



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

7500 Security Boulevard
Baltimore, MD 21244-1850

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FROM: Director
Survey and Certification Group

SUBJECTS: Review of Time Frames for Reporting Abuse;
Reporting Abuse to Law Enforcement;
Displaying Complaint Telephone Numbers; and
Clarification on Defining and Citing Abuse - **ACTION**

TO: Associate Regional Administrators, DMSO
State Survey Agency Directors

On March 1, 2002, the General Accounting Office (GAO) published a report to Congress - Nursing Homes: More Can Be Done to Protect Residents from Abuse (GAO-02-312). This report helps to validate some of the information we have gathered while working on the Nursing Home Complaint Improvement Project and a future Report to Congress: The Role of the Nurse Aide Registry, Impact of Institutional Environmental Factors, and Effectiveness of Other Sanctions in Preventing Abuse and Neglect in Nursing Homes.

CMS is committed to protecting nursing home residents from harm. This memorandum clarifies the Centers for Medicare & Medicaid Services' (CMS) policy with regard to preventing, citing and reporting abuse in nursing homes.

1. Review of Time Frames for Reporting Abuse

The sections of the regulations that deal with reporting and investigating abuse are found at 42 CFR §§483.13, 483.156, 488.332 and 488.335. The following is a review of the timeframes related to complaints:

- The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately 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). [§483.13(c)(2)]

- The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken. [§483.13(c)(4)]
- If the State makes a preliminary determination, based on oral or written evidence and its investigation, that the abuse, neglect or misappropriation of property occurred, it must notify in writing-
 - (i) The individual implicated in the investigation; and
 - (ii) The current administrator of the facility in which the incident occurred.Notification must occur within 10 working days of the State's investigation. [§488.335(c)(1) and (2)]
- The notice must include that the individual's failure to request a hearing in writing within 30 days from the date of the notice will result in reporting the substantiated findings to the nurse aide registry or appropriate licensure authority. [§488.335(c)(3)(v)]
- The State must complete the hearing and the hearing record within 120 days from the day it receives the request for a hearing. [§488.335(d)(1)]
- If the finding is that the individual has neglected or abused a resident or misappropriated resident property or if the individual waives the right to a hearing, the State must report the findings in writing within 10 working days to-
 - (1) The individual;
 - (2) The current administrator of the facility in which the incident occurred; and
 - (3) The administrator of the facility that currently employs the individual, if different than the facility in which the incident occurred;
 - (4) The licensing authority for individuals used by the facility other than nurse aides, if applicable; and
 - (5) The nurse aide registry for nurse aides. Only the State survey agency may report the findings to the nurse aide registry, and this must be done within 10 working days of the findings, in accordance with §483.156(c). The State survey agency may not delegate this responsibility. [§488.335(f)]

The state survey agency (SA) must ensure that allegations of abuse, neglect and misappropriation of resident property are reported, investigated and if substantiated, are reported to the nurse aide registry within regulatory timeframes. During the SA's investigation, it should evaluate how the facility had developed policies and procedures to prevent the abuse, and after the abuse occurred, how the facility took action to report and investigate the allegation while ensuring the safety of the residents. The SA must promptly review the results of all complaint investigations and determine whether or not a facility has violated any requirements in part 483, subpart B (Requirements for Long Term Care Facilities). If a facility is not in substantial compliance with these requirements, the SA initiates appropriate actions, as specified in part 488 of subpart F (Enforcement of Compliance for Long-Term Care Facilities with Deficiencies). [§488.335(h)(1) and (2)]

2. Reporting Abuse to Law Enforcement

The regulation at 42 CFR 483.13(b) is very specific. The resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion. We are very concerned about the findings in the GAO report.

As discussed above, the current regulations state the facility must ensure that all alleged violations involving abuse are reported immediately to the administrator of the facility and to other officials in accordance with State law including to the survey and certification agency, and that alleged violations are thoroughly investigated. [42 CFR 483.13(c)(1)(iii)(2) and (3)]

When the SA or Regional Office (RO) substantiates a finding of abuse, the SA or RO must report the substantiated findings to local law enforcement and, if appropriate, the Medicaid Fraud Control Unit.

3. Displaying Complaint Telephone Numbers

One of the seven key components published by CMS to combat abuse in nursing homes is Prevention. Prevention includes providing residents, families and staff information on how and to whom they may report concerns, incidents and grievances without fear of retribution.

