prevent further potential abuse, neglect, exploitation, or mistreatment while the investigation is in progress. §483.12(c)(4) Report the results of all investigations to the administrator or his or her designated representative and to other officials in accordance with State law, including to the State Survey Agency, within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.	Agency and Local Law Enforcement per facility policy. ☐ Review the facility's process to document a thorough investigation including resident statements, witness statements, staff statements, environmental review, resident physical assessment, etc., including a timeline of events. ☐ The facility must have evidence that the resident(s) is protected during the investigation (i.e. documentation with time clock verification of employee clocking out and leaving the building) ☐ Review the facility's process to substantiate reporting results of the investigation to the administrator and other officials in accordance with State law and the State Survey Agency within working days ☐ Ensure there is a process to document and verify employee corrective action taken as a result of the investigation
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REQUIRED POLICIES AND PROCEDURES

	F608	F609
What?	Any reasonable suspicion of a crime against a resident	1) All alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property 2) The results of all investigations of alleged violations
Who is responsible?	Any covered individual, including the owner, operator, employee, manager, agent or contractor of the facility	The facility

To whom?	State Survey Agency (SA) and one or more law enforcement entities for the political subdivision in which the facility is located (i.e., police, sheriffs, detectives, public safety officers; corrections personnel; prosecutors; medical examiners; investigators; and coroners)	The facility administrator and to other officials in accordance with State law, including to the SA and the adult protective services where state law provides for jurisdiction in long-term care facilities
When?	Serious bodily injury-Immediately but not later than 2 hours* after forming the suspicion No serious bodily injury-not later than 24* hours	All alleged violations-Immediately but not later than 1) 2 hours-if the alleged violation involves abuse or results in serious bodily injury 2) 24 hours-if the alleged violation does not involve abuse and does not result in serious bodily injury

The below areas serve as a cross reference for facility leaders to conduct addition policy and procedure review across departments to incorporate the changes set forth in 483.12: Freedom from abuse, neglect and exploitation. This listing is not all encompassing however should serve as a resource for leaders as they update their internal policies, procedures and operational processes.

- Resident Rights
- CMS Definitions
- Employee Orientation
- Annual Training Requirements
- Quality Assurance and Performance Improvement
- Caregiver Background Checks
- Hiring Protocols
- Staff Training and Education
- Comprehensive Dementia Program
- Pre- Admission and Admission Policies
- Elopement Policy
- Incident Accident Policy and Procedure
- Behavior Management
- Physical Device and Chemical Restraint Policy and Procedure
- Problem Resolution/Grievance Process

Freedom from Abuse, Neglect, and Exploitation Policy and Procedure

§483.12

PREFACE

It is the policy of the facility to maintain an environment where residents are free from abuse, neglect, exploitation and misappropriation of resident property and all residents, staff, families, visitors, volunteers and resident representatives are encouraged and supported in reporting any suspected acts of abuse, neglect, misappropriation of resident property, or exploitation. Abuse includes but is not limited to freedom from corporal punishment, involuntary seclusion, and any physical or chemical restraints not required to treat the resident's medical symptoms. The term abuse (abuse, neglect, exploitation, involuntary seclusion or misappropriation of resident property from abuse, neglect, misappropriation of resident property, and exploitation) will be used throughout this policy unless specifically indicated.

The facility does not discriminate in providing services because of membership in any protected class, including, without limitation, race, color, creed, religion, national origin, sex, disability, or sexual orientation.

An owner, licensee, Administrator, Licensed Nurse, employee or volunteer of a nursing home shall not physically, mentally or emotionally abuse, mistreat or neglect a resident. Any nursing home employee or volunteer who becomes aware of abuse, mistreatment, neglect, exploitation or misappropriation shall immediately report to the Nursing Home Administrator.

The Nursing Home Administrator or designee will report abuse to the state agency per State and Federal requirements.

§483.12 Freedom from Abuse, Neglect, and Exploitation

The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation as defined in this subpart. This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident's medical symptoms.

INTENT

- **F600 Free from Abuse and Neglect**
Each resident has the right to be free from abuse, neglect and corporal punishment of any type by anyone.
- **F602 Free from Abuse/Exploitation**



Each resident has the right to be free from misappropriation of property and exploitation.

➤ **F603 Free from Involuntary Seclusion**

Each resident has the right to be free from involuntary seclusion.

➤ **F604 Right to be Free from Physical Restraints**

Each resident shall attain and maintain his/her highest practicable well-being in an environment that:

- Prohibits the use of physical restraints for discipline or convenience;
- Prohibits the use of physical restraints to unnecessarily inhibit a resident's freedom of movement or activity; and
- Limits physical restraint use to circumstances in which the resident has medical symptoms that may warrant the use of restraints.

When a physical restraint is used, the facility must:

- Use the least restrictive restraint for the least amount of time; and
- Provide ongoing re-evaluation of the need for the physical restraint.

➤ **F605 Right to be Free from Chemical Restraints**

The intent of this requirement is for each person to attain and maintain his/her highest practicable well-being in an environment that prohibits the use of chemical restraints:

- For discipline or convenience; and
- Not required to treat a resident's medical symptoms.

When a medication is indicated to treat a medical symptom, the facility must:

- Use the least restrictive alternative for the least amount of time;
- Provide ongoing re-evaluation of the need for the medication; and
- Not use the medication for discipline or convenience.

➤ **F606 Not Employ Engage Staff with Adverse Actions**

The facility must not hire an employee or engage an individual who was found guilty of abuse, neglect, exploitation, or mistreatment or misappropriation of property by a court of law; or who has a finding in the State nurse aide registry concerning abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property, or has had a disciplinary action in effect taken against his/her professional license. The facility must report knowledge of actions by a court of law against an employee that indicates the employee is unfit for duty.

➤ **F607 Develop and Implement Abuse Policies**

This regulation was written to provide protections for the health, welfare and rights of each resident residing in the facility. To provide these protections, the facility must develop written policies and procedures to prohibit and prevent abuse, neglect, exploitation of residents, and misappropriation of resident property. These written policies must include, but are not limited to, the following components:

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- Screening;
- Training;
- Prevention;
- Identification;
- Investigation;
- Protection; and
- Reporting/response.

To ensure that the facility is doing all that is within its control to prevent such occurrences, these policies must be implemented (i.e., carried out), otherwise, the policies and procedures would not be effective. The facility is expected to provide oversight and monitoring to ensure that its staff, who are agents of the facility, implement these policies during the provision of care and services to each resident residing in the facility. A facility cannot disown the acts of its staff, since the facility relies on them to meet the Medicare and Medicaid requirements for participation by providing care in a safe environment.

➤ **F608 Reporting Reasonable Suspicion of a Crime**

The intent is for the facility to develop and implement policies and procedures that:

- Ensure reporting of crimes against a resident or individual receiving care from the facility occurring in nursing homes within prescribed timeframes to the appropriate entities, consistent with Section 1150B of the Act;
- Ensure that all covered individuals, such as the owner, operator, employee, manager, agent or contractor report reasonable suspicion of crimes, as required by Section 1150B of the Act;
- Provide annual notification for covered individuals of these reporting requirements;
- Post a conspicuous notice of employee rights, including the right to file a complaint; and
- Assure that any covered individual who makes a report to be made, or is in the process of making a report, is not retaliated against.

➤ **F609 Reporting of Alleged Violations**

The facility must report alleged violations related to mistreatment, exploitation, neglect, or abuse, including injuries of unknown source and misappropriation of resident property and report the results of all investigations to the proper authorities within prescribed timeframes.

➤ **F610 Investigate/Prevent/Correct Alleged Violation**

The facility must take the following actions in response to an alleged violation of abuse, neglect, exploitation or mistreatment:

- Thoroughly investigate the alleged violation;

- Prevent further abuse, neglect, exploitation and mistreatment from occurring while the investigation is in progress; and
- Take appropriate corrective action, because of investigation findings.

DEFINITIONS

Abuse exists in many forms and to varying degrees. The following are the approved CMS definitions of abuse from the Advanced Copy of State Operations Manual Appendix PP effective November 28, 2016.

*(*This section should be reviewed and tailored to the specific state law and statutory requirements)*

Abuse is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology.

Alleged violation is a situation or occurrence that is observed or reported by staff, resident, relative, visitor or others but has not yet been investigated and, if verified, could be noncompliance with the Federal requirements related to mistreatment, exploitation, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property.

Behavioral interventions are individualized, non-pharmacological approaches to care that are provided as part of a supportive physical and psychosocial environment, directed toward understanding, preventing, relieving, and/or accommodating a resident's distress or loss of abilities, as well as maintaining or improving a resident's mental, physical or psychosocial wellbeing.

Behavioral or psychological expressions are occasionally related to the brain disease in dementia; however, they may also be caused or exacerbated by environmental triggers. Such expressions or indications of distress often represent a person's attempt to communicate an unmet need, discomfort, or thoughts that they can no longer articulate.

Capacity and Consent: Residents have the right to engage in consensual sexual activity. However, anytime the facility has reason to suspect that a resident may not have the capacity to consent to sexual activity, the facility must ensure the resident is evaluated for capacity to consent. Residents without the capacity to consent to sexual activity may not engage in sexual activity.

Chemical restraint is defined as any drug that is used for discipline or staff convenience and not required to treat medical symptoms.

Convenience is defined as the result of any action that has the effect of altering a resident's behavior such that the resident requires a lesser amount of effort or care, and is not in the resident's best interest.

Corporal punishment, which is physical punishment, is used as a means to correct or control behavior. Corporal punishment includes, but is not limited to, pinching, spanking, slapping of hands, flicking, or hitting with an object.

Covered individual is anyone who is an owner, operator, employee, manager, agent or contractor of the facility.

Crime is defined by law of the applicable political subdivision where the facility is located. A political subdivision would be a city, county, township or village, or any local unit of government created by or pursuant to State law.

Criminal sexual abuse: In the case of "criminal sexual abuse," serious bodily injury/harm shall be considered to have occurred if the conduct causing the injury is conduct described in section 2241 (relating to aggravated sexual abuse) or section 2242 (relating to sexual abuse) of Title 18, United States Code, or any similar offense under State law. In other words, serious bodily injury includes sexual intercourse with a resident by force or incapacitation or through threats of harm to the resident or others or any sexual act involving a child. Serious bodily injury also includes sexual intercourse with a resident who is incapable of declining to participate in the sexual act or lacks the ability to understand the nature of the sexual act.

Deprivation by staff of goods or services includes those goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. In these cases, staff has the knowledge and ability to provide care and services, but choose not to do it, or acknowledge the request for assistance from a resident(s), which result in care deficits to a resident(s).

Discipline is defined as any action taken by the facility for the purpose of punishing or penalizing residents.

Exploitation means taking advantage of a resident for personal gain, through the use of manipulation, intimidation, threats, or coercion.

Finding is defined as a determination made by the State that validates allegations of abuse, neglect, exploitation, mistreatment of residents, or misappropriation of their property.

Found guilty ... by a court of law applies to situations where the defendant pleads guilty, is found guilty, or pleads no contest to charges of abuse, neglect, exploitation, misappropriation of property, or mistreatment.

Freedom of movement means any change in place or position for the body or any part of the body that the person is physically able to control.

Highest practicable physical, mental, and psychosocial well-being is defined as the highest possible level of functioning and well-being, limited by the individual's recognized pathology and normal aging process. Highest practicable is determined through the comprehensive resident assessment and by recognizing and competently and thoroughly addressing the physical, mental or psychosocial needs of the individual.

Immediately means as soon as possible, in the absence of a shorter State time frame requirement, but not later than 2 hours after the allegation is made, if the events (potential crime) that cause the allegation involve abuse or result in serious bodily injury, or not later than 24 hours if the events that cause the allegation do not involve abuse and do not result in serious bodily injury.

Indication for use is defined as the identified, documented clinical rationale for administering a medication that is based upon an assessment of the resident's condition and therapeutic goals and is consistent with manufacturer's recommendations and/or clinical practice guidelines, clinical standards of practice, medication references, clinical studies or evidence-based review articles that are published in medical and/or pharmacy journals.

Injuries of unknown source: An injury should be classified as an "injury of unknown source" when both of the following criteria are met:

- The source of the injury was not observed by any person or the source of the injury could not be explained by the resident; and
- The injury is suspicious because of the extent of the injury or the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma) or the number of injuries observed at one particular point in time or the incidence of injuries over time.

Involuntary seclusion is defined as separation of a resident from other residents or from her/his room or confinement to her/his room (with or without roommates) against the resident's will, or the will of the resident representative.

Law enforcement is the full range of potential responders to elder abuse, neglect, and exploitation including: police, sheriffs, detectives, public safety officers; corrections personnel; prosecutors; medical examiners; investigators; and coroners.

Manual method means to hold or limit a resident's voluntary movement by using body contact as a method of physical restraint.

Medical symptom is defined as an indication or characteristic of a physical or psychological condition.

Mental abuse is the use of verbal or nonverbal conduct which causes or has the potential to cause the resident to experience humiliation, intimidation, fear, shame, agitation, or degradation. Mental abuse includes abuse that is facilitated or enabled through the use of technology, such as smartphones and other personal electronic devices.

Misappropriation of resident property means the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent.

Mistreatment means inappropriate treatment or exploitation of a resident.

Neglect means the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish or emotional distress.

Non-pharmacological intervention refers to approaches to care that do not involve medications, generally directed towards stabilizing and/or improving a resident's mental, physical, and psychosocial well-being.

Person-Centered Care is care that is individualized by being tailored to all relevant considerations for that individual, including physical, functional, and psychosocial aspects.

Physical abuse includes, but is not limited to, hitting, slapping, punching, biting, and kicking.

Physical restraint is defined as any manual method, physical or mechanical device, equipment, or material that meets all of the following criteria:

- Is attached or adjacent to the resident's body;
- Cannot be removed easily by the resident; and
- Restricts the resident's freedom of movement or normal access to his/her body.

Psychological, behavioral, or psychosocial "harm" includes, but is not limited to, the following:

- Fear of a person or place, of being left alone, of being in the dark, and/or disturbed sleep and nightmares;
- Extreme changes in behavior, including aggressive or disruptive behavior toward a specific person; and

- Running away, withdrawal, isolating self, feelings of guilt and shame, depression, crying, talk of suicide or attempts

Position change alarms are alerting devices intended to monitor a resident's movement. The devices emit an audible signal when the resident moves in certain ways.

Removes easily means that the manual method, physical or mechanical device, equipment, or material, can be removed intentionally by the resident in the same manner as it was applied by the staff.

Serious bodily injury means an injury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; requiring medical intervention such as surgery, hospitalization, or physical rehabilitation; or an injury resulting from criminal sexual abuse.

Sexual abuse is non-consensual sexual contact of any type with a resident. Generally, sexual contact is nonconsensual if the resident either:

- Appears to want the contact to occur, but lacks the cognitive ability to consent; or
- Does not want the contact to occur.

