

Abuse and Neglect
Policy and Procedure

October
2022

This facility is dedicated to ensuring the prevention, protection, prompt reporting and needed interventions in response to any alleged, suspected or witnessed abuse, neglect, mistreatment, misappropriation of property, or exploitation of any facility resident.

Resident Abuse/Neglect Policy and Procedure

Purpose:

To ensure prevention, protection, prompt reporting and interventions in response to alleged, suspected or witnessed abuse, neglect, mistreatment, misappropriation of property, or exploitation of any facility resident.

Policy:

All residents have the right to be free from mental, physical, sexual and verbal abuse, neglect, mistreatment, misappropriation of property, and exploitation and to be treated with dignity and respect. (NOTE: From here-on-in the term “abuse/neglect” represents any type of witnessed or suspected abuse that can be inflicted upon a resident; see pp.2-3 for specific definitions.)

The Facility will not condone the abuse/neglect of any resident by anyone including, but not limited to, staff members, other residents, consultants, volunteers, staff of agencies serving the resident, family members, legal guardians, sponsors, friends, or other individuals. All employees are expected to and must immediately report any injury sustained by a resident, whether or not the nature of the injury is known. Any employee witnessing any form of abuse/neglect (including abuse of the resident in social media), is required to immediately report the incident.

The facility’s abuse/neglect policies will be coordinated with the facility’s QAPI program.

DEFINITIONS

ALLEGED VIOLATION: 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.

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. It 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.

Mental Abuse/Verbal Abuse: *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. *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. Examples of mental and verbal abuse include, but are not limited to:

1. Harassing a resident
2. Mocking, insulting, ridiculing
3. Yelling or hovering over a resident, with the intent to intimidate
4. Threatening residents, including but limited to, depriving a resident of care or withholding a resident from contact with family and friends; and
5. Isolating a resident from social interaction or activities

Mental Abuse/Social Media Abuse: Mental abuse includes abuse that is facilitated or enabled through the use of technology, such as smartphones and other personal electronic devices. This would include keeping and/or distributing demeaning or humiliating photographs and recordings through social media or multimedia messaging. If a photograph or recording of a resident, or the manner that it is used, demeans or humiliates a resident(s), regardless of whether the resident provided consent and regardless of the resident's cognitive status, the surveyor must consider non-compliance related to abuse at this tag. This would include, but is not limited to, photographs and recordings of residents that contain nudity, sexual and intimate relations, bathing, showering, using the bathroom, providing perineal care such as after an incontinence episode, agitating a resident to solicit a response, derogatory statements directed to the resident, showing a body part such as breasts or buttocks without the resident's face, labeling resident's pictures and/or providing comments in a demeaning manner, directing a resident to use inappropriate language, and showing the resident in a compromised position. Depending on what was photographed or recorded, physical and/or sexual abuse may also be identified.

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

- **Corporal Punishment:** Physical punishment 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.

Sexual Abuse: Non-consensual sexual contact of any type with a resident.

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NEGLECT: 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.

CHEMICAL RESTRAINT: Any drug that is used for discipline or staff convenience and not required to treat medical symptoms.

EXPLOITATION: Taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats, or coercion.

INVOLUNTARY SECLUSION: 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.

MISAPPROPRIATION OF RESIDENT PROPERTY: The deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent.

MISTREATMENT: Inappropriate treatment or exploitation of a resident.

PHYSICAL RESTRAINT: Any manual method, physical or mechanical device, equipment, or material that meets all the following criteria:

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

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.

COVERED INDIVIDUAL: Anyone who is an owner, operator, employee, manager, agent or contractor of the facility.

CRIME: 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.

LAW ENFORCEMENT: 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

SERIOUS BODILY INJURY: Injury involving extreme physical pain, substantial risk of death, 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. Serious bodily injury is considered to have occurred when an injury results from criminal sexual abuse (see below).

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 includes threatening or placing that other person in fear that they will be subjected to death, serious bodily injury, kidnapped, or attempts made to do so. Criminal sexual abuse includes cases where a person causes another person to engage in a sexual act by threatening or placing that other person in fear; engages in a sexual act with another person if that other person is incapable of appraising the nature of the conduct or is physically incapable of declining participation in, or communicating unwillingness to, engage in a completed non-consensual sex act (i.e., rape); attempts a non-consensual sex act, abusive sexual contact (i.e., unwanted touching), or non-contact sexual abuse (e.g., threatened sexual violence, exhibitionism, or verbal sexual harassment).

The following sets forth the Facility's policies in more detail and will provide Facility staff with, among other things, assistance in recognizing abuse of any resident and reporting procedures.

I. SCREENING

We are dedicated to thoroughly investigating the past histories of any individual we are considering hiring as an employee or otherwise engaging. All prospective employees, will be carefully screened using the following processes to identify potential risk of abuse/neglect of any resident:

1. Reference check
2. License check and background checks:

CNA certifications are verified on The State of NJ Department of Health & Senior Services website:

<https://njna.psiexams.com/>

****Multi-State Registry Verification:** Before allowing an individual to serve as a CNA, the facility will ask applicants if they ever served - or were licensed/certified - as a CNA in any other State and then seek information from every State registry established that the facility believes will include information on the applicant.