Sections 483.10(b)(7)(iii) and (iv) of the regulations address resident rights. The facility must furnish a written description of legal rights which includes-

A posting of names, addresses, and telephone numbers of all pertinent State client advocacy groups such as the State survey and certification agency, the State licensure office, the State ombudsman program, the protection and advocacy network, and the Medicaid fraud control unit; and

A statement that the resident may file a complaint with the State survey and certification agency concerning resident abuse, neglect, misappropriation of resident property in the facility, and non-compliance with advance directives requirements.

The SA needs to assure that the facility prominently displays the pertinent advocacy numbers and residents know how to file a complaint. More guidance on this issue can be found at tags F156 and F168 of the State Operations Manual. **CMS is asking that all SAs review how their telephone number is listed in the local directory and ensure that complaint telephone numbers are prominently listed.**

Another aspect of our consumer information sharing includes an awareness campaign to detect and prevent abuse in nursing homes. This campaign is a partnership among CMS, the nursing home industry, and consumer advocates. A poster has been developed and is targeted to reach nursing home residents, their family members, friends and staff. The poster will be distributed to each participating nursing home, nursing home advocates, ombudsmen, and SAs. The poster is currently in the clearance process. The poster is designed to remind nursing home

residents, their families, friends and staff of their right to be free from abuse and neglect and what actions to take if abuse occurs. The poster states: "Every resident has the right to be free from abuse and neglect. We DON'T Tolerate ABUSE! If you see it, report it." The accompanying information cards list telephone numbers and suggest contacting either the nursing home, the state ombudsman, SA, or CMS. We will notify you when the posters have been released and ask that following the release of the poster, and during the next survey at a facility, you encourage facilities to prominently display the poster.

4. Clarification on Defining and Citing Abuse

When the SA performs a Federal survey, the Federal definition of abuse must be followed when citing a Federal deficiency. The Federal definition of abuse is "Abuse means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish." The definition is found at 42 CFR 488.301.

The GAO reported that state officials said "they would view an instance in which an aide struck a combative resident in retaliation after being slapped by the resident as an unfortunate reflex response rather than an act of abuse." CMS regulations and policies address nurse aide training in relation to preventing resident abuse. In 42 CFR 483.152(b) the regulation addresses the curriculum of the nurse aide training program. As part of a nurse aide's training, the nurse aide must be taught: how to modify their behavior in response to a resident's behavior; how to respond to resident behavior; techniques for addressing the unique needs and behaviors of individuals with dementia; understanding the behavior of cognitively impaired residents; and the appropriate responses to the behavior of cognitively impaired residents. According to our Guidelines to Surveyors in Long Term Care Facilities, the facility must have procedures to train employees, through orientation and on-going sessions on issues related to abuse prohibition practices such as appropriate interventions to deal with aggressive and/or catastrophic reactions of residents. Properly trained staff should be able to respond appropriately to resident behavior. CMS does not consider striking a combative resident an appropriate response. "Retaliation" by staff is abuse and should be cited as such and reported to the appropriate law enforcement agency and, if appropriate, the Medicaid Fraud Control Unit.

In 1998, CMS established the Abuse and Neglect Prevention Forum in an effort to raise awareness of the extent of the abuse and neglect problem affecting the elderly and people with disabilities. The group identified Seven Key Components that can potentially reduce, detect, and prevent abuse and neglect. The Seven Key Components are: Screening, Training, Prevention, Identification, Investigation, Protection, and Reporting/Response. In May 2001, CMS implemented an abuse and neglect detection and prevention train-the-trainer program for representatives from each SA. In an October 2001 memorandum (Ref: S&C-02-01) sent to the ROs and SAs, CMS requested states to complete training within their respective areas by March 20, 2002. To monitor the number and type of individuals trained, we asked each SA to complete and submit a tracking plan that was provided as part of the above referenced memorandum. We will evaluate whether more guidance is needed to assure the Survey Protocol and the Abuse and Neglect Prevention Program are being followed by each SA.

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We appreciate your forceful efforts to prevent abuse and neglect in nursing homes. Please continue to be diligent in these efforts.

Effective Date: This policy clarification is effective immediately.

Training: This policy should be shared with all survey and certification staff, their managers, and the state/regional office training coordinator.

If you have further questions regarding this matter please contact Jeane Nitsch of my staff at (410) 786-1411 or e-mail, JNitsch@cms.hhs.gov.

/s/

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