

Abuse, Neglect, Mistreatment and Misappropriation of Resident Property

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ABUSE, NEGLECT, MISTREATMENT AND MISAPPROPRIATION OF RESIDENT PROPERTY

PREFACE

It is the policy of the facility to encourage and support all residents, staff, families, visitors, volunteers and resident representatives in reporting any suspected acts of abuse, neglect, exploitation, involuntary seclusion or misappropriation of resident property from abuse, neglect, misappropriation of resident property, and exploitation. 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. 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 on account 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.

Centers for Medicaid and Medicare Services (CMS) - Definitions

DEFINITIONS OF ABUSE AND NEGLECT

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

- a. **Abuse:** 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. Abuse includes verbal abuse, sexual abuse, physical abuse and mental abuse, including abuse facilitated or enabled through the use of technology. Willful, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

- i. **Verbal abuse** is defined as the use of oral, written or gestured language that willfully includes disparaging and derogatory terms to residents or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse include, but are not limited to: threats of harm; saying things to frighten a resident, such as telling a resident that he/she will never be able to see his/her family again.
- ii. **Sexual abuse** is non-consensual sexual contact of any type with a resident.
- iii. **Physical abuse** includes hitting, slapping, pinching, and kicking. It also includes controlling behavior through corporal punishment.
- iv. **Mental abuse** includes but is not limited to, humiliation, harassment, threats of punishment or deprivation.

New York State Commentary: *New York has amended the definition of abuse to make the following clarifications in the New York State Department of Health (NYSDOH) Incident Reporting Manual:*

- *Federal (Abuse) Definition: The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.*
 - *State (Abuse) Definition: Inappropriate physical contact with a resident of a residential health care facility, while the resident is under the supervision of the facility, which harms or is likely to harm the resident. Inappropriate physical contact includes, but is not limited to, striking, pinching, kicking, shoving, bumping and sexual molestation.*
- b. **Involuntary seclusion** is defined as the separation of a resident from other residents or her/his room or confinement to her/his room (with or without roommates) against the resident's will or the will of the resident's legal representative. Emergency or short term monitored separation from other Residents will not be considered involuntary seclusion and may be permitted if used for a limited period as a therapeutic intervention to reduce agitation until professional staff can develop a plan of care to meet the resident's needs.



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- c. **Exploitation** is defined as unfair treatment or use of a resident or the taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats, or coercion.
- d. **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.
- e. **Mistreatment** means inappropriate treatment or exploitation of a resident.
- f. **Neglect** is 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.
- g. **Injuries of Unknown Origin: An injury should be classified as an injury of unknown source when both of the following conditions are met:**
 - i. The source of the injury was not observed by any person or the source of the the injury could not be explained by the resident;
 - ii. 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 vulnerable to trauma) or the number of injuries observed at one particular point in time or the incidence of injuries over time.
- h. **Immediately:** means as soon as possible, but ought not to exceed 24 hours after discovery of the incident. Immediately for the purposes of reporting a crime resulting in serious bodily injury means covered individual shall report immediately, but not more than 2 hours after forming the suspicion. (see Reporting Section)

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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,

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

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

ABUSE POLICY REQUIREMENTS: The facility is to monitor 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.

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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. The interdisciplinary team will identify the vulnerabilities and interventions on the resident care plan.

2. ORIENTATION (*Residents, Representatives 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, upon admission, via meetings, newsletters, and other forms of communication.

3. PHYSICAL PLANT/ENVIRONMENT

- a. The facility Safety Committee will review the facility physical plant and identified areas of concern and implement responses and corrections to the facility’s physical plant/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

- a. The facility's population presents the following factors, (*May include, but not limited to*) which could result in maltreatment of residents:

The assessment, planning of care and services, and monitoring of residents with needs and behaviors which might lead to conflict or neglect, such as 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

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 is 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.