Employee criminal and other **background checks** are run on Applicant Safe: <http://www.applicantsafe.com/>

Verification of all Licensed Staff done through The State of NJ Division of Consumer Affairs website: <https://newjersey.mylicense.com/verification> or call 973 273 8090.

*ALL staff (licensed & non-licensed) are screened upon hire and on a monthly basis for **exclusions** through Streamline Verification, https://app.streamlineverify.com/app_welcome, this includes the OIG review.*

These records will be maintained in the Human Resources Office.

The Facility will report to the State Nurse Aide Registry or licensing authorities 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.

II. TRAINING

- A. Orientation of New Employees and Other Engaged Individuals
- B. In-service / Continuing Education

A. Orientation of New Employees and Other Engaged Individuals:

Each new employee and other engaged individual will complete an orientation addressing the facility's abuse/neglect policy and procedure; education will include:

- Recognizing signs of - and understanding what constitutes abuse/neglect of any resident
- Mandatory reporting and investigation procedures

In-servicing and continuing education of otherwise engaged individuals may be provided off-site by the sending entity in accordance with such entity's contractual obligations, if any.

B. In-Service / Continuing Education:

Each employee and other engaged individual of the facility shall then attend scheduled mandatory in-services annually and as needed regarding the facility's abuse/neglect policy and procedure as well as continuing education on various issues related to abuse including:

1. Appropriate interventions to deal with aggressive and/or catastrophic reactions of residents
2. Dementia management and resident abuse prevention
3. Reporting allegations without fear of reprisal
4. Recognizing signs of burnout, frustration, and stress that may lead to abuse
5. Recognizing signs of abuse
6. Activities that constitute abuse/neglect

III. & IV. PREVENTION AND IDENTIFICATION

- A. Resident Complaint and Grievance Procedure
- B. Assessment of New Residents
- C. Identification, Tracking, & Trending

A. Resident Complaint and Grievance Procedure:

Policies governing handling a resident's or resident representative complaints and/or grievances are outlined in a separate policy entitled "Grievance Policy." Residents and resident representatives are encouraged and assisted, throughout the resident's stay in the facility, to exercise their rights and to voice complaints and recommend changes in policies and services to the social worker, facility staff, and/or outside representatives free from restraint, interference, coercion, discrimination, or reprisal.

B. Assessment of New Residents:

Through psychosocial and physical assessments, new admissions will be assessed for signs of previous abuse/neglect as well as to identify residents who are at high risk for potential abuse/neglect (i.e., no family, friends, or POA, unable to communicate needs, disoriented, lethargic, etc.)

C. Identification, Tracking, & Trending:

Through orientation and ongoing in servicing, staff shall be instructed on how to identify markings or behavior which may indicate potential abuse/neglect (i.e., increased fearfulness and/or agitation, bruises or skin tears of unknown origin – particularly on trunk or head, repeated incidents of bruises or skin tears, etc.). Ongoing assessments and skin checks shall be performed during routine resident care (i.e., showers, toileting, AM/PM care, etc.). Staff is trained to report any unusual markings or occurrences to a supervising nurse. A nurse shall assess the resident upon notification of an unusual finding and notify the nursing office.

The Grievance Officer (GO) will maintain a record to identify potential patterns and trends (i.e., times, CNA assigned, locations, types of occurrences, behavioral or toileting, related occurrences, etc.).

V. PROTECTION, INVESTIGATION & REPORTING

- A. Protection
- B. Notification
- C. Investigative and Reporting Procedure

A. Protection:

1. While an alleged abuse/neglect investigation is being conducted, accused individuals not employed by the facility will be denied access to the resident. Employees of the facility who are under investigation will be temporarily suspended until the Administrator has reviewed the results of the investigation.
2. If the investigation determines that an employee of the facility did abuse/neglect a resident, sanctions against such employee will be imposed based on the severity of the case as determined by the Administrator, including counseling, suspension, and/or termination. Even if abuse/neglect is not substantiated, the Administrator and/or DON has the right to reassign the accused staff member to another assignment and/or unit to ensure he/she is not assigned to the resident involved in the alleged abuse/neglect.

B. Notification:

1. Any staff member witnessing or receiving an allegation of abuse/neglect of any resident shall notify the Nursing Supervisor immediately after witnessing the incident or receiving the allegation of abuse/neglect.
2. The Administrator/GO and the DON (and/or designees) shall then be immediately notified of the incident and an investigation will be initiated.
 - a. In the event that the Nursing Supervisor is the individual being accused, the person witnessing or receiving the allegation shall not notify the Nursing Supervisor, but rather, the Administrator/GO and DON and/or designees.
 - b. If the Administrator/GO is the accused the Governing Body (Ownership) or their designee will oversee the investigation.
3. The Social Services Director (or Social Work designee) will be notified of the incident and will be involved in the investigative process.
4. The attending physician will be notified of the incident and follow-up medical care provided as necessary.
5. The Administrator/GO or his/her designee will immediately notify the resident/resident representative of (a) the alleged abuse/neglect, (b) that an investigation has been initiated, and (c) once complete, inform them of the result of the investigation

