



## FACILITY EVENT REPORTING REQUIREMENTS & GUIDANCE FOR CONDUCTING INVESTIGATIONS

The purpose of this document is to outline the scope of facility reporting requirements for "Reasonable Suspicion of a Crime" and "Abuse, Neglect and Exploitation, Mistreatment, Injuries of Unknown Source, and Misappropriation of Resident Property" for Long Term Care Facilities. This document is intended as a resource only and is not intended to be all inclusive. Please refer to protocols, procedures and other available resources including but not limited to the guidance provided in Chapter 7 and Appendix PP of the State Operations Manual (SOM).

### 1. **DEFINITIONS**

**Definitions** used in this document are based on federal regulations and guidelines.

- A. **Abuse**, including resident to resident 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.

#### 1. ***Mental and 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:*

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

2. **Sexual Abuse** is non-consensual sexual contact of any type with a resident. Sexual abuse includes, but is not limited to:

- *Unwanted intimate touching of any kind especially of breasts or perineal area;*
- *All types of sexual assault or battery, such as rape, sodomy, and coerced nudity;*
- *Forced observation of masturbation and/or pornography; and*
- *Taking sexually explicit photographs and/or audio/video recordings of a resident(s) and maintaining and/or distributing them (e.g. posting on social media). This would include, but is not limited to, nudity, fondling, and/or intercourse involving 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.*

3. **Physical Abuse** includes but is not limited to, hitting, slapping, pinching, kicking or controlling behavior through corporal punishment. *Corporal punishment, which is physical abuse, includes, but is not limited to, pinching, spanking, slapping of hands, flicking, or hitting with an object.*

**B. 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.

**C. Exploitation/Misappropriation of Resident Property** is the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent. Exploitation is further defined as taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats, or coercion.

**D. Mistreatment** is inappropriate treatment or exploitation of a resident.

**E. Injuries of Unknown Source** is an injury for which **both** of the following conditions 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., it's 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.



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- F. Facility Reports** are official self-report notifications typically sent by the facility administrator or designee to the State Survey Agency or CMS Regional Office of incidents required by federal and/or state law, regulation or policy.
- G. State Survey Agency** means the Office of Health Care Assurance (OHCA).
- H. 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).
- I. 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.
- J. 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.
- K. 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; requiring medical intervention such as surgery, hospitalization, or physical rehabilitation; or an injury resulting from criminal sexual abuse.

## 2. **WHAT MUST BE REPORTED AND WHEN MUST REPORTS BE MADE**

- A. Reasonable Suspicion of a Crime.** The facility must develop and implement written policies and procedures that ensure reporting of crimes occurring in federally funded long term care facilities within the timeframes listed in the table below. Covered individuals must 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 receiving care, from the facility. Some facilities may have policies and procedures where the administrator could coordinate timely reporting to the State Survey Agency and law enforcement on behalf of covered individuals who choose to the report to the administrator. 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. Reports should be documented, and the administrator should keep a record of the documentation. 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.

**B. Abuse, Neglect, Exploitation, Mistreatment, Injuries of Unknown Source, and Misappropriation of Resident Property.** The facility must ensure ALL allegations of abuse, neglect, exploitation or mistreatment, injuries of unknown source that both met conditions and misappropriation of resident property, are reported to the administrator of the facility and to the State Survey Agency within the timeframes listed in the table below.

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. Regardless, covered individuals still have the obligation to report the reasonable suspicion of a crime to the State Survey Agency and local law enforcement.

*The following table describes the different reporting requirements that are addressed under 42 CFR 483.12:*

	<b><i>F608 42 CFR 483.12(b)(5) and Section 1150B of the Act</i></b>	<b><i>F609 42 CFR 483.12(c)</i></b>
<b><i>What</i></b>	<i>Any reasonable suspicion of a crime against a resident</i>	<i>1) All alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source that met both conditions and misappropriation of resident property 2) The results of all investigations of alleged violations</i>
<b><i>Who is required to report</i></b>	<i>Any covered individual, including the owner, operator, employee, manager, agent or contractor of the facility</i>	<i>The facility</i>
<b><i>To whom</i></b>	<i>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)</i>	<i>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</i>
<b><i>When</i></b>	<i>Serious bodily injury- Immediately but not later than 2 hours* after forming the suspicion No serious bodily injury-not later than 24* hours</i>	<i>1. 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.</i>



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		<p>2. <i>The results of facility investigations of abuse, neglect, exploitation, mistreatment, including injuries of unknown source that met both conditions and misappropriation of resident property must be reported to the administrator or his/her designated representative, the State Survey Agency, and to other officials in accordance with state law within 5 working days of the incident.</i></p>
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### 3. **FACILITY INVESTIGATIONS**

A. Federal regulation requires that a facility must have evidence that all allegations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property, are **thoroughly investigated**. In addition, the facility must take action to prevent further potential abuse while the investigation is in progress.

B. See "Conducting A Thorough Investigation."

### 4. **HOW TO REPORT**

A. Reports of alleged abuse, neglect, exploitation/misappropriation of resident property may be emailed to the Office of Health Care Assurance using the following address:

**Email: [doh.ohcamco@doh.hawaii.gov](mailto:doh.ohcamco@doh.hawaii.gov)**

B. Facilities should use the "Event Report" form to make required reports. Add attachments if needed. The facility must provide the type of information identified on the form in the required reporting to OHCA. The "Event Report" form is available at the following website address under "Forms":

**<http://health.hawaii.gov/ohca/home/medicare-section/>**

Completed forms should be electronically saved and emailed to the designated email address ([doh.ohcamco@doh.hawaii.gov](mailto:doh.ohcamco@doh.hawaii.gov)).