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
- b. Unnecessary fear
- c. Abnormal discharge from body orifices
- d. Inconsistent details by staff regarding how incidents occurred
- e. Unusual behavior toward other staff, residents, family members, or visitors

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. A root cause investigation and analysis will be completed. The information gathered is given to administration.

- 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: 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)
 - 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 all 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
- Was the cause of the symptom removed?
- Were alternatives attempted prior to separation?
- Was the separation for the least amount of time necessary?
- Was the family/legal representative involved in the care planning and informed choice regarding the separation?
- Is there evidence of monitoring and adjustments in care to reduce negative outcomes and attempt to determine less restrictive alternatives?

Additional Investigation Protocols

- 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 human resources 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.

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. 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 must be 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 facility 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, evaluate the situation and identify options to put into place for resident protection.



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- 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 possible. 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 immediately to determine any injury and identify any immediate clinical interventions necessary. Notify resident physician.
- v. Social Services or designee should 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. Notification of 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.

1. Other measures as deemed appropriate and by existing safety policies and procedures.

- i. If the injury is unexplainable (i.e., fracture), and if the findings of abuse are substantiated (physical, verbal, sexual, financial exploitation), and if there is caregiver neglect (i.e., care plan not followed resulting in resident injury), or if a therapeutic error resulted in injury a report must be made to the facility designated State Agency within 24 hours (or per State guidelines) of the initial findings. (Call to Administrator and Designee is made immediately).
 - a. Within five business days of the original report, Administrator, Director of Nursing, and Director of Social Services will meet to make the final decision regarding the outcome of the investigation. (See State Specific tab for reporting information)
 - b. If the investigation shows maltreatment did take place, the employee will be disciplined, up to and including termination.
 - i. If licensed staff member, if found at fault – must be reported to the applicable licensing board.
 - ii. Complaints about a nursing assistant must be reported to the State Specific Agency for Nursing Assistants. An investigation must be completed before a finding can be substantiated and entered onto the Registry.
 - iii. If Department of Health determines an aide mistreated a resident or misused a resident's property, the aide will also be notified by the Department of their intention to put this information on the registry.

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- c. If the investigation shows maltreatment was unsubstantiated, the employee's individual situation will be reviewed to determine, reinstatement, potential for pay, and further training education needs in coordination with the Administrator, DON and Human Resources.
- d. The resident and /or family will be notified of the completion of the investigation and whether the incident was substantiated. Information will be provided according to confidentiality guidelines.
- e. Education will be provided as needed to all parties involved.
- f. Information on advocacy group and other resources will be provided by Social Services or designee.
- g. Community resources will be utilized if the psychosocial needs warrant counseling skills above that which is available in-house.

G. REPORTING AND RESPONSE

"ABUSE" POLICY 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, 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.

PROCEDURE:

INTERNAL REPORTING:

- a. Employees must always report any “abuse” or suspicion of “abuse” immediately to the Administrator. ****Note: Failure to report can make employee just as responsible for the abuse in accordance with State Law**
- 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.

EXTERNAL REPORTING:

- Each covered individual shall report to the NYSDOH 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 NYSDOH via the Health Commerce System (HCS). A follow up investigation will be submitted via the HCS 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.

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- 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.

New York State Commentary: *The follow-up investigative notes must be submitted via the NYS HCS within five working days of the initial report by completing the electronic incident form on the HCS. When reporting, the facility representative should have available the following documentation:*

- *Witness statement(s)*
 - *Resident statement(s)*
 - *Accused statement(s)*
 - *Facility investigation report*
 - *Resident(s) medical record*
 - *Care plan(s) and diagnoses*
 - *Resident cognition evaluation*
 - *Employee personnel and training records*
 - *Report /case ID number from law enforcement, if reported*
 - *Plan to prevent reoccurrence*
- 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 Administrator or designee will inform the resident or resident’s representative of the report of an incident and that an investigation is being conducted.

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- 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.

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.

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_ltcf.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

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