Other examples of nonconsensual sexual contact may include, but are not limited to, situations where a resident is sedated, is temporarily unconscious, or is in a coma.

Transmission Based Precautions

When used appropriately, transmission-based precautions (i.e., isolation due to infection) is not to be considered involuntary seclusion. The facility's policies must identify the type and duration of the transmission-based precautions required, depending upon the infectious agent or organism involved; and the precautions should be the least restrictive possible for the resident based on his/her clinical situation. Furthermore, the resident's record must contain the rationale for the selected transmission-based precautions. However, once the resident is no longer a risk for transmitting the infection, the removal of transmission-based precautions is required to avoid unnecessary involuntary seclusion.

Unnecessary drug: Any drug when used in excessive dose (including duplicate drug therapy); or for excessive duration; or without adequate monitoring; or without adequate indications for its use; or in the presence of adverse consequences which indicate the dose should be reduced or discontinued; or any combinations of the reasons stated above.

Verbal abuse may be considered to be a type of mental abuse. Verbal abuse includes the use of oral, written, or gestured communication, or sounds, to residents within hearing distance, regardless of age, ability to comprehend, or disability.

Willful means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

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Abuse Policy

It is the policy of (Facility) that each resident will be free from Abuse. Abuse can include verbal, mental, sexual, or physical abuse, corporal punishment or involuntary seclusion. The resident will also be free from physical or chemical restraints imposed for purposes of discipline or convenience and that are not required to treat the resident's medical symptoms. Additionally, residents will be protected from abuse, neglect, and harm while they are residing at the facility. No abuse or harm of any type will be tolerated, and residents and staff will be monitored for protection. The facility will strive to educate staff and other applicable individuals in techniques to protect all parties.

OBJECTIVE OF ABUSE POLICY

The objective of the abuse policy is to comply with the seven-step approach to abuse and neglect detection and prevention. The abuse policy will be reviewed on an annual basis or more frequently and will be integrated into the facility Quality Assurance and Performance Improvement (QAPI) program.

OVERVIEW OF SEVEN COMPONENTS

- Screening
- Training
- Prevention
- Identification
- Investigation
- Protection
- Reporting and Response

A. SCREENING COMPONENTS

ABUSE POLICY REQUIREMENTS: It is the policy of this facility to screen employees and volunteers prior to working with residents. Screening components include verification of references, certification and verification of license and criminal background check.

PROCEDURE:

1. EMPLOYEE SCREENING AND TRAINING

- a. Before new employees are permitted to work with residents, references provided by the prospective employee will be verified as well as appropriate board registrations and certifications regarding the prospective employee's background. The facility will not employ or otherwise engage individuals who have been found guilty of abuse,

neglect, exploitation, misappropriation of property, or mistreatment by a court of law.

- b. Nurse Aides: The Facility will not employ or otherwise engage an individual who:
 - a. Has a finding entered into the State nurse aide registry concerning abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property
 - b. In addition, the facility will report to the State nurse aide registry any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff
- c. Licensed Staff: The facility will not employ or otherwise engage a licensed professional who:
 - a. Has a disciplinary action in effect against his or her professional license by a state licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property
 - b. In addition, the facility will report to the State licensing authorities any knowledge it has of actions by a court of law against an employee which would indicate unfitness for service as a licensed professional
- d. A criminal background check will be conducted on all prospective employees as provided by the facility's policy on criminal background checks. A significant finding on the background check will result in denied employment consistent with the criminal background check policy in accordance with State and Federal Regulation.
- e. All new employees/volunteers will receive training on the abuse policy prior to direct or indirect resident contact.
- f. All new employees/volunteers will be oriented to the Abuse Policy and made aware of their responsibility to report any suspected maltreatment as defined and described in this policy.
- g. Attendance at a yearly in-service on the Abuse Policy and on Resident Rights is mandatory for all employees/volunteers.
- h. The facility will provide information regarding the procedure for reporting suspected maltreatment upon request and by posting the procedure in a conspicuous location in the facility.

2. VOLUNTEER SCREENING AND ORIENTATION

- a. Before new volunteers are permitted to work with residents, all references provided by the prospective volunteer must be checked. A volunteer's services will be declined if it is determined that his/her presence in the facility represents a risk to residents
- b. If Volunteers have direct resident contact, a state background check will be performed if required by State regulations.

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- c. Volunteers are provided education on the Abuse Policy and Resident Rights, and are required to attend yearly.

3. Resident Screening

- a. Before a prospective resident is accepted for admission, a review will determine if the facility has the capacity and capability to provide the necessary care and services for the resident.
- b. The screen will include, but is not limited to
 - An assessment of the individual's functional and mood/behavioral status;
 - Medical acuity; and
 - Special needs (e.g., mechanical ventilation care, dialysis, hospice).
- d. The facility will consider whether the current staffing patterns, staff qualifications, competency and knowledge, clinical resources, physical environment and equipment can safely and competently provide the necessary care

B. TRAINING COMPONENTS

ABUSE POLICY REQUIREMENTS: It is the policy of this facility to train employees, through orientation and on-going sessions on issues related to abuse and prohibition practices.

PROCEDURE:

Staff and volunteers will receive education about resident mistreatment, neglect, and abuse, including injuries of unknown source, exploitation and misappropriation of property upon first employment and annually after that, incorporating the following elements:

- Orientation and ongoing programs
- Training on the abuse policies and procedures
- How to deal with aggressive and catastrophic reaction of residents
- How to report abuse without fear of reprisal
- Recognizing signs of burnout, frustration, and stress
- Training about challenging behaviors and how to intervene
- Communication of reports of resident mistreatment, neglect, and/or abuse, including injuries of unknown source, and misappropriation of property
- The definition of what constitutes resident mistreatment, neglect, or abuse, including injuries of unknown source, exploitation and misappropriation of property
- How to identify residents at risk for neglect or abuse
- Resident Bill of Rights
- Review of facility abuse policies and procedures

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- Annual notification of covered individuals of their obligation to comply with reporting requirements

ABUSE POLICY REQUIREMENTS: The facility monitors staff for burnout, which could lead to the potential maltreatment of residents.

PROCEDURE:

- a. Staff and contracted individuals will be taught the signs and symptoms of staff burnout
- b. Staff should report any signs and symptoms of burnout to their supervisor.
- c. Department Manager may involve human resources designee, if necessary.
- d. Staff that are identified with burnout may require referral for assistance. If it is determined that a staff member requires special intervention such as training, time off work, or referral for assistance, this will be handled by the department manager and human resources.

C. PREVENTION

ABUSE POLICY REQUIREMENTS: It is the policy of this facility to prevent abuse by providing residents, families and staff information and education on how and to whom to report concerns, incidents and grievances without the fear of reprisal or retribution. The facility will provide feedback regarding complaints and concerns. The facility leadership will assess the needs of the residents in the facility to be able to identify concerns in order to prevent potential abuse.

PROCEDURE:

1. RESIDENT ASSESSMENT

The population of the facility includes individuals who meet the criteria for skilled care under the Medicaid and Medicare guidelines including specialty programs provided by the facility. (**Specialty programs may include short-term rehabilitation, post-acute care, dementia care, ventilation program and transitional care*)

Every resident is unique and may be subject to abuse based on a variety of circumstances, including facility physical plant, environment, the resident's health, behavior or cognitive level.

- a. Before admission, prospective residents will be screened to help determine suitable placement within the facility.

- b. Upon admission and periodically after that, each resident will have a safety or vulnerability assessment completed which identifies potential vulnerabilities such as cognitive, physical, psychosocial, environment and communication concerns.
- c. Resident assessment for the capacity to consent to sexual contact will be made by the attending physician or designee, when the question of capacity is raised by the interdisciplinary team. The attending physician may refer the resident for additional evaluation as needed.
- d. The interdisciplinary team will identify the vulnerabilities and interventions on the resident care plan.
- e. The interdisciplinary team will identify the health and safety of each resident with regard to visitors such as family members or resident representatives, friends, or other individuals subject to the resident's right to deny or withdraw consent at any time and to reasonable clinical and safety restrictions;

2. ORIENTATION (*Residents, Representatives, Volunteers and Staff*)

- a. Individuals will be provided orientation to the Abuse Policy and Resident Rights.
- b. Current residents/families/guardians will receive information with regards to the Abuse Policy, the Grievance policy and how to report incidents or concerns without fear of retribution upon admission, via meetings, newsletters, and other forms of communication.

3. PHYSICAL PLANT/ENVIRONMENT

*(*This section should be reviewed and tailored to the specific state law and statutory requirements)*

- a. The facility Safety Committee will review the facility physical plant, identify areas of concern and implement responses and corrections to the facility's physical plant and environment to assist in the prevention of resident maltreatment.
- b. The facility will conduct a review of the physical plant and surrounding environment for areas of potential vulnerability. This review will include areas of concerns that can potentially affect resident safety. A plan will be developed to address these areas in the facility QAPI process and will be reported.

4. POPULATION

*(*This section should be reviewed and tailored to the specific state law and statutory requirements)*

- a. The facility provides identification, ongoing assessment, care planning for appropriate interventions and monitoring of residents with needs and behaviors that might lead to conflict or neglect, such as

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- residents with a history of cognitive deficits, sensory deficits, aggressive behaviors,
 - residents who have behaviors such as entering other residents' rooms, wandering behaviors,
 - residents with self-injurious behaviors,
 - socially inappropriate behaviors, verbal outbursts,
 - residents with communication disorders, those who are nonverbal and those that require heavy care and/or are totally dependent on staff.
- b. The facility will ensure a comprehensive dementia management program to prevent resident abuse.

5. PREDATORY OFFENDER PROVISIONS

*(*This section should be reviewed and tailored to the specific state law and statutory requirements)*

When assessing a person's risk of abusing other vulnerable adults, or if a predatory offender is seeking admission or has been admitted to the facility:

- A law enforcement agency, with knowledge of the predatory offender, must notify the facility.
- The offender is required to self-identify. Failure to do so is a felony. If a predatory offender is admitted and does not self-identify, the facility can discharge the offender, and the offender has no right to appeal the discharge.
- The facility must notify other residents that a predatory offender has been admitted. If it is determined that notice to a particular resident not be appropriate because of the resident's medical, emotional, or mental status, the resident's next of kin or emergency contact (resident representative) must be notified.

6. POSTING

- a. A posting in an area accessible to residents, employees and visitors contains the name, title, location and telephone number of the individual in the nursing home that is responsible for receiving complaints and ensuring a complaint investigation is completed.

7. SUPERVISION OF STAFF

Staff will be supervised to identify inappropriate behaviors while caring for or in attendance with residents.

8. SUFFICIENT STAFFING

The facility deploys trained, qualified and competent staff on each shift in sufficient numbers to meet the needs of the residents. Staff have knowledge of the individual resident's care needs, as identified by the Facility Assessment.

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D. IDENTIFICATION

ABUSE POLICY REQUIREMENTS: It is the policy of this facility that all staff monitor residents and will know how to identify potential signs and symptoms of abuse. Occurrences, patterns and trends that may constitute abuse will be investigated.

PROCEDURE:

All staff will receive education about how to identify signs and symptoms of abuse. Residents will be monitored for possible signs of abuse. Symptoms that will be monitored:

- a. Suspicious or unexplained bruising or other unexplained or unusual injuries
- b. Unnecessary fear
- c. Abnormal discharge from body orifices
- d. Inconsistent details by staff regarding how incidents occurred
- e. Sudden or unexplained changes in behavior toward other staff, residents, family members, or visitors, such as fear, feelings of guilt or shame.
- f. Social withdrawal, depression or reduced social contact

E. INVESTIGATION

ABUSE POLICY REQUIREMENTS:

It is the policy of this facility that reports of abuse (mistreatment, neglect, or abuse, including injuries of unknown source, exploitation and misappropriation of property) are promptly and thoroughly investigated.

PROCEDURE:

The investigation is the process used to try to determine what happened. The designated facility personnel will begin the investigation immediately upon identification of alleged abuse. A root cause investigation and analysis will be completed. The information gathered is given to administration.

*(*This section should be reviewed and tailored to the specific state law and statutory requirements)*

a. Investigation of abuse: When an incident or suspected incident of abuse is reported, the Administrator or designee will investigate the incident with the assistance of appropriate personnel. The investigation will include:

- i. Who was involved
- ii. Residents' statements

- a. For non-verbal residents, cognitively impaired residents or residents who refuse to be interviewed, attempt to interview resident first. If unable, observe resident, complete an evaluation of resident behavior, affect and response to interaction, and document findings.
- iii. Resident's roommate statements (if applicable)
- iv. Involved staff and witness statements of events
- v. A description of the resident's behavior and environment at the time of the incident
- vi. Injuries present including a resident assessment
- vii. Observation of resident and staff behaviors during the investigation
- viii. Environmental considerations

*All staff must cooperate during the investigation to assure the resident is fully protected.

b. Investigation of injuries of Unknown Origin or Suspicious injuries:

Injuries of unknown origin or suspicious injuries must be immediately investigated to rule out abuse:

- i. injuries include, but are not limited to, bruising of the inner thigh, chest, face, and breast, bruises of an unusual size, multiple unexplained bruises, and/or bruising in an area not typically vulnerable to trauma.

c. Investigation regarding misappropriation: complete an active search for missing item(s) including documentation of investigation.

- 1. The investigation will consist of at least the following:
 - A review of the completed complaint report
 - An interview with the person or persons reporting the incident
 - Interviews with any witnesses to the incident
 - A review of the resident medical record if indicated
 - A search of resident room (with resident permission)
 - A search of other pertinent areas
 - An interview with staff members having contact with the resident during the relevant periods or shifts of the alleged incident
 - Interviews with the resident's roommate, family members, and visitors
 - A root-cause analysis of circumstances surrounding the incident.

d. Investigation of involuntary seclusion should include:

- Symptoms that led to the consideration of the separation
- Investigation into whether the symptoms were caused by failure to meet resident needs, provide meaningful activities or manipulation of the resident environment
- Whether the cause of the symptom was removed
- If alternatives were attempted prior to separation

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- The separation was for the least amount of time necessary
- The family/legal representative was involved in the care planning and informed choice regarding the separation
- Evidence of monitoring and adjustments in care to reduce negative outcomes and attempt to determine less restrictive alternative

Additional Investigation Protocols

*(*This section should be reviewed and tailored to the specific state law and statutory requirements)*

- While the investigation is being conducted, accused individuals not employed by the facility will be denied unsupervised access to the resident. Visits may only be made in designated areas, supervised by staff after approval by the Administrator.
- The Administrator will keep the resident or his/her resident representative informed of the progress of the investigation.
- The results of the investigation will be recorded and attached to the report.
- The Administrator or designee will complete a copy of the investigation materials.
- The Administrator or designee will inform the resident and/or his/her representative of the findings of the investigation and corrective action taken.
- Inquiries made concerning abuse reporting and investigation must be referred to the Administrator or Designee.
- Law Enforcement:
 - All reports of suspected crime and/or alleged sexual abuse must be immediately reported to local law enforcement to be investigated. Facility staff will fully cooperate with the local law enforcement designee.

