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**Chapter 6 – MISCONDUCT REPORTING AND INVESTIGATIONS**

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**6.1.0 ENTITY INTERNAL INVESTIGATION AND REPORTING REQUIREMENTS****HFS 13**

Entity internal investigation and reporting requirements for caregiver misconduct and injuries of unknown source apply a consistent method for reporting incidents of caregiver misconduct for all entities regulated by BQA, except nursing homes. See Chapter 7 for Nursing Home Reporting Requirements.

**6.2.0 CAREGIVER MISCONDUCT****HFS 13.03(13)**

Caregiver misconduct means:

- Abuse of a client, or
- Neglect of a client, or
- Misappropriation of a client's property.

**6.2.1 Abuse****HFS 13.03(1)(a)**

Abuse is any of the following acts committed by a caregiver:

1. An act or repeated acts by a caregiver or nonclient resident, including but not limited to restraint, isolation or confinement, that, when contrary to the entity's policies and procedures, not a part of the client's treatment plan and done intentionally to cause harm, does any of the following:
  - a. Causes or could be reasonably expected to cause pain or injury to a client or the death of a client, and the act does not constitute self-defense as defined in s. 939.48, Stats.
  - b. Substantially disregards a client's rights under ch. 50 or 51, Stats., or a caregiver's duties and obligations to a client.
  - c. Causes or could reasonably be expected to cause mental or emotional damage to a client, including harm to the client's psychological or intellectual functioning that is exhibited by anxiety, depression, withdrawal, regression, outward aggressive behavior, agitation, or a fear of harm or death, or a combination of these behaviors. This subdivision does not apply to permissible restraint, isolation, or confinement implemented by order of a court or as permitted by statute.
2. An act or acts of sexual intercourse or sexual contact under s. 940.225, Stats., by a caregiver and involving a client.
3. The forcible administration of medication or the performance of psychosurgery, electroconvulsive therapy or experimental research

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on a client with the knowledge that no lawful authority exists for the administration or performance.

4. A course of conduct or repeated acts by a caregiver which serve no legitimate purpose and which, when done with intent to harass, intimidate, humiliate, threaten or frighten a client, causes or could be reasonably expected to cause the client to be harassed, intimidated, humiliated, threatened or frightened.

Examples of abuse include, but are not limited to:

- Physical abuse – hitting, slapping, pinching, and kicking;
- Sexual abuse – harassment, inappropriate touching, or assault;
- Verbal abuse – threats of harm, saying things to intentionally frighten a client; and
- Mental abuse – humiliation, harassment, and intimidation with threats of punishment or threats of depriving care or possessions.

**Example:**

Mary S., caregiver at an adult family home tells resident Jerry R. "I am so sick and tired of you throwing your food on the floor; if you do it again I will not give you any pain medication today." Jerry knocks his plate on the floor and Mary states "Now you did it, no pain medication for you. I don't care how much your leg hurts."

Later that day Jerry says his leg hurts and Mary states, "Too bad, maybe next time you won't throw your food on the floor." Jerry's care plan requires administration of pain medications prescribed by the physician but Mary does not give Jerry any medication.

*Abuse of a client* – The caregiver intentionally harmed the client by not providing the prescribed pain medication. This act of abuse by the caregiver is contrary to the entity's policies and procedures and causes pain and injury to the client.

**HFS 13.03(1)(b)**

Abuse does not include an act or acts of mere inefficiency, unsatisfactory conduct or failure in good performance as the result of inability, incapacity, inadvertency, or ordinary negligence in isolated instances, or good faith errors in judgment or discretion.

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## 6.2.2

**Neglect****HFS 13.03(14)(a)**

Neglect means an intentional omission or intentional course of conduct by a caregiver or a nonclient resident, including but not limited to restraint, isolation or confinement, that is contrary to the entity's policies and procedures, is not part of the client's treatment plan and, through substantial carelessness or negligence, does any of the following:

- a. Causes or could reasonably be expected to cause pain or injury to a client or the death of a client.
- b. Substantially disregards a client's rights under either ch. 50 or 51, Stats., or a caregiver's duties and obligations to a client.
- c. Causes or could reasonably be expected to cause mental or emotional damage to a client, including harm to the client's psychological or intellectual functioning that is exhibited by anxiety, depression, withdrawal, regression, outward aggressive behavior, agitation, fear of harm or death, or a combination of these behaviors. This paragraph does not apply to permissible restraint, isolation or confinement implemented by order of a court or as permitted by statute.

Neglect is the intentional carelessness, negligence, or disregard of policy, or care plan, which causes, or could reasonably be expected to cause pain, injury, or death.

**Example:**

Bobby E., a personal care worker, left three clients from a facility for the developmentally disabled (FDD) in a van, unattended for approximately 45 minutes. When he returned one of the clients was missing.

All three clients have care plans requiring 24-hour supervision. Bobby E. was aware of the care plan requirements. The client was located 2 hours later, unharmed, after the local police had been contacted to assist in the search.