C. Investigative and Reporting Procedure:

When an allegation of abuse/neglect is made, the Administrator/GO or his/her designee shall lead an investigation that includes the following:

1. If the allegation is “physical” abuse, a complete physical assessment of the resident must be completed and documented in the Medical Record.
2. If abuse/neglect is suspected or confirmed, the resident shall be assessed to determine the need for counseling.
3. The Administrator or his/her designee will form an investigatory team that will thoroughly investigate the allegation and document the investigation, provided that, the investigatory team shall not include any individual that is alleged to have committed the abuse/neglect. The following steps will be taken:
 - (a) Incident Report will be completed.
 - (b) Interviews will be conducted – and statements obtained from all staff members, residents, family, volunteers and others that may have witnessed or have knowledge with respect to the alleged incident. All such statements will be in writing and placed in the investigatory file related to the alleged incident.
 - (c) The employee file of any accused staff will be reviewed. All findings from such a review shall be memorialized in writing and placed in the in the investigatory file related to the alleged incident.
 - (d) Medical Records of the resident including, but not limited, to documentation related to the physical assessment of the resident, as well as any assessment relating to the resident’s psychological condition, will be reviewed. The findings of the review will be documented and placed in the investigatory file.
 - (e) A written report which, among other things, provides an overview of the incident, pertinent medical data, and a summary of statements taken, investigative findings, follow-up actions and a conclusion will be prepared. A copy of the written report shall be provided to the Administrator/GO and/or his/her designee.
 - (f) The Administrator/GO and/or his/her designee and such other members of the investigatory team as directed by the Administrator/GO shall review the written report, the Incident Report and all written documentation and determine whether the investigation has been completed or further investigation is required. In the event that further investigation is conducted, the written report shall be updated to include the results of such further investigation. A final “written” report shall be prepared for submission as provided for in the box below.
 - (g) Based on investigative findings the facility may implement corrective action to prevent further potential abuse that may include, but are not limited to, staffing changes, increased supervision, protection from retaliation, and follow-up psychological counseling for the residents.

The Department of Health and & Senior Services, and the Office of the Ombudsman if resident is 60 or over, will be notified immediately (as soon as possible but not to exceed 2 hours) of the incident, followed by a written report within 5 days of the incident and if the alleged violation is verified, the facility shall take all appropriate corrective action.

TELEPHONE NUMBERS:

NJ DEPARTMENT OF HEALTH:
800-792-9770

OFFICE OF THE OMBUDSMAN:
877-582-6995

Federal Requirement: Reporting Reasonable Suspicion of a “Crime” in a Long-Term Care Facility:

- a. Section 1150B of the Social Security Act (the Act) requires the facility and each covered individual to immediately report any reasonable suspicion of a “crime” committed against a resident of the facility to at least one law enforcement agency of jurisdiction and the State Survey Agency (SA), in fulfillment of the statutory directive to report to the Secretary. The term “**immediately**” means not later than 2 hours after the allegation is made if the events that cause the allegation 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. “**Covered individual**” means the facility’s owners, operators, employees, managers, agents, and contractors. **(Please note, this can conflict with the reporting time frame indicated at the bottom of p. 4; there is a different timing standard for Section 1150B notification and when there is no reasonable suspicion that a crime has been committed.)**
- b. The Facility does not condone and expressly prohibits the retaliation against any individual reporting the reasonable suspicion of a crime against a resident as required by Section 1150B of the Social Security Act (the Act). Retaliation includes any of the following actions taken as a result of the individual making such report: (A) the discharge, demotion, suspension, threatening, harassing, or denying a promotion or other employment-related benefit to an employee, or in any other manner discriminating against an employee in the terms and conditions of employment; or (B) filing a complaint or a report against a nurse or other employee with the appropriate State professional disciplinary agency. The Administrator shall take such actions as the Administrator deems necessary to prevent retaliation including, but not limited to, increased supervision and staffing change. Any and all employment actions concerning an employee submitting a report under 1150B of the Social Security Act (including, but not limited to, the discharge, demotion, suspension, review, issuance of warnings, denial of a promotion or other employment-related benefit, or filing a complaint or a report against a nurse or other employee with the appropriate State professional disciplinary agency) shall be reviewed by and approved by the facility’s Administrative Body and general counsel prior to taking any such action.
- c. The facility shall conspicuously display a notice of employee rights under Section 1150B of the Social Security Act (the Act) in the form designated by the Secretary in an area readily accessible to and frequented by the facility’s employees (e.g. break area) which notifies the employee of, among other things, a statement that an employee may file a complaint with the Secretary against the facility in the event that the facility violates the provisions of Section 1150B of the Social Security Act (the Act) and information with respect to the manner of filing such a complaint.
- d. The Facility shall notify each covered individual of that individual's obligation to: (i) 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 (ii) 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.