The follow-up investigative notes will be submitted via **(State specific contact point)** within five working days of the initial report. In cases of resident-to-resident abuse that result in injury, an initial report must be completed and submitted to the State Agency via **(State specific contact point)** *(*This section should be reviewed and tailored to the specific state law and statutory requirements)*

F. PROTECTION

ABUSE POLICY REQUIREMENTS: It is the policy of this facility that the resident(s) will be protected from the alleged offender(s).

PROCEDURE:

Immediately upon receiving a report of alleged abuse, the Administrator, and or designee will coordinate delivery of appropriate medical and/or psychological care and attention to the involved resident. Ensuring safety and well-being for the vulnerable individual are of utmost

priority. Safety, security and support of the resident, their roommate, if applicable and other residents with the potential to be affected will be provided. This should include as appropriate:

- a. **Procedures are in place to provide the resident with a safe, protected environment during the investigation:**
- i. The alleged perpetrator will immediately be removed and resident protected. Employees accused of alleged abuse will be immediately removed from the resident's area and will remain removed pending the results of a thorough investigation. (Decision of the extent of immediate disciplinary action will be made by the Administrator or designee).
 - ii. If a family member or resident representative is possibly contributing to the potential abuse and the resident could be at risk, the situation will be evaluated and options identified to put into place for resident protection.
 - iii. If the alleged perpetrator is a facility resident, the staff member will immediately remove the perpetrator from the situation and another staff member will stay with the alleged perpetrator and wait for further instruction from administration. If the situation is an emergent danger to the other residents or staff, dial 911 for immediate assistance.
 - iv. Examine, assess and interview the resident and other residents potentially affected as soon as possible to determine any injury and identify any immediate clinical interventions necessary. Notify the resident's physician.
 - v. Social Services or designee will keep in frequent contact with the resident and/or resident representative
 - vi. If the resident could be at risk in the same environment, evaluate the situation and consider options including a room change or roommate change
 - vii. Notify law enforcement and/or State Agency, Crisis Response, Poison Control, etc. as indicated
 - viii. A medical, evidentiary, or sexual assault exam should be completed as soon as possible, as appropriate.

G. REPORTING AND RESPONSE

ABUSE POLICY REQUIREMENTS:

(*This section should be reviewed and tailored to the specific state law and statutory requirements)

It is the policy of this facility that abuse allegations (abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property) are reported per Federal and State Law. The facility will ensure that all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property, that may constitute reasonable suspicion of a crime

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are reported immediately, but not later than 2 hours after the allegation is made, if the events that cause the allegation involve abuse or result in serious bodily injury, or not later than 24 hours if the events that cause the allegation do not involve abuse and do not result in serious bodily injury, to the administrator of the facility and to other officials (including to the State Survey Agency and adult protective services where state law provides for jurisdiction in long-term care facilities) in accordance with State law through established procedures. In addition, local law enforcement will be notified of any reasonable suspicion of a crime against a resident in the facility.

DEFINITIONS (in accordance to the Elder Justice Act):

Covered Individual: A “covered individual” is defined as anyone who is an owner, operator, employee, manager, agent or contractor of the facility.

Serious Bodily Injury: The term “serious bodily injury” is defined as an injury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation

In the case of “criminal sexual abuse” which is defined in section 2011(19)(B) of the Act (as added by section 6703(a)(1)(C) of the Affordable Care Act), serious bodily injury/harm shall be considered to have occurred if the conduct causing the injury is conduct described in section 2241 (relating to aggravated sexual abuse) or section 2242 (relating to sexual abuse) of Title 18, United States Code, or any similar offense under State law.

Serious Bodily Injury Reporting – 2 Hour Limit: If the events that cause the reasonable suspicion result in serious bodily injury to a resident, the covered individual shall report the suspicion immediately, but not later than 2 hours after forming the suspicion;

All Other Reporting – Within 24 Hours: If the events that cause the reasonable suspicion do not result in serious bodily injury to a resident, the covered individual shall report the suspicion not later than 24 hours after forming the suspicion.

(INSERT STATE SPECIFIC REPORTING REQUIREMENTS)

PROCEDURE:

INTERNAL REPORTING:

- a. Employees must always report any abuse or suspicion of abuse immediately to the Administrator.
- b. The Administrator, will involve key leadership personnel as necessary to assist with reporting, investigation and follow up.
- c. The Administrator will report to the Medical Director.

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EXTERNAL REPORTING:

*(*This section should be reviewed and tailored to the specific state law and statutory requirements)*

- Each covered individual shall report to the State Agency and one or more law enforcement entities for the political subdivision in which the facility is located, any reasonable suspicion of a crime against any individual who is a resident of or is receiving care from, the facility, and each covered individual shall report immediately, but not more than 2 hours after forming the suspicion, if the events that cause the suspicion result in serious bodily injury or not later than 24 hours if the events that cause the suspicion do not result in serious bodily injury.
- **Initial reporting of allegations:** If an incident or allegation is considered reportable, the Administrator or designee will make an initial (immediate or within 24 hours) report to the State Agency. A follow up investigation will be submitted to the State Agency within five (5) working days. When making a report, the following information should be reported:
 - Name, age, diagnosis and mental status of the resident allegedly abused or neglected.
 - Type of abuse reported (physical, sexual, theft, neglect, verbal or mental abuse).
 - Date, time, location and circumstances of the alleged incident.
 - Any obvious injuries or complaints of injury.
 - Report/Notification to resident's attending physician
 - Steps the facility has taken to protect the resident.
 - Names and social security numbers of alleged staff involved.
 - The facility must include the following investigative components:
 - Have evidence that all alleged violations are thoroughly investigated.
 - Prevent further potential abuse, neglect, exploitation, or mistreatment while the investigation is in progress.
- Report the results of all investigations to the administrator or his or her designated representative and to other officials in accordance with State law, including immediate or 24 hour reporting to the State Survey Agency, law enforcement and the follow up report to the State Agency, within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.
- Law Enforcement:
 - All reports of suspected crime and/or alleged sexual abuse must be immediately reported to local law enforcement to be investigated. Facility staff will fully cooperate with the local law enforcement designee.

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- The Administrator or designee will inform the resident or resident's representative of the report of an incident and that an investigation is being conducted.
- Covered individuals are obligated to comply with reporting requirements. If uncertain whether or not to report an incident, call the State Agency for further direction
- Employee rights will be posted (identify the conspicuous location)
- The facility will protect reporting individuals from potential retaliation.

(Insert State specific reporting and investigation requirements).

For the protection of all individuals involved, copies of any internal reports, interviews and witness statements during the course of the investigation shall be released only with the permission of the Administrator or the facility attorney.

Informing the Resident and/or Responsible Party: The Administrator or designee, will inform the resident and/or responsible party the results of the investigation.

Inquiries about the Incident: Inquiries concerning the abuse reporting and investigation should be referred to the Administrator.

The facility will take all necessary actions as a result of the investigation, including

- analyzing the occurrence to determine the reason that the abuse occurred, and what changes need to be made to prevent further occurrences
- defining how care systems and processes will be changed to protect residents
- training of staff about changes made as a result of the investigation and reporting
- corrective action for staff involved in the incident
- identification of staff responsible to monitor the implementation of the changes made to the abuse prevention plan.

References:

Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities
10/04/16:

- <https://www.federalregister.gov/documents/2016/10/04/2016-23503/medicare-and-medicaid-programs-reform-of-requirements-for-long-term-care-facilities>

State Operations Manual Appendix PP – Guidance to Surveyors for Long-Term Care Facilities,
06/10/16:

- https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltc.pdf

CMS Memo Ref: S&C 17-07-NH: Advance Copy – Revisions to State Operations Manual (SOM),
Appendix PP- Revised Regulations and Tags, 11/09/16:

- <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-07.pdf>

CMS Memo Ref: S&C: 11-30-NH: Reporting Reasonable Suspicion of a Crime in a Long-Term
Care Facility (LTC): Section 1150B of the Social Security Act, Revised 01/20/12 (Elder Justice Act
Provisions):

- https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/SCLetter11_30.pdf

CMS Transmittal 169-Advanced Copy: Revision to State Operations Manual (SOM) Appendix PP
for Phase 2, F-Tag Revisions, and Related Issues

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Downloads/Advance-Appendix-PP-Including-Phase-2-.pdf>

Tool: Abuse Investigation Checklist

§483.12 Freedom from Abuse, Neglect, and Exploitation

Abuse Investigation	
DIRECTIONS: Use this tool for investigating an alleged violation of abuse to a resident, including allegations where a resident was deprived of goods or services by an individual, necessary to attain or maintain physical, mental and psychosocial well-being as well as involuntary seclusion. • Refer to the Neglect Investigation tool for concerns about structures or processes leading to a resident(s) with an outcome, for example, unrelieved pain, avoidable pressure ulcers/injuries, poor grooming, avoidable dehydration, lack of continence care, or malnourishment; or • Refer to the Reporting Reasonable Suspicion of a Crime Investigation tool, if a covered individual did not report a reasonable suspicion of a crime or for an allegation of retaliation.	
Review the following in Advance to Guide Observations and Interviews Information related to an alleged violation of abuse, such as: • Date, time, and location (e.g., unit, room, floor) where alleged abuse occurred; • Name of alleged victim(s), alleged perpetrator(s) and witnesses, if any; • Narrative/specifics of the alleged abuse(s) including frequency and pervasiveness of the allegation; and • Whether the allegation was reported by the facility and/or to other agencies, such as Adult Protective Services or law enforcement. Sources for this information may include: • Resident, representative, or family interviews, observations or record review; • Facility's abuse prohibition policies and procedures.	
Observation Across Various Shifts	
	What access did the alleged perpetrator have to the alleged victim and other residents?
	Describe the alleged victim's reaction, if any, when the alleged perpetrator, or a specific resident(s) or staff person(s) was present: - o Avoids or withdraws from conversations or activities; - o Displays fear of, or shies away from being touched; and/or - o Exhibits behaviors such as angry outbursts, tearfulness, or stress (agitation, trembling, cowering)?
	Describe physical injuries, if any, related to the alleged abuse, such as: - o Fractures, sprains or dislocations; - o Burns, blisters, or scalds; - o Bite marks, scratches, skin tears, and lacerations with or without bleeding, including those that would be unlikely to result from an accident;



	- o Bruises, including those forming shapes (<i>e.g.</i>, finger imprints) or found in unusual locations such as the head, neck, lateral locations on the arms, posterior torso and trunk, inner thigh, genital area and/or breasts; and/or - o Facial injuries, including but not limited to, broken or missing teeth, facial fractures, black eye(s), bruising, bleeding or swelling of the mouth or cheeks.
	Observe and describe: - o If the alleged perpetrator is a resident, whether he/she displays symptoms, such as: ▪ Verbally aggressive behavior, such as screaming, cursing, bossing around/demanding, insulting to race or ethnic group, intimidating; ▪ Physically aggressive behavior, such as hitting, kicking, grabbing, scratching, pushing/shoving, biting, spitting, threatening gestures, throwing objects; ▪ Sexually aggressive behavior such as saying sexual things, inappropriate touching/grabbing; ▪ Taking, touching, or rummaging through other's property; ▪ Wandering into other's rooms/space; or ▪ Resistive to care and services. - o If the alleged perpetrator is staff, whether he/she displays rough handling of residents, appears rushed, dismisses requests for assistance, expresses anxiety, or frustration regarding work and lack of staffing.
	Observe for possible environmental factors related to the alleged abuse, such as: - o If in a resident's room, the room configuration, presence of privacy curtains, and the availability of a working call light/call bell; - o Lighting levels; or - o Location in relation to the nurse's station, staff lounges, or outside access such as windows, doors, or hallways.
	For an allegation that a resident was deprived of goods or services by staff, observe for physical/psychosocial outcomes related to care deficits.
Interviews Be impartial, use discretion, and non-judgmental language. Use an interpreter as needed to obtain as accurate information as possible. Attempt to interview the alleged victim and witnesses as soon as possible.	
Alleged Victim or Representative and Witness(es) Interview Conduct private interviews unless the alleged victim requests the presence of another person. Observe the alleged victim's emotions and tone, as well as any nonverbal expressions or gesturing to a particular body area, in response to the questions. Maintain the confidentiality of witnesses and the person who reported the allegation (<i>e.g.</i>, change the order of the interviews, location or time), to the extent possible. During the interview with the witnesses, you may ask him/her to re-create or re-enact the alleged incident, to better understand the sequence of events.	
	For the alleged victim/resident representative/witness, ask, as applicable: - o What occurred prior to, during, and immediately following the alleged abuse? - o When and where did the alleged abuse occur?



	- o Could he/she identify the alleged perpetrator and any witnesses? Who? - o What was said? What was the tone of the alleged perpetrator's voice or volume? - o Did you report the alleged abuse? Who did you report it to? What was their response? If not reported, what prevented you from reporting the alleged abuse? - o Did you report the alleged abuse to any external entities (e.g., police, physician, ombudsman, and other state agencies)? Who did you report it to? What was their response? - o Do you think retaliation has occurred since you reported the alleged abuse? If so, what actions were taken?
	For the alleged victim/resident representative , document as applicable: - o Did you suffer any injuries (e.g., bruises, cuts, fractures) from the alleged abuse? Please describe, including the alleged victim's response to the injuries (e.g., pain, new difficulty sitting or walking). - o Did you go to the hospital or physician's clinic for evaluation and treatment? When and which facility? - o Do you feel safe? - o Have there been past encounters with the alleged perpetrator? - o Have there been past instances of abuse?
	For the resident's representative , ask, as applicable: o Have you observed any changes in the alleged victim's behavior, and if so, describe?
	For an allegation that a resident was deprived of goods or services by staff, for the alleged victim/resident representative , ask, as applicable: - o How do staff respond to your requests for assistance? If staff do not respond, what happens? - o Do you have any concerns about the manner in which care is provided to you? If so, describe. Did you report this to anyone? If so, to whom, when, and what was the response? - o Do you feel that you have had any negative changes (e.g., weight loss, pressure ulcers) because of the failure to receive the care that you need? - o Have you had any changes in medication (e.g., antipsychotics) that may be impacting the care you receive?
Alleged Perpetrator Interview If the alleged perpetrator is a staff member, the staff member may have been suspended or re-assigned until the facility's investigation is completed and in some situations, the facility may have terminated the employment of the individual. In some cases the alleged perpetrator may not be in the facility or may refuse to be interviewed. If possible, interview the alleged perpetrator in person or by phone even if the alleged perpetrator is no longer working in the facility. In addition, the alleged perpetrator may be a resident or visitor. Interview the alleged perpetrator to determine the following, to the extent possible, and include information regarding inability, if any, to conduct the interview:	
	What information can you provide regarding the alleged abuse?