*Neglect of a client* – The care plan requires 24-hour supervision of these three clients. The caregiver intentionally left the clients unattended. Even though no harm was intended, the caregiver's actions could reasonably be expected to cause pain or injury to the clients.

**HFS 13.03(14)(b)**

Neglect does not include an act or acts of mere inefficiency, unsatisfactory conduct or failure in good performance as the result of inability, incapacity, inadvertency or ordinary negligence in isolated instances, or good faith errors in judgment or discretion.

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**6.2.3 Misappropriation of Property****HFS 13.03(12)**

Misappropriation of property is any of the following:

1. The intentional taking, carrying away, using, transferring, concealing or retaining possession of a client's movable property without the client's consent and with the intent to deprive the client of possession of the property.
2. Obtaining property of a client by intentionally deceiving the client with a false representation which is known to be false, made with the intent to defraud, and which does defraud the person to whom it is made. "False representation" includes a promise made with the intent not to perform it if the promise is a part of a false and fraudulent scheme.
3. By virtue of his or her office, business or employment, or as trustee or bailee, having possession or custody of money or of a negotiable security, instrument, paper or other negotiable writing of a client, intentionally using, transferring, concealing, or retaining possession of money, security, instrument, paper or writing without the client's consent, contrary to his or her authority, and with the intent to convert it to his or her own use or to the use of any other person except the client.
4. Intentionally using or attempting to use personal identifying information as defined in s. 943.201 (1)(b), Stats., or a client's birth certificate or financial transaction card as defined in s. 943.41(1)(em), Stats., to obtain credit, money, goods, services or anything else of value without the authorization or consent of the client and by representing that he or she is the client or is acting with the authorization or consent of the client.
5. Violating s. 943.38, Stats., involving the property of a client, or s. 943.41, Stats., involving fraudulent use of a client's financial transaction card.

Examples of misappropriation include, but are not limited to:

- Theft of money, credit cards or jewelry;
- Misuse of property, such as a client's phone or other personal items without consent.

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**Example:**

Karen B., a resident at a residential care apartment complex (RCAC), reported that her purse containing \$200 was missing. Karen reported that she had last counted her money on August 15 upon her return from shopping. On August 17, she was preparing for another outing and discovered her money and purse missing from her top dresser drawer. She could not recall leaving her apartment door unlocked during that time frame. RCAC staff are the only individuals with access to Karen's apartment.

*Misappropriation of a client's property* – Taking a resident's money without consent intentionally deprives the resident the use of these funds.

**6.2.4****Injury of Unknown Source**

Per S & C Memo-  
05-09 12/16/04

An injury should be classified as an “injury of unknown source” when both of the following conditions 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.

**Example:**

Maude T., resident of an adult family home, appears agitated and complains of her arm hurting while trying to feed herself. Nurse aide, Jeff H. reports the information to the supervisor who checks Maude's arm thoroughly, but does not find any injury.

The next day a large bruise appears on Maude's arm. X-rays confirm the resident's arm has a fracture. Maude does not know how it happened and there is no documentation of any incidents involving Maude.

*Injury of unknown source* – At the time the injury is discovered, it is not known how the client hurt her arm. As the client has a fractured arm and it is not known how the fracture occurred, caregiver misconduct cannot be ruled out.

**6.2.5****Incident**

Caregiver misconduct and injuries of unknown source are considered “incidents.”

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**6.3.0 INCIDENT REPORTING****s.146.40(4r)**

Anyone who has information regarding an incident may report the incident to the entity. An entity can learn of an incident from:

- Verbal or written statement of a client;
- Verbal or written statement by someone in a position to have knowledge of the incident through direct or indirect observation;
- Discovering an incident after it occurred;
- Hearing about an incident from others;
- Observing injuries (physical, emotional or mental) to a client;
- Observing misappropriation of a client's property;
- Or otherwise becoming aware of an incident.

**6.3.1 Written Procedures**

Entities are required to develop written procedures specifying:

- How and to whom staff are to report incidents;
- How internal investigations will be completed;
- How staff will be trained on the procedures related to allegations of caregiver misconduct; and
- How residents will be informed of those procedures.

Every entity must ensure that its employees, contractors, volunteers, clients and nonclient residents are knowledgeable about the entity's misconduct reporting procedures and requirements. Staff must be trained to immediately report to the appropriate person all allegations of misconduct, including abuse or neglect of a client or misappropriation of a client's property.

Note: FDDs should refer to BQA Memo 04-002 regarding reporting allegations to the Administrator.

See the [Misconduct Reporting Requirements for Entities Regulated by the Bureau of Quality Assurance in Wisconsin's Caregiver Program brochure \(PDE-3158\)](#).

Entities that fail to develop written procedures on misconduct reporting requirements can be subject to regulatory sanctions.