## **5. CONDUCTING A "THOROUGH" INVESTIGATION**

**Federal regulations require the facility to have evidence that all alleged violations are "thoroughly investigated" by the facility. An investigation by Law Enforcement or other entities such as protection agencies do not constitute or replace the need for a facility investigation. The following represents guidance on those components of an investigation that would contribute to a "thorough" investigation. It is important that the facility document all aspects of its investigation to provide evidence that all allegations were "thoroughly investigated".**

### **A. The Investigation**

1. Specify the type of allegation that is being reported (i.e., physical abuse, sexual, verbal abuse, neglect, misappropriation/exploitation or injury of unknown origin that met both conditions.
2. Document the details of the incident. What allegedly occurred? When and where did the alleged incident occur? Who is the alleged victim? Who is the alleged perpetrator? What is the physical description of the perpetrator? Did the victim identify the perpetrator?
3. Document the description of the injury. Describe the size, color, appearance, and location of any injuries, and what treatment was rendered, if any.
4. Develop a list of known and possible witnesses to the alleged incident. Interview and obtain signed statements where possible from staff, residents, and/or visitors or anyone who has, or might have, knowledge of the incident that is being investigated. Interview staff who cared for the resident(s) at the time of the alleged incident. Interview staff on other shifts who might have seen or heard anything, such as 24 hours prior to the alleged incident, to try and narrow down the time frame of the alleged occurrence and to document when the first sign any injury appeared. Interview residents in the same room, or residents in the immediate vicinity of where the alleged incident occurred, who might have seen or heard something. Also, do not forget visitors who might have witnessed the incident. Observe and document any unusual demeanor of the person being interviewed. Statements obtained from individuals who the facility determines to be actual witnesses need to be very specific, (i.e., what does "rough" mean to that individual?) Include the names, addresses and phone numbers of all individuals identified as actual witnesses.
5. Identify the cognitive status of the victim(s) and resident(s) who are witnesses. (Are they alert, oriented, and able to answer questions appropriately? This would help in determining if he/she would be a credible witness). Review a copy of the resident's current MDS and the resident's current care plan, if applicable to the incident. If the witness is not alert and oriented, but the facility is utilizing this witness' statement in the investigation, explain why the witness is considered credible/believable, (i.e., he/she



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consistently repeats the same story and/or has a history of consistently providing accurate information).

6. Interview and obtain a written signed statement where possible from the alleged perpetrator(s).
7. If the perpetrator is an employee, review the perpetrator's past performance (work history) or any previous incident. Interview coworkers and/or residents to gain knowledge of their experiences with the accused person.
8. If the perpetrator is a resident, review the perpetrator's past behaviors documented in the resident record, including the MDS. Determine if the resident's care plan was updated and implemented as appropriate.
9. Describe any action(s) taken by the facility to protect resident(s) and to prevent a possible reoccurrence during the investigation.
10. Note if there is any evidence of bias between the alleged perpetrator(s) and any of the witnesses, or there is evidence of conflict between witnesses. What is the relationship between the witnesses and perpetrator (i.e., professionals, friends, relatives and/or enemies)?
11. If agency personnel were involved, obtain a statement from the person. Identify the name of the agency and the contact person, and the name, address, and phone number of the employee.
12. If the allegation involves sexual abuse, document if the alleged victim was examined, and if so, obtain a copy of the examination or statement from the examiner.
13. If the allegation involved neglect, identify the staff member or members involved, the length of time involved, and any outcome to the victim. Be specific.
14. If the allegation involves misappropriation/exploitation, clearly identify the items and their approximate value. Obtain copies of bills, charge slips, vendor receipts, etc., if applicable.
15. Review the schedule and assignment(s) showing when and where the suspect was working at the time of alleged incident. Be specific as to the hall, section, and/or resident rooms.
16. Identify any medication(s) that may cause the resident to bruise easily or in any way be related to the nature of the injury.

17. If applicable, review facility procedures and staff training records if the incident may be related to unsafe technique used by staff.
18. Review and identify any nurses' notes or other facility records that may contain information about the incident.

**B. Summary Report of Facility's Findings and Conclusions**

1. Upon conclusion of the investigations, the nursing facility should prepare a summary report of the findings and conclusions. This summary report must include sufficient detail of the investigation to document that the facility conducted a thorough investigation; any actions taken by the facility (i.e., staff training, disciplinary actions, etc.); a summary of the findings and a conclusion of the investigation (i.e., was the allegation substantiated or unsubstantiated.) See "Event Report" form.
2. This summary report is required to be submitted to the State Survey Agency within 5 working days of the initial incident. The report may include copies of any additional documents the facility believes necessary to demonstrate that a thorough investigation was conducted, required referrals were made and that appropriate steps have been taken to prevent recurrence.
3. OHCA may require the facility to provide any additional information and/or documentation when it has reason to clarify the information provided, question the thoroughness of the facility's investigation or, whenever such documents may be necessary for purposes of pursuing administrative action related to the alleged perpetrator.