	Were you present in the facility at the time of the alleged abuse? If so, where were you at?
	What is your relationship, if any, to the alleged victim?
	For an allegation that a resident was deprived of goods or services , ask the staff member: - o How do you respond to the resident's requests for assistance; - o Have you had any concerns when you have been assigned to this resident? If so, describe. Did you report this to anyone? If so, to whom, when, and what was the response? - o Have you noticed any negative changes (e.g., weight loss, pressure ulcers) with this resident? If so, describe; and - o Has the resident had any behavioral symptoms (e.g., combative behavior, frequent requests for assistance, calling out, grabbing) that may be impacting the care that they receive? If so, have you reported this? If reported, to whom, when, and what was the response?
	If the alleged perpetrator is a staff member : - o What is your position? - o Describe any contact that you have with the alleged victim. - o Do you continue to have access to the alleged victim? If not, why? - o How long have you worked in the facility? - o What type of orientation, training, work assignments, and supervision did you receive? - o What training have you received related to abuse prevention, reporting abuse, and the facility's abuse policy and procedures?
	o Do you have any other information you wish to share in regard to the investigation?
Staff Interviews Interview the most appropriate direct care staff member. Review staff schedules from all departments to determine who was working at the time of the alleged abuse and who may have had contact with the alleged perpetrator or alleged victim. Interview the most appropriate direct care staff member:	
	Did you have knowledge of the alleged abuse? If so, describe.
	What actions, if any, did you take in response to the allegation?
	If you're familiar with the alleged victim, have you noticed any changes in the alleged victim's behavior as a result of the alleged abuse? If so, describe.
	How did the alleged perpetrator and victim act towards one another prior to and after the incident?
	Did the alleged perpetrator and/or victim exhibit any behaviors that would provoke one another? If so, what actions were taken to address this?
	If the alleged perpetrator was staff, had the alleged perpetrator exhibited inappropriate behaviors to the alleged victim or other residents in the past, such as using derogatory language, rough handling, or ignoring residents while giving care?
	If the alleged perpetrator was a visitor, did the visitor exhibit any inappropriate behaviors in the past or have any indication of risk to the resident(s)?



	Did you report the alleged abuse to any supervisors/administration? Who did you report it to? What was their response? - o If reported, do you think retaliation has occurred since you reported the alleged abuse? If so, describe. Do you fear retaliation? - o If not reported, what prevented you from reporting the alleged abuse?
	Did you report the alleged abuse to any external entities (e.g., police, physician, ombudsman, and other state agencies)? Who did you report it to? What was their response?
	Have you received training on abuse identification, prevention, and reporting requirements?
	For an allegation that a resident was deprived of goods or services by staff, ask: - o How do staff respond to the resident's requests for assistance? If staff do not respond, what do they say; - o Do you have any concerns about the manner in which care is provided to the resident? If yes, describe. Did you report this to anyone? If so, to whom, when, and what was the response; - o Has the resident had any negative changes (e.g., weight loss, pressure ulcers) because of the failure to receive the care that he/she needs; - o Has the resident had any changes in medication (e.g., antipsychotics) that may be impacting the care that they receive? Note: Determine if the resident may have received unnecessary medications such as chemical restraints.
Other Healthcare Professionals (DON, Social Worker, Attending Practitioner) Interviews, as Appropriate Ask the appropriate personnel:	
	Do you have knowledge of the alleged abuse? If so, describe.
	When and by whom were you notified of the alleged abuse?
	Did you conduct an assessment of the alleged victim for potential injuries or a change in mental status? What interventions or treatment (e.g., counseling) were provided, if any?
	Was the alleged victim assessed and/or treated at a hospital after the alleged incident? NOTE: Attempt to interview the practitioner from the hospital who examined the alleged victim to determine physical findings and mental status at the time.
	Do you know if the alleged victim's representative and attending practitioner were notified of the alleged abuse? If so, when and what were the responses?
	If there are discrepancies in injuries based on the alleged victim's description, how was this investigated?
	Did the alleged perpetrator and/or victim exhibit any behaviors that would provoke one another? If so, what actions were taken to address this?
	Did you report the alleged abuse to administration? Who did you report it to? What was their response? If not reported, what prevented you from reporting the alleged abuse? Did you report the alleged abuse to anyone else (e.g., resident representative, attending practitioner)?



	Were any external entities (e.g., APS or law enforcement) contacted? If so, who made the report, to whom, and when?
	If the alleged perpetrator was a resident: - o Did you conduct any interviews related to the alleged abuse and identify the circumstances of what occurred prior to, during and after the alleged abuse? - o Does the care plan identify interventions to address any behaviors of the alleged perpetrator? - o Was the care plan implemented? - o If the interventions were not effective in reducing the behaviors, were they revised and if so, what was changed? - o Did the revised interventions provide the needed protections? - o What protections have been put in place at this time? - o Has access to other residents at risk been limited? If so, how?
	If the alleged perpetrator was staff, ask: - o Did the alleged perpetrator exhibited inappropriate behaviors to the alleged victim or other residents in the past (e.g., using derogatory language, rough handling, or ignoring residents while giving care)? If yes, describe. - o Was there a history of resident/family grievances or problems identified with care delivery or services provided? If so, what was the result of the investigation of the concerns, and describe any disciplinary actions and/or training provided related to the complaints/concerns. - o Did annual performance reviews identify issues with the provision of care, treatment, or other concerns? If so, what was provided to address the concerns. - o How is monitoring and supervision provided regarding the delivery of care and services by the alleged perpetrator? - o Who is responsible for supervising and monitoring the delivery of care at the bedside?
	If the alleged perpetrator is a visitor: - o Was there any indication of a prior history of abuse, aggression, or other inappropriate behaviors? - o Was there any indication of a physical or psychosocial change in the alleged victim after a visit with the alleged perpetrator, whether onsite or outside of the facility? - o Did you interview the alleged perpetrator and identify the circumstances of what occurred prior to, during and after the alleged abuse? If so, describe? - o Were visits from the alleged perpetrator supervised? When and where did visits usually occur? - o Is access to the alleged victim currently allowed? If so, under what circumstances? - o What protections have been put in place (e.g., supervision of visits while the investigation is being conducted); and/or - o Has access to other residents been limited? If so, how?



	For an allegation that a resident was deprived of goods or services by staff, ask: - o Have you noticed any negative changes (<i>e.g.</i>, weight loss, pressure ulcers) with this resident? If so, please describe. - o How do staff respond to the resident's requests for assistance? If staff do not respond, what do they say? - o Do you have any concerns about the manner in which care is provided to the resident? If yes, describe. Has staff reported this concern to you? If so, when and what did you do; - o Has the resident had any behavioral symptoms (<i>e.g.</i>, combative behavior, frequent requests for assistance, calling out, grabbing) that may be impacting care they receive? If so, did staff report this to you? If reported, when and what was your response; - o Has the resident had any changes in medication (<i>e.g.</i>, antipsychotics) that may be impacting the care that they receive? Note: Determine if the resident may have received unnecessary medications such as chemical restraints.
Facility Investigator Interview Interview the staff member responsible for the initial reporting and the overall investigation of the alleged abuse. For some facilities, the Administrator may be the Facility Investigator.	
	When (date and time) were you notified of the alleged abuse and by whom?
	What information was reported to you related to the alleged abuse?
	When and what actions were taken to protect the alleged victim from further abuse while the investigation was in process?
	Describe medical interventions, if any, taken in relation to the alleged abuse, (<i>e.g.</i> , hospitalization, transfer to ER, onsite visit by attending practitioner).
	Describe any mental assessments that were conducted pertaining the alleged abuse, and any interventions taken to assist the resident (<i>e.g.</i> , counseling).
	If the allegation relates to sexual abuse, describe the immediate actions of the staff, including preserving evidence, providing medical intervention (<i>e.g.</i> , transfer to hospital for sexual assault for rape kit), conducting a physical assessment, and reporting.
	Who did you notify and when (date/time) of the alleged abuse? Was an outside entity informed about the alleged abuse, and if so, when (date and time)? NOTE: If a suspected crime, note the date and time reported. Obtain copies of the outside entities investigations, if available.
	What steps were taken to investigate the allegation? Can you provide me a timeline of events that occurred?
	Describe interviews conducted, such with the alleged victim/resident representative, witnesses, alleged perpetrator, and practitioner and what information was obtained.
	Describe record reviews conducted related to the alleged abuse and what information was obtained.
	Were there any photographs or videos obtained related to the alleged abuse? If yes, describe.
	When and who received results of the investigation?

	What actions were taken as a result of the investigation (e.g., for the alleged victim, the alleged perpetrator, other staff, training, policy revisions)?
	Is there any related information regarding the allegation that may not be included in the investigation report?
Administrator Interview	
	When (date and time) were you notified of the allegation and by whom?
	When (date and time) was the initial report reported to required agencies and law enforcement, as applicable?
	Who was/is responsible for the investigation? Is the investigation completed or ongoing? If completed, what was the outcome? (if the administrator is the facility investigator, use the questions above to determine how the investigation was conducted.)
	When (date and time) were the results of the investigation reported to you and to the required agencies?
	When and what actions were taken to protect the alleged victim and residents at risk from further abuse while the investigation was in process?
	What happened as a result of the investigation?
	How do you monitor for potential or actual reported allegations of abuse?
	If the alleged perpetrator is an employee, were there previous warnings or incidents at the facility? If the alleged abuse was verified, describe actions that were taken.
	How do you assure retaliation does not occur when staff or a resident reports an allegation of abuse?
	For an allegation that a resident was deprived of goods or services , ask: - o Have staff reported any concerns to you about the manner in which care is provided to the resident? If yes, when, what did they report, and what did you do; and - o Who is responsible for supervising and monitoring the delivery of care at the bedside?
QAA Responsible Person Interview	
	How do you monitor reported allegations of abuse?
	When did the QAA Committee receive the results of the investigation for the allegation of abuse?
	Did the QAA Committee make any recommendations based on the results of the investigation, such as policy revisions or training to prevent abuse?
Review the Alleged Victim's Record	
	Was the alleged victim assessed at risk for abuse (e.g., as indicated in the RAI, care plan, progress notes from nurses, social services, practitioners)? If so, how did the facility implement interventions to mitigate risks?
	When (date/time) did the allegation occur? When was it discovered and by whom?
	When was the resident's representative, practitioner and other required entities notified?
	Were physical injuries noted related to the alleged abuse?



	Are there changes in the alleged victim's mood or demeanor before and after the alleged abuse (e.g., distrust, fear, angry outburst, cowering, tearfulness, agitation, panic attacks, withdrawal, difficulty sleeping, and PTSD symptoms)?
	Are there potential indicators of sexual abuse (e.g., STD, vaginal or anal bleeding, pain or irritation in genital area, bruising/lacerations on breasts or inner thighs, or recent difficulty with sitting or walking)?
	Was the resident assessed and the care plan revised as needed? What interventions (e.g., first aid, hospitalization) occurred to address any physical injuries or changes in mental status? (Note: If the resident required medical treatment, you may need to contact the hospital and/or practitioner to obtain related medical records for review.)
	For an allegation that a resident was deprived of goods or service : - o Does the record reflect any negative changes (e.g., weight loss, pressure ulcers); - o Has the alleged victim had any behavioral symptoms (e.g., combative behavior, frequent requests for assistance, calling out, grabbing) that may be impacting the care that they receive? If so, describe; and/or - o Determine if the alleged victim may have received unnecessary medications such as chemical restraints and if this impacted the care received.
Review the Alleged Perpetrator's Record, if a Resident	
	What circumstances are documented (date/time) before, during and after the alleged abuse?
	Is there a previous history of exhibiting any behaviors that would provoke others? If so: Does the care plan address behaviors, if any, of the alleged perpetrator, and include interventions (e.g., monitoring, staff supervision, redirection)? - o Were care plan interventions implemented? - o If the interventions were not effective in reducing the behaviors, were they revised and if so, what was changed? - o Did the revised interventions provide the needed protections? - o What protections are currently in place? - o Does the alleged perpetrator have limited access to other residents at risk? If so, how?
	After the alleged abuse, did staff separate the alleged victim and other residents at risk?
	What are the plans to monitor and supervise the resident?
	If interventions were unsuccessful, was the physician notified? Were new interventions implemented?
Review the Alleged Perpetrator's Personnel File, if Staff	
	Is there any information related to the alleged abuse? If so, describe.
	Is there a history of other allegations?
	Were adverse personnel actions taken? If so, describe.
	Is there information related to any finding of abuse/neglect/exploitation/misappropriation of property/mistreatment?

	If a nurse aide: - o Was training and orientation provided related to dementia management, abuse and neglect prevention? - o Were annual performance reviews conducted? Was there a history of competency concerns? If so, what disciplinary actions and/or training was provided related to performance deficits?
Investigative Report from Other Investigatory Agencies (APS, Professional Licensing Boards, Law Enforcement)	
	Review a copy of the report if another investigatory agency (<i>e.g.</i> , APS, Professional Licensing Board, and Law Enforcement) conducted an investigation.
	What did the other investigatory agency find?

Critical Element Decisions, Potential Abuse Citations	
Did the facility protect a resident's right to be free from any type of abuse that results in, or has the likelihood to result in physical harm, pain, or mental anguish? If No, cite F600	
Did the facility hire or engage staff who have: - o Not been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law? - o Not had a finding entered into the State nurse aide registry concerning abuse, neglect, exploitation, mistreatment of residents, or misappropriation of resident property? - o Not had a disciplinary action taken by a state professional licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents, or misappropriation of resident property? - o Not had a successful appeal of their disqualification from employment? AND/OR Did the facility report to the State nurse aide registry or licensing authorities any knowledge of actions taken by a court of law that would indicate unfitness as a staff member of a nursing home? If No, cite F606 NA, the alleged perpetrator was not staff	
Did the facility develop and implement written policies and procedures that prohibit and prevent abuse, establish policies and procedures to investigate any such allegations, and include training as required at paragraph §483.95? If No, cite F607	
Did the facility develop, implement, and maintain an effective training program for all new and existing staff that includes training on activities that constitute abuse; procedures for reporting incidents of abuse; and dementia management and resident abuse prevention? If No, cite F943	
Does the facility's in-service training for nurse aides include resident abuse prevention? If No, cite F947	

Did the facility develop and implement written policies and procedures to ensure reporting of suspected crimes within mandated timeframes, annual notification of covered individuals of reporting obligations, posting of signage stating employee rights related to retaliation against the employee for reporting a suspected crime, and prohibition and prevention of retaliation?

If No, cite F608

For alleged violations of abuse, did the facility:

- o Identify the situation as an alleged violation involving abuse, including injuries of unknown source?
- o Immediately report the allegation to the administrator and to other officials, including to the State survey and certification agency, and APS in accordance with State law?
- o Report the results of all investigations within five working days to the administrator or his/her designated representative and to other officials in accordance with State law (including to the State survey and certification agency)?

If No to any of the above, cite F609

For alleged violations of abuse, did the facility:

- o Prevent further potential abuse while the investigation is in progress?
- o Initiate and complete a thorough investigation of the alleged violation?
- o Maintain documentation that the alleged violation was thoroughly investigated?
- o Take corrective action following the investigation, if the allegation is verified?

If No to any of the above, cite F610

Other Tags, Care Areas (CA), and Tasks (Task) to be Considered:

Dignity (CA),
Visitors F563/F564,
Notice of Rights and Rules F572,
Privacy (CA),
Grievances F585,
Reporting Reasonable Suspicion of a Crime F608,
Accidents (CA),
Social Services F745,
Behavioral-Emotional Status (CA),
Sufficient and Competent Staffing (Task),
QAA/QAPI (Task).

Adapted from Abuse Critical Element Pathway CMS-2009 (5/2017)

Tools: Compliance with Guidance for Chemical Restraints

§483.12 Freedom from Abuse, Neglect, and Exploitation

A. DEFINITION

- a. Chemical Restraint –
 - i. Any medication that is not an accepted standard of practice for a resident's medical or psychiatric condition, and that restricts the resident's movement or cognition, or sedates or subdues the resident, and the medication may be a chemical restraint.
 - ii. Any medication that follows accepted standards of practice may be a chemical restraint if there was a less restrictive alternative treatment that could have been given that would meet the resident's needs and preferences or if the medical symptom justifying its use has subsided.

B. FACILITY RESPONSIBILITY

- a. The facility is accountable for the process to meet the minimum requirements of the regulation including appropriate assessment, care planning by the interdisciplinary team, and documentation of the medical symptoms and use of a less restrictive alternative for the least amount of time possible and provide ongoing re-evaluation.
- b. Facilities are responsible for knowing the effects medications have on their residents. If a medication has a sedating or subduing effect on a resident, and is not administered to treat a medical symptom, the medication is acting as a chemical restraint.

C. MEDICATIONS TO STABILIZE A DISORDER

- a. A medication may have been required to treat a medical symptom, and as a result, the medical symptom is no longer present. The clinical goal of the continued use of the medication may be to stabilize the symptoms of the disorder and have no symptoms of the disorder so that the resident can function at the highest level possible.
- b. In such instances, if the medication is reduced or discontinued, the symptoms may return. Reducing or eliminating the use of the medication may be contraindicated and must be individualized. If the medication is still being used, the clinical record must reflect the rationale for the continued administration of the medication. If no rationale is documented, this may meet the criteria for a chemical restraint, such as for staff convenience
- c. Although the symptom may no longer be present, the disease process is still present. For example, diseases may include:
 - i. Chronic psychiatric illness such as schizophrenia or schizoaffective disorder, bipolar disorder, depression, or post-traumatic stress disorder;
 - ii. Neurological illness such as Huntington's disease or Tourette's syndrome; and
 - iii. Psychosis and psychotic episodes.

D. DETERMINATION OF MEDICAL SYMPTOMS

- a. The clinical record must reflect whether the staff and practitioner have identified, to the extent possible, and addressed the underlying cause(s) of distressed behavior, either before



or while treating a medical symptom. Potential underlying causes for expressions and/or indications of distress may include, but are not limited to:

- i. Delirium;
 - ii. Pain;
 - iii. The presence of an adverse consequence associated with the resident's current medication regimen; and
 - iv. Environmental factors, such as staffing levels, over stimulating noise or activities, under stimulating activities, lighting, hunger/thirst, alteration in the resident's customary location or daily routine, physical aggression leading to altercations, temperature of the environment, and crowding.
- b. Assure that a medication is being used to treat a medical symptom is supported by adequate indication and rationale for use, and is used at the correct dose and duration, and with adequate monitoring.
- c. Examples of facility practices that indicate that a medication (ordered by a practitioner) is being used as a chemical restraint for staff convenience or discipline include, but are not limited to:
- i. Staff indicate that a medication is being administered based on the resident's representative's request to administer a medication to "calm down" the resident;
 - ii. Staff have recommended to the practitioner that a resident be administered a medication in order to prevent a resident from displaying behaviors such as wandering into other resident's rooms;
 - iii. Staff administer a medication to quiet the resident because the resident continually calls out, without attempting alternative interventions;
 - iv. Staff become frustrated with a resident who continually requests staff assistance (such as for toileting), or continually puts on the call light, and administer a medication to sedate or subdue the resident);
 - v. Staff administer a medication that subdues or sedates a resident when insufficient staffing levels do not allow for the resident's needs to be met;
 - vi. Staff administer a medication to sedate or subdue the resident, and/or to restrict the resident to a seated or lying position, since the resident continually wanders into other resident's rooms or attempts to leave the unit; and
 - vii. Staff become upset with a resident who resists receiving a bath and pinches staff. The staff had not re-assessed the resident nor revised interventions regarding how to provide bathing care in order to meet the resident's needs. Instead, staff administer a medication that is used to subdue the resident prior to providing the bath, but the medication is not used to treat an identified medical symptom.

E. DETERMINATION OF INDICATION FOR MEDICATION USE

- a. The clinical record must reflect the following:
 - i. Whether there is an adequate indication for use for the medication (*e.g.*, a psychotropic medication is not administered unless the medication is used to treat a specific condition);



- ii. Whether an excessive dose and/or duration of the medication was administered to the resident;
- iii. Whether there is adequate monitoring for the effectiveness of the medication in treating the specific condition and for any adverse consequences resulting from the medication;
- iv. Whether a resident who uses a psychotropic drug(s) is receiving gradual dose reduction and behavioral interventions, unless clinically contraindicated; and
- v. Whether a resident who receives a psychotropic drug(s) pursuant to a PRN (*pro re nata*, or as needed) order is not administered the medication unless the medication is necessary to treat a diagnosed specific symptom, as documented in the clinical record.
- vi.

F. USE OF PRN PSYCHOTROPIC MEDICATIONS

§483.45(e)(3) Residents do not receive psychotropic drugs pursuant to a PRN order unless that medication is necessary to treat a diagnosed specific condition that is documented in the clinical record; and

§483.45(e)(4) PRN orders for psychotropic drugs are limited to 14 days. Except as provided in §483.45(e)(5), if the attending physician or prescribing practitioner believes that it is appropriate for the PRN order to be extended beyond 14 days, he or she should document their rationale in the resident's medical record and indicate the duration for the PRN order.

§483.45(e)(5) PRN orders for anti-psychotic drugs are limited to 14 days and cannot be renewed unless the attending physician or prescribing practitioner evaluates the resident for the appropriateness of that medication. Use of PRN Medication

- a. A medication to be administered on a PRN time-limited basis for the provision of medical treatment to address an emergency medical condition (e.g., delirium), this would not be considered to be a chemical restraint.
- b. The dosage cannot exceed what is prescribed by the practitioner, and if the resident does not respond to the initial administration of the PRN medication, the practitioner must be contacted, regarding re-assessment of the resident's medical condition and evaluation of interventions.
- c. The administration of a PRN medication must be discontinued when the resident does not need the medication for treatment of the medical condition (also see §483.45(e) F758 for limitations on psychotropic and antipsychotic medication PRN orders).
- d. If staff continue to utilize a PRN medication that subdues or sedates a resident, and is not treating a medical condition, this would be considered to be a chemical restraint for staff convenience or discipline.
- e. Even if a medication was initially administered for a medical symptom, the continued administration of a medication in the absence of a medical symptom, that sedates a resident or otherwise makes it easier to care for them, is a chemical restraint.

G. RISKS AND PSYCHOSOCIAL IMPACTS RELATED TO USE OF CHEMICAL RESTRAINTS

- a. A medication that is used for discipline or convenience and is not required to treat medical symptoms, may cause the resident to be:
 - i. Subdued, sedated, or withdrawn;
 - ii. Asleep during hours that he/she would not ordinarily be asleep; or
 - iii. Limited in his/her functional capacity.
 - iv. Loss of autonomy, dignity, self-respect and orientation;
 - v. Confusion, cognitive decline, withdrawal, depression;
 - vi. Decreased activity levels, including social activities;
 - vii. Decline in skin integrity;
 - viii. Decline in continence level;
 - ix. Decline in physical functioning including an increased dependence in activities of daily living (*e.g.*, ability to walk), impaired muscle strength and balance, decline in range of motion, and risk for development of contractures, increased risk of falls; and
 - x. Weight loss if missing meals.



COMPLIANCE CHECKLIST FOR CHEMICAL RESTRAINT USE

OBSERVATION

- Any potential environmental causes of distress to the resident, such as staffing levels, over stimulating noise or activities, under stimulating activities, lighting, hunger/thirst, physical aggression leading to altercations, temperature of the environment, and crowding. I
- Alteration to the resident's customary location or daily routine.
- Record any visible physical and psychosocial reaction to the potential use of a medication, such as:
 - Drowsiness, somnolence, excessive sedation, and hallucinations;
 - Neurologic consequences such as akathisia, neuroleptic malignant syndrome (NMS), parkinsonism, tardive dyskinesia; and/or
 - Confusion, agitation, anxiety, nervousness;
 - Social isolation, withdrawal, loss of self-esteem; and/or
 - Lack of participation in individualized activities, according to the resident's care plan.

INTERVIEWS

Interview the resident, and/or resident representative, to the degree possible, to identify:

- Prior to administration of the medication:
 - Whether other interventions have been attempted; if so, what alternatives; and what the response was;
 - Whether staff provided information regarding why the medication was being used;
 - The risks and/or benefits of using the medication; and
 - When and for how long the medication was going to be used.
- Who requested the medication to be used and why;
- Describe the effect of the medication on the resident's functioning, participation in individual and/or group activities, and how it makes them feel; and
- Describe any changes in the resident's ability to understand, sleeping patterns, or social involvement since receiving the medication.

Interview direct care staff and/or licensed personnel (e.g., nursing, social worker), as appropriate, on various shifts that provide care to the resident to determine:

- Why the medication is being administered and what effect (physical and/or psychosocial) it has on the resident;
- How do staff respond and what individualized, person-centered interventions are attempted;



	• Prior to administration of the medication, whether other interventions have been attempted; if so, what alternatives; and how the interventions met or failed to meet the resident's needs; • How long the medication has been administered, and when it began; • Prior to administration of the medication, what is determined to be the underlying cause(s) of the medical symptom that is being treated; how is the cause(s) treated; • Who and how the facility monitors for adverse consequences related to the medication; • How is it determined that the medical symptom is no longer present and who determines this; • If the medication continues to be administered and the medical symptom is no longer present, what is the clinical rationale for continuing the use of the medication and where is this documented; • How staff are assigned to monitor, care for, and be familiar with residents' behaviors (e.g., the number, location, and consistency of staff assigned across different shifts/units); • Who supervises the overall delivery of care to the residents to assure care planned interventions are implemented and how supervision occurs (to assure that a chemical restraint is not used for staff convenience); and • Whether staff have discussed concerns with the Director of Nurses and Administrator regarding the behavioral symptoms of specific residents and the monitoring of interventions, and whether staff have requested more resources or changes to resident assignments, and the response to the concerns.
	Interview the practitioner • When the staff contacted him/her, what concerns they identified regarding the resident's behavior, • the response provided, including whether other interventions were attempted prior to the use of a medication, • what medical symptom is being treated with the medication, • whether the medication is considered to be the least restrictive (in type, dose, and duration) that may be used to treat the symptom, and • the plan for discontinuing and/or revising interventions.
	Interview the pharmacist to identify • when he/she conducted the last medication regimen review for the resident; • if the medication was administered prior to the last review and it was not identified as a concern, • whether he/she can provide information regarding the indication for use of the medication; • if the medication was administered prior to the last review and it was identified as a concern, ,



	• whether he/she notified the practitioner, Director of Nurses, and/or medical director and • what was the response; and • what is the facility's process for notifying the pharmacist when initiating a medication for a change in the resident's condition, such as when there are expressions or indications of distress, or other changes in a resident's psychosocial status
	Interview the social worker • any patterns of behaviors that may impact the resident's safety or care provided, • whether he/she was aware of interventions attempted, • how attempts met or did not meet the resident's needs, • whether he/she was aware of what medications are administered to the resident, • whether he/she has identified any changes in the resident's behavior or activity level after administration of the medication, and • why he/she believes the medication is being administered.
	Interview the Director of Nurses • identify his/her knowledge regarding the behavioral symptoms of specific residents and the monitoring of interventions. Also, • interview the Director of Nurses and Administrator to identify whether staff have requested more resources or changes to resident assignments, and the response to the concerns.
RECORD REVIEW	
	• Review the assessment, care plan, practitioner orders, progress notes, and consulting pharmacist reviews. • Determine whether there was a decline in the resident's functional and/or psychosocial status related to the medication that was administered. • determine whether the decline can be attributed to disease progression or administration of an unnecessary medication. • Determine if documentation in the resident's record reflects: ○ Prior to administration of the medication, whether other interventions have been attempted; if so, what alternatives; and how the interventions met or failed to meet the resident's needs; ○ Prior to administration of the medication, whether the facility identified, to the extent possible, and addressed the underlying cause(s) of the medical symptom; ○ Indication for use for the medication(s), including the medical symptom(s) being treated; ○ Whether the record reflects any adverse consequences after administration of the medication;



	○ Whether the record reflects whether there was a change in functioning and/or activity after administration of the medication; ○ If a medication used to treat medical symptoms was appropriate at one time, determine if it was discontinued once it was no longer necessary, or if a clinical rationale to continue the medication is documented; and ○ Whether the medication is administered on a PRN basis on particular days or shifts or when certain staff is caring for the resident and the symptoms for which the medication is prescribed are not documented.
FACILITY REVIEW	
	• Interview the medical director regarding medications that are not required to treat the resident's medical symptoms result in the resident being subdued, sedated, or withdrawn or limited in his/her functional capacity. • Determine whether the Quality Assessment & Assurance committee is aware of psychotropic medication used to address resident behavioral symptoms, whether there is sufficient, qualified staff trained to provide interventions for behavioral symptoms, and supervision of staff to assure that medications are only used to treat a medical symptom and do not have the effect of convenience or discipline.
KEY ELEMENTS OF NONCOMPLIANCE	
	Noncompliance will be identified if the facility has failed, in one or more areas, to do any one or more of the following: • Assure that the resident is free from restraints imposed for discipline or staff convenience (convenience can be caused intentionally or unintentionally by staff); • Identify medical symptoms that were being treated with the use of a chemical restraint; • If a chemical restraint is in use, the facility: ○ Provides the least restrictive alternative for the least time possible, including and as appropriate, developing and implementing a plan for gradual dose reduction, in the absence of identified and documented clinical contraindications; ○ Monitors and evaluates the resident's response to the medication; and ○ Discontinues the use of the medication when the medical symptom is no longer being treated, unless reducing or eliminating the use of the medication may be clinically contraindicated.
POTENTIAL TAGS FOR ADDITIONAL INVESTIGATION	The surveyor is cautioned to investigate these related requirements before determining whether non-compliance may be present. Some examples of related requirements that should be considered include the following: • 42 CFR 483.10, 483.10(a)(1)-(2), 483.10(b)(1)-(2), F550- Resident Rights and Dignity • 42 CFR 483.10(c)(2)-(3), F553 - Right to Participate Planning Care • 42 CFR 483.21(b)(1), F656- Develop/Implement Comprehensive Care Plan



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| | <ul style="list-style-type: none">• 42 CFR 483.35, 483.35(a), and 483.35(c)- F725 and F726 – Sufficient and Competent Staff• 42 CFR 483.40(b)-(b)(1), F742- Treatment/Svc for Mental/Psychosocial Concerns• 42 CFR 483.45(c), F756-Drug Regimen Review, Report Irregular, Act On• 42 CFR 483.45(d), F757- Drug Regimen is Free From Unnecessary Drugs • 42 CFR 483.45, F758- Psychotropic Medications• 42 CFR 483.70(h), F841-Responsibilities of Medical Director• 42 CFR 483.75 (g)(2)(ii)- F867- QAA Activities |
|--|---|

Adapted from Interpretive Guidelines at **F605** §483.12(a)(2).

Tool: Compliance with Physical Restraint Regulations

§483.12 Freedom from Abuse, Neglect, and Exploitation

A. Definition:

- a. “Physical restraint” is defined as any manual method, physical or mechanical device, equipment, or material that meets all of the following criteria:
 - i. Is attached or adjacent to the resident’s body;
 - ii. Cannot be removed easily by the resident; and
 - iii. Restricts the resident’s freedom of movement or normal access to his/her body.

B. Facility Responsibility

- a. Assist each resident to attain and maintain his/her highest practicable well-being in an environment that:
 - i. Prohibits the use of physical restraints for discipline or convenience;
 - ii. Prohibits the use of physical restraints to unnecessarily inhibit a resident’s freedom of movement or activity; and
 - iii. Limits physical restraint use to circumstances in which the resident has medical symptoms that may warrant the use of restraints.
- b. When a physical restraint is used, the facility must:
 - i. Use the least restrictive restraint for the least amount of time; and
 - ii. Provide ongoing re-evaluation of the need for the physical restraint.

C. Convenience and/or Discipline

- a. A facility must not impose physical restraints for purposes of discipline or convenience.
 - i. The facility is prohibited from obtaining permission from the resident, or resident representative, for the use of restraints when the restraint is not necessary to treat the resident’s medical symptoms.

D. Determination of Use of Restraints for a Period of Imminent Danger to the Safety and Well-Being of the Resident

- a. In the event that a resident is in “imminent danger” and there was fear for the safety and well-being of the resident(s) due to violent behavior, such as physically attacking others, the order from the practitioner and supporting documentation for the use of a restraint must be obtained either during the application of the restraint, or immediately after the restraint has been applied.
- b. The failure to immediately obtain an order is viewed as the application of restraint without an order and supporting documentation.



- c. Facilities may have a policy specifying who can initiate the application of restraint prior to obtaining an order from the practitioner.
- d. If application of a restraint occurs, the facility must:
 - i. Determine that a physical restraint is a measure of last resort to protect the safety of the resident or others;
 - ii. Provide ongoing direct monitoring and assessment of the resident's condition during use of the restraint;
 - iii. Provide assessment by the staff and practitioner to address other interventions that may address the symptoms or cause of the situation (e.g., identification of an infection process or delirium, presence of pain);
 - iv. Ensure that the resident and other residents are protected until the resident's behavioral symptoms have subsided, or until the resident is transferred to another setting;
 - v. Discontinue the use of the restraint as soon as the imminent danger ends; and
 - vi. Immediately notify the resident representative of the symptoms and temporary intervention implemented.

E. Determination of Use of Bed Rails as a Restraint

- a. Facilities must use a person-centered approach when determining the use of bed rails, which would include conducting a comprehensive assessment, and identifying the medical symptom being treated by using bed rails.
- b. Bed rails may have the effect of restraining one individual but not another, depending on the individual resident's conditions and circumstances.
- c. To determine if a bed rail is being used as a restraint, the resident must be able to easily and voluntarily get in and out of bed when the equipment is in use. If the resident cannot easily and voluntarily release the bed rails, the use of the bed rails may be considered a restraint.

F. Determination of the Use of Position Change Alarms as Restraints

- a. Position change alarms are any physical or electronic device that monitors resident movement and alerts the staff when movement is detected.
 - i. Types of position change alarms include chair and bed sensor pads, bedside alarmed mats, alarms clipped to a resident's clothing, seatbelt alarms, and infrared beam motion detectors.
 - ii. Position change alarms do not include alarms intended to monitor for unsafe wandering such as door or elevator alarms.
 - iii. While position change alarms may be implemented to monitor a resident's movements, for some residents, the use of position change alarms that are audible to the resident(s) may have the unintended consequence of inhibiting freedom of movement



Physical Restraint Investigation

RECORD REVIEW

- Review the most current comprehensive and most recent quarterly (if the comprehensive isn't the most recent) MDS/CAAs for Sections C – Cognitive Patterns, E – Behavior, G – Functional Status, J – Health Conditions (falls), and P – Restraints and Alarms.
- Practitioner's orders (*e.g.*, medical symptom being treated, type of restraint, frequency of releasing the restraint).
- Care plan (*e.g.*, medical symptoms justifying use of restraint, type of restraint used, frequency, duration, circumstances for when it is to be used, interventions to address potential or actual complications from restraint use such as increased incontinence, decline in ADLs or ROM, increased confusion, agitation, or depression).

OBSERVATION

- use of a device is indicated in the care plan,
- how are care-planned interventions implemented
- If the resident's movement is restricted
- the method used, by whom, and how did staff communicate or respond to the resident
- Examples include:
 - Placing a chair or bed close enough to a wall that the resident is prevented from rising out of the chair or voluntarily getting out of bed;
 - Tucking in or fastening a sheet, fabric, or clothing tightly so that a resident's freedom of movement is restricted;
 - Placing a resident in a chair, such as a beanbag or recliner, that prevents a resident from rising independently;
 - Using devices in conjunction with a chair, such as trays, tables, cushions, bars or belts, that the resident cannot remove and/or that prevent the resident from rising; or
 - Holding down a resident in response to a behavioral symptom or during the provision of care.
- How the resident requests staff assistance (*e.g.*, access to the call light, calling out to staff for help, grabbing at staff walking by)
- How the staff respond to the resident
- How often staff are monitoring the resident
- How often the resident is taken to the bathroom, ambulated, or provided exercises or range of motion
- When the restraint is released, who released the restraint, for how long, and how often
- If a position change alarm is in use, determine the reason, and the impact to the resident
- Determine if the restraint used for discipline or results in convenience for staff?
Examples include:
 - In response to a resident's wandering behavior, staff become frustrated and restrain a resident to a wheelchair;



	○ When a resident is confused, and becomes combative when care is provided and staff hold the resident's arms and legs down to complete the care (NOTE: This example differs from an emergency situation where staff briefly hold a resident for the sole purpose of providing necessary immediate medical care ordered by a practitioner); or ○ Staff place a resident in a bean bag chair, in the absence of a medical symptom, and the resident is unable to get out of it, which is potentially more convenient for staff. • Determine if there any physical or psychosocial reactions to the use of any devices/practices • Examples include: ○ Attempts to release/remove a device (e.g., pulling, picking, twisting); ○ Verbalizing anger/anxiety due to restricted movement; ○ Calling out for help to take a device off; ○ Fear of moving since it could trigger the sound of a position change alarm; or ○ Attempting to stand up out of a chair (e.g., bean bag, recliner) • If staff said the resident can remove the restraint, request that staff ask the resident to demonstrate how he/she releases the restraint without staff providing specific instructions for the removal. • During high activity times in the facility (e.g., getting ready in the morning, meal times, bathing), identify how staff respond to residents who are wandering or confused
RESIDENT, RESIDENT REPRESENTATIVE, OR FAMILY INTERVIEW	
	• When conducting interviews, describe the device/practice instead of using the term "restraint" since the interviewee may not recognize that a restraint was/is being used.
	Ask the resident, representative or family the following: • Explain why the device is used • Describe who requested the device and why • Prior to the use of the device, if staff provided information regarding: ○ Why the device would be used; ○ The risks and benefits; ○ The effects of the device on your mobility, other activities of daily living, involvement in activities and meals; and ○ When and for how long the device would be used? • Describe what was tried before the device was used • Describe how the resident was involved in the development of the care plan for the use of the device Determine if the care plan reflects the resident's choices and preferences • Describe how the resident contacts staff when needing assistance when the device is used. Describe how staff responds to request • If there is a position change alarm in use, ask the resident to explain why the alarm is in use. • Ask the resident to describe how the alarm makes them feel • Ask the resident if the use of the alarm changes how they move • Ask the resident if they have had any problems when the device is being used



	- For the resident representative, if a physical restraint was used when imminent danger was present, - Determine if the representative notified by staff and when - Describe what staff told the representative about the use of the restraint (e.g., type/method) - Determine if staff explained when the restraint would be discontinued. If not, determine if staff explained why the restraint continues to be used.
STAFF INTERVIEWS	
NURSING AIDES, NURSES, DON, AS APPROPRIATE	
	- When conducting interviews, describe the device/practice instead of using the term “restraint” since the interviewee may not recognize that a restraint was/is being used. - Ask staff to describe why the device is being used - Ask for a description of training on the use of the device - Ask if the device has impacted how care is provided to the resident - Ask when the device was begun. - Ask for the medical symptoms for use of the device - Ask for the risks and benefits of using the device - Ask what measures were used prior to starting use of the current device - Ask about the frequency, duration and circumstances for applying the device - Ask how often the device is removed - Ask how the staff responds to the resident’s request to remove the device - Determine if the resident attempts to remove the device. If the resident does attempt removal, determine the following: - If the resident verbalizes anger or anxiety about use of the device - If the resident calls out for help to remove the device - If the resident pulls, picks, twists or otherwise manipulates the device to remove it - How often the resident tries to remove the device - If the resident’s attempts to remove the device been reported and to whom - If care plan changes were made and implemented - How staff monitors the device in use - Determine if staff have noted a change in the resident’s physical or psychosocial function - Ask staff how they manage their time to meet residents’ needs when they have more than one resident with a device - Ask about staff training for managing residents’ problem behaviors - Ask if there are facility protocols or policies for the use of physical devices/restraints - If there is a personal alarm or position change alarm in use, ask staff why the alarm is used. - Determine the impact to the resident of alarm use
LICENSED STAFF INTERVIEW	
	- Ask how the nurse supervises staff to assure that the device is applied correctly and released, as ordered - Ask if the resident had any physical or psychosocial changes related to the use of the device, and how care-planned interventions were revised to address the changes?



	○ Ask if the attending practitioner was notified of the changes ○ Ask about the practitioner's response • Determine how often residents are evaluated and assessed for the ongoing need for the use of the restraint for the treatment of the medical symptoms • Determine the plan for reducing the use of the device, including ongoing assessment of the resident, revising the plan as necessary, and attempting other interventions to minimize or eliminate the use of the restraint • Ask how the resident responded to other interventions • Ask for a description of staff assignments to monitor, care for, and be familiar with residents' behaviors ○ the number, location, and consistency of staff assigned across different shifts/units
RECORD REVIEW	
	• Identify the specific medical symptom justifying the use of the restraint or device that restricts the resident's movement (physically or psychosocially). • If the assessment identified whether the medical symptom could be eliminated or reduced, without the use of the device. • The risks and benefits, if any, identified for the use of the device. • interventions, including less restrictive alternatives, that were attempted and whether the interventions were successful in meeting the residents assessed needs • information provided and when to the resident or representative regarding the identification of a medical symptom requiring the use of the device, the risks and/or benefits, the least restrictive interventions, and when and for how long the device was going to be used. • Whether the resident/resident representative was involved in the development of the care plan related to the use of the device in accordance with his/her preferences and choices. • the resident's current functional ability including strength and balance such as bed mobility, ability to transfer between bed or chair, and to stand or go to the bathroom and whether there has been a decline in physical or psychosocial functioning that may be related to the use of device • whether the care planned interventions were revised and implemented to address the decline. • Whether the resident had any injuries, or potential injuries, that occurred during the use of the device and if so, the facility's response. • Whether there was a "significant change" in the resident's condition and if so, if and when the MDS significant change comprehensive assessment was conducted. • Who provides monitoring for the use of the device and how monitoring is provided for the implementation of interventions, such as when and how often the device is released and assistance provided for going to the bathroom, ambulation, and ROM. • What ongoing assessment and evaluation for the treatment of the medical symptom was conducted related to the use of the device.



- What interventions have been attempted and evaluated to minimize/eliminate the use of the device and address the medical symptom/underlying problems causing the medical symptom.
- Whether there is any indication that the device is used for the purpose of discipline or staff convenience.
- If concerns are identified, review the facility policy related to the use of restraints or the device.
- If a position change alarm is in use, what is the rationale for its use, and impact on the resident.

Adapted from Physical Restraint Critical Element Pathway CMS-20077 (5/2017)

KEY ELEMENTS OF NONCOMPLIANCE

Did the facility ensure all the following?

- Ensure that the resident is free from physical restraints imposed for discipline or staff convenience;
- Identify the medical symptom being treated when using a device or a facility practice that meets the definition of physical restraint;
- Define and implement interventions according to standards of practice during the use of a physical restraint that is used for treatment of a medical symptom;
- Provide the least restrictive restraint for the least time possible;
- Provide ongoing monitoring and evaluation for the continued use of a physical restraint to treat a medical symptom; and
- Develop and implement interventions for reducing or eventually discontinuing the use of the restraint when no longer required to treat a resident's medical symptoms?

If No, cite F604

For newly admitted residents and if applicable based on the concern under investigation, did the facility develop and implement a baseline care plan within 48 hours of admission that included the minimum healthcare information necessary to properly care for the immediate needs of the resident? Did the resident and resident representative receive a written summary of the baseline care plan that he/she could understand?

If No, cite F655

NA, the resident did not have an admission since the previous survey OR the care or service was not necessary to be included in a baseline care plan.

If the condition or risks were present at the time of the required comprehensive assessment, did the facility comprehensively assess the resident's physical, mental, and psychosocial needs to identify the risks and/or to determine underlying causes, to the extent possible, and the impact upon the resident's function, mood, and cognition?

If No, cite F636

NA, condition/risks were identified after completion of the required comprehensive assessment and did not meet the criteria for a significant change MDS OR the resident was recently admitted and the comprehensive assessment was not yet required.

If there was a significant change in the resident's status, did the facility complete a significant change assessment within 14 days of determining the status change was significant? If No, cite F637 NA, the initial comprehensive assessment had not yet been completed therefore a significant change in status assessment is not required OR the resident did not have a significant change in status.
Did staff who have the skills and qualifications to assess relevant care areas and who are knowledgeable about the resident's status, needs, strengths and areas of decline, accurately complete the resident assessment (<i>i.e.</i>, comprehensive, quarterly, significant change in status)? If No, cite F641
Did the facility develop and implement a comprehensive person-centered care plan that includes measurable objectives and timeframes to meet a resident's medical, nursing, mental, and psychosocial needs and includes the resident's goals, desired outcomes, and preferences? If No, cite F656 NA, the comprehensive assessment was not completed.
Did the facility reassess the effectiveness of the interventions and review and revise the resident's care plan (with input from the resident or resident representative, to the extent possible), if necessary, to meet the resident's needs? If No, cite F657 NA, the comprehensive assessment was not completed OR the care plan was not developed OR the care plan did not have to be revised
Other Tags, Care Areas (CA), and Tasks (Task) to surveyors may consider: Dignity (CA), Right to be Informed F552, Right to Participate In Care F553, Accident Hazards (CA), Bed Rails F700, Behavioral-Emotional Status (CA), Unnecessary/Psychotropic Medications (CA), Sufficient and Competent Staffing, Medical Director F841, Resident Records F842, QAA/QAPI (Task).

Adapted from Physical Restraint Critical Element Pathway CMS-20077 (5/2017)

Tools: Guidance for Reporting Reasonable Suspicion of a Crime

§483.12 Freedom from Abuse, Neglect, and Exploitation

The following information is included within the Interpretative Guidelines for **F608** §483.12(b)(5):

A. DEFINITIONS

- a. “Covered individual” is anyone who is an owner, operator, employee, manager, agent or contractor of the facility (See section 1150B(a)(3) of the Act).
- b. “Crime”: Section 1150B(b)(1) of the Act provides that a “crime” is defined by law of the applicable political subdivision where the facility is located. A political subdivision would be a city, county, township or village, or any local unit of government created by or pursuant to State law.
- c. “Law enforcement,” as defined in section 2011(13) of the Act, is the full range of potential responders to elder abuse, neglect, and exploitation including: police, sheriffs, detectives, public safety officers; corrections personnel; prosecutors; medical examiners; investigators; and coroners.
- d. “Serious bodily injury” means an injury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; requiring medical intervention such as surgery, hospitalization, or physical rehabilitation; or an injury resulting from criminal sexual abuse (See section 2011(19)(A) of the Act).
- e. “Criminal sexual abuse”: In the case of “criminal sexual abuse” which is defined in section 2011(19)(B) of the Act (as added by section 6703(a)(1)(C) of the Affordable Care Act), serious bodily injury/harm shall be considered to have occurred if the conduct causing the injury is conduct described in section 2241 (relating to aggravated sexual abuse) or section 2242 (relating to sexual abuse) of Title 18, United States Code, or any similar offense under State law. In other words, serious bodily injury includes sexual intercourse with a resident by force or incapacitation or through threats of harm to the resident or others or any sexual act involving a child. Serious bodily injury also includes sexual intercourse with a resident who is incapable of declining to participate in the sexual act or lacks the ability to understand the nature of the sexual act.

B. FACILITY RESPONSIBILITIES

- a. The facility must develop and implement policies and procedures that:
 - i. Ensure reporting of crimes against a resident or individual receiving care from the facility occurring in nursing homes within prescribed timeframes to the appropriate entities, consistent with Section 1150B of the Act;
 - ii. Ensure that all covered individuals, such as the owner, operator, employee, manager, agent or contractor report reasonable suspicion of crimes, as required by Section 1150B of the Act;
 - iii. Provide annual notification for covered individuals of these reporting requirements;
 - iv. Post a conspicuous notice of employee rights, including the right to file a complaint; and

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- v. Assure that any covered individual who makes a report to be made, or is in the process of making a report, is not retaliated against.

C. POLICIES AND PROCEDURES

- a. Identification of who in the facility is considered a covered individual;
- b. Identification of crimes that must be reported;
- c. Identification of what constitutes “serious bodily injury;”
- d. The timeframe for which the reports must be made; and
- e. Which entities must be contacted, for example, the State Survey Agency and local law enforcement.

D. COVERED INDIVIDUALS IN THE FACILITY

- a. Identify the owner, operator, employee, manager, agent or contractor of the facility as the “Covered Individual”
- b. Facilities may have policies and procedures where the administrator coordinates timely reporting to the State Survey Agency and law enforcement on behalf of covered individuals who choose to the report to the administrator.
 - i. Risks to the covered individual for reporting to the administrator could be mitigated if an individual has clear assurance that the administrator is reporting it and submitting a collective report would not cause delays in reporting according to specified timeframes.
 - ii. Reports should be documented and the administrator should keep a record of the documentation.
 - iii. It remains the responsibility of each covered individual to ensure that his/her individual reporting responsibility is fulfilled, so it is advisable for any multiple-person report to include identification of all individuals making the report. In addition, a facility cannot prohibit or circumscribe a covered individual from reporting directly to law enforcement even if it has a coordinated internal system.

E. IDENTIFICATION OF CRIMES TO BE REPORTED

- a. There are political subdivisions that have examples for which instances of elder mistreatment are considered to be crimes. Because all reasonable suspicions of crimes must be reported, regardless of whether it is perpetrated by facility staff, residents, or visitors, it would be especially beneficial for the facility to work with local law enforcement in determining what would not be reported (e.g., all cases of resident to resident conflict may not rise to the level of abuse and may not be appropriate to report to local law enforcement)
- b. There are instances where an alleged violation of abuse, neglect, misappropriation of resident property and exploitation would be considered to be reasonable suspicion of a crime. In these cases, the facility is obligated to report to the administrator, to the state survey agency, and to other officials in accordance with State law (see F609).
- c. Examples of situations that would likely be considered crimes in all subdivisions would include but are not limited to:
 - i. Murder;

- ii. Manslaughter;
 - iii. Rape;
 - iv. Assault and battery;
 - v. Sexual abuse;
 - vi. Theft/Robbery;
 - vii. Drug diversion for personal use or gain;
 - viii. Identify theft; and
 - ix. Fraud and forgery.
- d. Regardless, covered individuals still have the obligation to report the reasonable suspicion of a crime to the State Survey Agency and local law enforcement\

NOTE: Each State and local jurisdiction may vary in what is considered to be a crime and may have different definitions for each type of crime. Facilities should consult with local law enforcement to determine what is considered a crime.

F. TIMEFRAMES FOR REPORTING

- a. If the events that cause the reasonable suspicion result in serious bodily injury to a resident, the covered individual must report the suspicion immediately, but not later than 2 hours after forming the suspicion;
- b. If the events that cause the reasonable suspicion do not result in serious bodily injury to a resident, the covered individual shall report the suspicion not later than 24 hours after forming the suspicion

G. ENTITIES TO CONTACT

- a. State Survey Agency (SA) and one or more law enforcement entities for the political subdivision in which the facility is located (i.e., police, sheriffs, detectives, public safety officers; corrections personnel; prosecutors; medical examiners; investigators; and coroners)

H. ANNUAL NOTIFICATION OF REPORTING OBLIGATIONS TO COVERED INDIVIDUALS

- a. The facility must develop and implement written procedures that include, but are not limited to, notifying covered individuals annually of their obligations to report reasonable suspicion of crimes in the facility.
- b. The facility must document the mechanism for documenting that all covered individuals have been notified annually of their reporting obligations.
 - i. Documentation may include a copy of a notice or letter sent to covered individuals with confirmation that it was received or a completed training/orientation attendance sheet documenting the individual completed training on reporting obligations.

I. PENALTIES FOR FAILURE TO REPORT

- a. If a covered individual fails to report within mandated timeframes, the covered individual will be subject to a civil money penalty of not more than \$200,000; and the covered individual may be excluded from participation in any Federal health care program (as defined in section 1128B(f)).

- b. If a covered individual fails to report within mandated timeframes and the violation exacerbates the harm to the victim of the crime or results in harm to another individual, the covered individual will be subject to a civil money penalty of not more than \$300,000; and the Secretary may make a determination in the same proceeding to exclude the covered individual from participation in any Federal health care program (as defined in section 1128B(f)).

J. RETALIATION

- a. facilities should develop and implement policies and procedures that promote a culture of safety and open communication in the work environment. This may be accomplished through prohibiting retaliation against an employee who reports a suspicion of a crime.
- b. Actions that constitute retaliation against staff include:
 - i. When a facility discharges, demotes, suspends, threatens, harasses, or denies a promotion or other employment-related benefit to an employee, or in any other manner discriminates against an employee in the terms and conditions of employment because of lawful acts done by the employee.
 - ii. When a facility files a complaint or a report against a nurse or other employee with the state professional licensing agency because of lawful acts done by the nurse or employee for reporting a reasonable suspicion of a crime to law enforcement.
- c. POSTING NOTICE
 - i. In addition to developing policies prohibiting retaliation for reporting suspicions of a crime, the facility must develop and implement policies and procedures for posting notice in a conspicuous location informing covered individuals of their right to file a complaint with the State Survey Agency if they believe the facility has retaliated against an employee or individual who reported a suspected crime and how to file such a complaint.
 - ii. The sign may be posted in the same area that the facility posts other required employee signs, such as labor management posters.
 - 1. Size and type requirements for the sign should be no less than the minimum required for the other required employment-related signs.
- d. PROTECTING CRIME SCENE AND MATERIALS
 - i. Once an individual suspects that a crime has been committed, facility staff must exercise caution when handling materials that may be used for evidence or for a criminal investigation.
 - ii. Examples include:
 - iii. washing linens or clothing,
 - iv. destroying documentation,
 - v. bathing or cleaning the resident before the resident has been examined, or
 - vi. failure to transfer a resident to the emergency room for examination including obtaining a rape kit, if appropriate.

NOTE: Please refer to the facility's obligations under "Reporting Reasonable Suspicion of a Crime in a Long-Term Care Facility: Section 1150B of the Social Security Act," (See S&C Memo: 11-30-NH, revised January 20, 2012, http://www.cms.gov/Medicare/ProviderEnrollment-and-Certification/SurveyCertificationGenInfo/downloads/scletter11_30.pdf)



COMPLIANCE CHECKLIST FOR REPORTING REASONABLE SUSPICION OF A CRIME	
Facility Policies and Procedures	
	Review the facility's policies and procedures to determine whether the facility is in compliance with the requirements at 1150B for: • Ensuring the reporting reasonable suspicion of crimes, • Notifying covered individuals of their reporting responsibilities, • Prohibiting and preventing retaliation, and • Posting notification of employee rights.
Observations	
	Observe whether the facility has posted notification of employee rights and whether the notification includes all of the required components. Note the location of the notification, in relation to whether it is likely to be noticed by all employees.
Interview Staff	Interview staff who should have knowledge of the requirements for reporting reasonable suspicion of a crime • how do staff follow facility policies and procedures, such as what actions should be taken when there is a suspected crime, • when he/she was the last training and/or notification regarding the reporting of suspected crimes, and • whether there are any barriers to reporting.
	Interview – Administrator • How does the Administrator oversee the implementation of policies and procedures for reporting of suspected crimes; • For an allegation of retaliation: - o what is the process for determining and taking actions against an employee involved in retaliation - o what is the process for submitting a report to the State professional licensing agency
Review of In-service Training/Orientation Records	
	Obtain and review documentation of training to determine whether covered individuals were notified annually of their responsibility to report allegations of crimes in the facility.
KEY ELEMENTS OF NONCOMPLIANCE	
	To cite deficient practice at F608, a surveyor's investigation will generally show that the facility failed to develop and implement policies and procedures for any one or more of the following: • Ensure the reporting of suspected crimes, within mandated timeframes (i.e., immediately but not later than two hours if the suspected crime resulted in serious bodily injury, within 24 hours for all other cases); • Notify covered individuals annually of their reporting obligations; • Post signage of employee rights related to retaliation against the employee for reporting a suspected crime; or • Prohibit and prevent retaliation.

Adapted from Interpretive Guidelines at **F608** §483.12(b)(5).

There may be instances where a report is required under 42 CFR 483.12(c) [F609], but not under 42 CFR 483.12(b)(5)/Section 1150B of the Act[F608]. The following table describes the different requirements.

F608 Reporting of Reasonable Suspicion of a Crime F609 Reporting of Alleged Violations		
	F608 42 CFR 483.12(b)(5) and Section 1150B of the Act	F609 CFR 483.12(c)
What	Any reasonable suspicion of a crime against a resident	1) All alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property 2) The results of all investigations of alleged violations
Who is required to report	Any covered individual, including the owner, operator, employee, manager, agent or contractor of the facility	The facility
To whom	State Agency and one or more law enforcement entities for the political subdivision in which the facility is located (i.e., police, sheriffs, detectives, public safety officers; corrections personnel; prosecutors; medical examiners; investigators; and coroners)	The facility administrator and to other officials in accordance with State law, including to the SA and the adult protective services where state law provides for jurisdiction in long-term care facilities
When	Serious bodily injury -- Immediately but not later than 2 hours after forming the suspicion No serious bodily injury- not later than 24 hours	All alleged violations-Immediately but not later than: 1) 2 hours- if the alleged violation involves abuse or results in serious bodily injury 2) 24 hours- if the alleged violation does not involve abuse and does not result in serious bodily injury. Results of all investigations of alleged violations- within 5 working days of the incident
Reporting requirements under this regulation are based on real (clock) time, not business hours.		

Adapted from Interpretive Guidelines at **F608** §483.12(b)(5) and **F609** §483.12(c)(1) and (4).

Tools: Guidance for Reporting Alleged Violations

§483.12 Freedom from Abuse, Neglect, and Exploitation

The following information is included within the Interpretative Guidelines for F609 §483.12(c)(1) and (4):

A. DEFINITIONS

- a. “Abuse,” is defined at §483.5 as “the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology.”
- b. “Alleged violation” is a situation or occurrence that is observed or reported by staff, resident, relative, visitor or others but has not yet been investigated and, if verified, could be noncompliance with the Federal requirements related to mistreatment, exploitation, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property.
- c. “Exploitation,” as defined at §483.5, means “taking advantage of a resident for personal gain, through the use of manipulation, intimidation, threats, or coercion.”
- d. “Immediately” means as soon as possible, in the absence of a shorter State time frame requirement, but not later than 2 hours after the allegation is made, if the events that cause the allegation involve abuse or result in serious bodily injury, or not later than 24 hours if the events that cause the allegation do not involve abuse and do not result in serious bodily injury.
- e. “Injuries of unknown source” – An injury should be classified as an “injury of unknown source” when both of the following criteria are met:
 - 1. The source of the injury was not observed by any person or the source of the injury could not be explained by the resident; and
 - 2. The injury is suspicious because of the extent of the injury or the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma) or the number of injuries observed at one particular point in time or the incidence of injuries over time.
- f. “Misappropriation of resident property,” as defined at §483.5, means “the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident’s belongings or money without the resident’s consent.”
- g. “Mistreatment,” as defined at §483.5, is “inappropriate treatment or exploitation of a resident.”

- h. “Neglect,” as defined at §483.5, means “the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish or emotional distress.”
- i. “Sexual abuse,” is defined at §483.5 as “non-consensual sexual contact of any type with a resident.”

B. FACILITY RESPONSIBILITIES FOR REPORTING ALLEGED VIOLATIONS

- a. The facility must report alleged violations related to mistreatment, exploitation, neglect, or abuse, including injuries of unknown source and misappropriation of resident property and report the results of all investigations to the proper authorities within prescribed timeframes.
- b. Ensure that all staff are aware of reporting requirements and
- c. to support an environment in which staff and others report all alleged violations of mistreatment, exploitation, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property.

C. POLICY AND PROCEDURES

- a. An individual (e.g., a resident, visitor, facility staff) who reports an alleged violation to facility staff does not have to explicitly characterize the situation as “abuse,” “neglect,” “mistreatment,” or “exploitation” in order to trigger the Federal requirements for reporting. Rather, if facility staff could reasonably conclude that the potential exists for noncompliance with the Federal requirements related to mistreatment, exploitation, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property, then it would be considered to be reportable and require action.
- b. All alleged violations, whether oral or in writing, must be immediately reported to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency and adult protective services where State law provides for jurisdiction in long-term care facilities).
- c. Conformance with this provision requires that each State Agency has a means to collect reports, even during off-duty hours (e.g., answering machine, voice mail, fax, electronic transmission, etc.).
- d. The facility must have documentation of the report, including what was reported and the date and time when the report was made to the SA.
- e. If an alleged violation has been identified and reported to the administrator/designee, the facility must immediately report it and provide protection for the identified resident(s) prior to conducting the investigation of the alleged violation.

- f. At the conclusion of the investigation, and no later than 5 working days of the incident, the facility must report the results of the investigation and if the alleged violation is verified, take corrective action.

NOTE: The phrase “in accordance with State law” modifies the word “officials” only. State law may stipulate that alleged violations and the results of the investigations be reported to additional State officials beyond those specified in Federal regulations. This phrase does not modify what types of alleged violations must be reported or the time frames in which the reports are to be made. States may not eliminate the obligation for any of the alleged violations (i.e., mistreatment, neglect, abuse, injuries of unknown source, exploitation, and misappropriation of resident property) to be reported, nor can the State establish longer time frames for reporting than mandated in the regulations at §§483.12(c)(1) and (4). No State can override the obligation of the nursing home to fulfill the requirements under §483.12(c), as long as the Medicare/Medicaid certification is in place.

Some States may have different reporting requirements that could go beyond the Federal requirements or are more specific than the Federal requirements. For example, some States require that all falls be reported to the SA. The SA should continue to manage and investigate these cases under its state licensure authority. If the State determines that these occurrences do meet the definition of abuse, neglect, mistreatment, or injuries of unknown source, as outlined in this guidance, the SA must assess whether the nursing home has met the requirements for reporting and investigating these cases in accordance with 42 C.F.R. §483.12(c).



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COMPLIANCE CHECKLIST FOR REPORTING ALLEGED VIOLATIONS	
Facility Policies and Procedures	
	• Review the facility's policies and procedures to establish that they contain direction to report: ○ All alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property ○ Alleged violations immediately to the administrator of the facility and to other officials in accordance with State law through established procedures ○ The results of all investigations of alleged violations ○ Report alleged violations to the State Agency and other officials- ▪ Immediately but not later than ▪ 2 hours-if the alleged violation involves abuse or results in serious bodily injury ▪ 24 hours-if the alleged violation does not involve abuse and does not result in serious bodily injury. ▪ Results of all investigations of alleged violations- within 5 working days of the incident ○ An individual (e.g., a resident, visitor, facility staff) who reports an alleged violation to facility staff does not have to explicitly characterize the situation as "abuse," "neglect," "mistreatment," or "exploitation" in order to trigger the Federal requirements for reporting ○ A mechanism to document reports ○ The facility staff provide protection for the identified resident(s) prior to conducting the investigation of the alleged violation
KEY ELEMENTS OF NONCOMPLIANCE	
	To cite deficient practice at F609, the surveyor's investigation will generally show that the facility failed to do any one or more of the following: • Identify a situation as an alleged violation involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property; ▪ Report immediately an alleged violation involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property to the administrator of the facility and to other officials, including to the State survey and certification agency and adult protective services in accordance with State law; or ▪ Report the results of all investigations within 5 working days to the administrator or his/her designated representative and to other officials in accordance with State law (including to the State survey and certification agency).



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There may be instances where a report is required under 42 CFR 483.12(c) [F609], but not under 42 CFR 483.12(b)(5)/Section 1150B of the Act[F608]. The following table describes the different requirements.

COMPARISON: F608 Reporting of Reasonable Suspicion of a Crime F609 Reporting of Alleged Violations		
	F608 42 CFR 483.12(b)(5) and Section 1150B of the Act	F609 CFR 483.12(c)
What	Any reasonable suspicion of a crime against a resident	1) All alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property 2) The results of all investigations of alleged violations
Who is required to report	Any covered individual, including the owner, operator, employee, manager, agent or contractor of the facility	The facility
To whom	State Agency and one or more law enforcement entities for the political subdivision in which the facility is located (i.e., police, sheriffs, detectives, public safety officers; corrections personnel; prosecutors; medical examiners; investigators; and coroners)	The facility administrator and to other officials in accordance with State law, including to the SA and the adult protective services where state law provides for jurisdiction in long-term care facilities
When	Serious bodily injury -- Immediately but not later than 2 hours after forming the suspicion No serious bodily injury- not later than 24 hours	All alleged violations-Immediately but not later than: 1) 2 hours- if the alleged violation involves abuse or results in serious bodily injury 2) 24 hours- if the alleged violation does not involve abuse and does not result in serious bodily injury. Results of all investigations of alleged violations- within 5 working days of the incident
Reporting requirements under this regulation are based on real (clock) time, not business hours.		

AMERICAN HEALTH CARE ASSOCIATION DRAFT POLICY AND PROCEDURE

Soon after the Elder Justice Act became effective, the American Health Care Association offered a draft template policy and procedure. It can be found on the following page.

Draft Template Policy & Procedure

[NOTE: This template has not been approved by CMS or any other federal/state agency or law enforcement office and is provided to assist facilities respond to the new Elder Justice Act (EJA) about staff requirements to report a suspicion of a crime. Facilities MUST modify this template policy & procedure to comply with their local and state reporting laws about suspected crimes and to be consistent with the facilities other policies & procedures.]

POLICY & PROCEDURE FOR REPORTING SUSPECTED

CRIMES UNDER THE FEDERAL ELDER JUSTICE ACT

POLICY:

It is [FACILITY NAME] policy to comply with the Elder Justice Act (EJA) about reporting a reasonable suspicion of a crime under Section 1150B of the Social Security Act, as established by the Patient Protection and Affordable Care Act (ACA), § 6703(b)(3). Specifically, it is [FACILITY NAME] policy to:

- a. annually notify all “*covered individuals*” (as that term is defined under the EJA) of their reporting obligations under the EJA to report a suspicion of a crime to the state survey agency (SSA) and *local law enforcement* for the *political subdivision* in which [FACILITY NAME] is located;
- b. refrain from *retaliating against any employee* who reports a suspicion of a crime against an individual receiving care in [FACILITY NAME];
- c. post a notice in a conspicuous location that informs all “*covered individuals*” of
 - o their reporting obligation under the EJA to report a suspicion of a crime to the SSA and *local law enforcement*; and
 - o their right to file a complaint with the state survey agency if they feel the [FACILITY NAME] has *retaliated against an employee* who reported a suspected crime under this statute;
- d. refrain from employing any individual who has been prohibited from working in a long term care facility because of failure to report a suspicion of a crime against a resident of a long term care facility; and
- e. [NOTE: Facilities are not required to report to either SSA or *local law enforcement* under this act; only individuals are required to report. However, facilities may be required to report certain incidents under other Federal, state or local laws and regulations such as reporting to SSA abuse, *neglect* or misappropriation of resident property. OPTIONAL: Facilities may choose but

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are not required under this act to adopt a policy that it will report a suspected crime against a resident to the SSA and one or more *local law enforcement* entities for the *political subdivision* in which the facility is located.]

Statutory and CMS Policy References

- §1150B of the Social Security Act, as established by §6703(b)(3) of the Patient Protection and Affordable Care Act of 2010; and
- CMS S&C: 11-30-NH.

Definitions (from CMS S&C: 11-30-NH):

“Covered Individual” means each individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility.

“Suspicion of a Crime” is defined by law of the applicable *political subdivision* where a LTC facility is located. Applicable facilities must coordinate with their state and *local law enforcement* entities to determine what actions are considered crimes within their *political subdivision*.

“Political subdivision” means a city, county, township or village.

“Local law enforcement” means the full range of potential responders to elder abuse, *neglect*, and exploitation including: police, sheriffs, detectives, public safety officers, corrections personnel, prosecutors, medical examiners, investigators, and coroners.

“Neglect” is the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an elder or *self-neglect*.

“Self-Neglect” means an adult’s inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including obtaining essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, mental health, or general safety; or managing one’s own financial affairs.

“Serious bodily injury” is an injury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation. In the case of “criminal sexual abuse” which is defined as serious bodily injury/harm shall be considered to have occurred if the conduct causing the injury is relating to aggravated sexual abuse or relating to sexual abuse.

“Retaliate against an employee” is when the employer discharges, demotes, suspends, threatens, harasses, or denies a promotion or any other employment-related benefit to an employee, or in any other manner discriminates against an employee within the terms and conditions of employment because the employee has met their obligation to report a suspicion of a crime.

PROCEDURE:

A. Staff Reporting Requirement

1. When staff ("staff" herein refers to *covered individuals*) suspect a crime has occurred against a resident at [FACILITY NAME], they must report the incident to SSA and *local law enforcement*.
2. Staff must report a *suspicion of a crime* to the state survey agency and at least one *local law enforcement* entity within a designated time frame by e-mail, fax or telephone. The individual does not need to determine which *local law enforcement* entity to report a suspicion of crime; but, must report to at least one *local law enforcement* entity. This will meet the individual's obligation to report.
3. Staff can use the facility form to report a *suspicion of a crime*. There is no requirement to use the form.
4. Staff can either report the same incident as a single complaint or multiple individuals may file a single report that includes information about the suspected crime from each staff person using the facility form.
5. If, after a report is made regarding a particular incident, the original report may be supplemented by additional staff who become aware of the same incident. The supplemental information may be added to the form and must include the name of the additional staff along with the date and time of their awareness of such incident or suspicion of a crime. However, in no way will a single or multiple person report preclude an individual from reporting separately. Either an individual or joint report will meet the individual's obligation to report.
6. If the reportable event results in *serious bodily injury*, the staff member shall report the suspicion immediately, but not later than 2 hours after forming the suspicion.
7. If the reportable event does not result in *serious bodily injury*, the staff member shall report the suspicion not later than 24 hours after forming the suspicion.
8. Failure to report in the required time frames may result in disciplinary action, including up to termination.
9. Staff must report the suspicion of an incident to the <insert appropriate person> [Note: facilities should determine the appropriate person within the facility for reporting a suspicion of a crime such as the staff's supervisor, Director of Nursing (DON) or administrator].

B. Staff Notification

1. Staff (i.e., "*covered individual*") will annually receive a copy of their obligation to comply with the law and these policies and procedures.
2. [Note: facilities need to determine how they will provide and document that they provided notification annually to all *covered individuals*]
3. All new staff, as part of their orientation to work at the facility, shall receive a copy of their obligation to comply with the law and this policy and procedure.

C. Posting Requirements

1. [FACILITY NAME] will post conspicuously in an appropriate location a sign specifying the rights of employees under the EJA. This sign shall include both
 - a. the reporting requirements of each staff member; and
 - b. a statement that an employee may file a complaint with the state survey agency against a long-term care facility that *retaliates against an employee* for filing, and information how to file such a complaint to the SSA.
2. The sign should be posted in the same area that [FACILITY NAME] posts other required employee signs, such as wage/hour and OSHA posters. These are found in [list the location in the facility].
3. Size and type requirements for the sign should be no less than the minimums required for the other required employment-related signs.

D. Facility Reporting [OPTIONAL]

[NOTE: Facility reporting is optional and not required as part of this EJA act; only individuals are required to report suspicion of a crime. However, Federal, state or local laws may require facility reporting. For example, Federal regulations require facilities to report abuse, *neglect* or misappropriation of resident property to the SSA.]

1. OPTIONAL: [FACILITY NAME] will file a report to SSA and *local law enforcement* using the attached form when becoming aware of a suspicion of a crime.
2. OPTIONAL: [FACILITY NAME] on behalf of staff will file a report to SSA and *local law enforcement* using the attached form when staff becomes aware of a suspicion of a crime.
3. OPTIONAL [FACILITY NAME] shall keep a record of these reports.

Training Plan: Abuse, Neglect, Exploitation Education for Direct Care Givers

Training Name: Abuse, Neglect, Exploitation Education for Direct Care Givers	
	☐ Training ☐ Simulation ☐ Workshop ☒ Presentation
Training Objectives	1. Understand the regulation that guides our practices regarding freedom from abuse, neglect and exploitation. 2. Identify the seven elements required for our process to protect residents from abuse, neglect and exploitation. 3. Be able to identify the role and responsibility of the staff member/leader to identify and report potential abuse or neglect issues.
Connection to Overall Project Goals	• This training is part of the overall project to educate and support nursing facility operators and staff regarding the revised requirements of participation for nursing homes. (how the goals of project will be realized by this Training)
Participants: Who should attend?	There are two education presentations; one for leaders and one for direct care staff. Education is offered in slide presentation form with speaker's notes for use by each facility. (short description)
	What training should they attend before this one? • No pre-requisite
	What training should they attend after this? • No specific follow-up training
Facilitators: (How many trainers should participate and whom?)	One presenter will be needed to facilitate the presentation, discussion and post-test
Logistics Requirements	What is needed? • Room for training • Projector • Screen or other blank light colored surface



Training References

CMS S&C Memo, June 30, 2017 Ref: S&C 17-36-NH Effective November 28, 2017

State Operations Manual, Appendix PP - Guidance to Surveyors for Long Term Care Facilities, Phase 2 F
Tag Revisions and Related Issues

www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Downloads/Survey-and-Cert-Memo-Revision-SOM-Appendix-PP-Phase-2.pdf

(what this training was based on: books, materials, internet resources)