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**6.4.0 ENTITY INTERNAL INVESTIGATION RESPONSIBILITIES****HFS 13.05(3)**

All entities regulated by BQA must conduct a thorough internal investigation and document the findings for all allegations or incidents at the entity. A thorough internal investigation may include:

- Collecting and preserving any physical and documentary evidence;
- Interviewing alleged victims and witnesses;
- Collecting other corroborating/disproving evidence;
- Involving other regulatory authorities who can assist (e.g., local law enforcement, elder abuse agency, Adult Protective Service agency, BQA, Board on Aging (Ombudsmen), Client Right's Specialist, etc.); and
- Documenting each step taken during the internal investigation.

These steps should be taken as part of the entity's initial attempt to determine what, if anything, happened, and to determine the complete factual circumstances surrounding the alleged incident.

An entity's internal investigation will assist in determining if an incident must be reported to BQA (see 6.5.0 – 6.6.0). If the incident is reported to BQA, the entity's internal investigation becomes part of the BQA caregiver misconduct investigation (see 6.7.0).

**6.4.1 Protection of Clients****HFS 13.05(2)**

**Immediately** upon learning of the incident, the entity must take necessary steps to protect clients from possible subsequent incidents of misconduct or injury.

**6.4.2 Notifying Law Enforcement**

In addition to BQA reporting requirements, entities are encouraged to notify local law enforcement authorities in any situation where there is a potential criminal offense.

**6.4.3 Entity Internal Investigative Report**

The entity must investigate any allegation or incident reported to them. A timely and thorough entity investigative report is critical to the possible substantiation of a finding of caregiver misconduct.

An internal investigative report provides:

- A record of the entity's internal investigator's activities and findings so that nothing is left to memory.

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- A permanent official record of the entity's internal investigator's actions, observations and discoveries.
- A basic reference of the case.
- Information on what has been done concerning the case.
- A basis for deciding further action.
- A method to communicate the findings of the case.
- Information that can be evaluated and analyzed to detect and identify patterns of conduct.

Entity reports should be written whenever an incident of caregiver misconduct or an injury of unknown source is reported to an entity and each time a contact has been made as part of the internal investigation.

**6.4.3.1***Elements of the Entity Report*

Entity reports should contain the following basic elements:

1. Individuals involved (*who*)  
Include all persons who are connected in any way with the incident under investigation:
  - Resident, client, or patient
  - Complainant
  - Suspect or accused person
  - Witness
  - Any others with first-hand knowledge

Identify each person separately in such a manner that he/she cannot be confused with any other individual, including:

- Legal name – first, middle, last
  - Names used – nicknames
  - Title, position, place of employment
  - Gender, race
  - Date of birth
  - Social security number
  - Full address
  - Telephone number
2. Description (*what*)  
Describe the incident in a precise and accurate manner
    - Document observable facts
    - Photograph injuries, bruises, skin tears, etc.
    - Obtain statements of witnesses
  3. Timeframe (*when*)  
Attempt to establish the date and time of the incident

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4. Location (*where*)

Include the specific location of all persons and things that are related to the offense or incident, including:

- Specific location of room, using room numbers, wings
- Specific location of objects in the space
- Noise
- Location of furnishings
- Type of furnishings
- Clothing of victim

Document physical findings using diagrams, sketches and photographs, as appropriate.

5. Effect on the client or client's reaction

6. How the incident occurred.

6.5.0

**ENTITY INTERNAL INVESTIGATION RESULTS**

HFS 13.05(3)(a)

The entity must document the results of their internal investigation using the [Caregiver Misconduct Incident Report](#) form, DDE-2447. The answers to questions asked during the entity's internal investigation are the foundation when determining whether or not to report an incident to BQA.

The following documents can assist an entity in determining if an incident must be reported to BQA:

- Caregiver Misconduct Reporting Requirements Worksheet (10/2004)
- Flowchart for Investigating and Reporting Caregiver Misconduct or Injuries of Unknown Source (Rev. 10/2004)

6.5.1

**Mandated Incident Reporting**

s.146.40(4r)(am)1  
HFS 13.05(3)(a)

Incidents **must** be reported to BQA when:

1. The entity has reasonable cause to believe they have sufficient evidence or another regulatory authority could obtain the evidence, to show the alleged incident occurred, **and**
2. The entity has reasonable cause to believe the incident meets, or could meet the definition of abuse, neglect or misappropriation.

When an entity concludes that these conditions are true, the entity **must** report the incident to BQA on the Incident Report form (DDE-2447).

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**Example:**

Mary G., a nurse aide at a hospital, overhears Jack K., nurse aide, shout loudly to patient Ellie V., “Will you shut up? I am sick and tired of cleaning up your disgusting messes! You make me sick!” Ellie begins to cry and will not respond to anyone for the rest of the evening. Mary reports the incident to her floor supervisor, Betty F. Mary was just outside the client’s room when the incident occurred and could clearly hear and see the accused aide and made a credible statement to that effect. After the incident, Betty immediately checks on the client, finds her crying and documents her withdrawn and unresponsive state for the rest of the evening. Betty interviews the two nurse aides after the incident, and Jack K. is evasive, changing his story several times but admits that he was attempting to clean up Ellie after toileting her.

In this example:

- 1) The entity has reasonable cause to believe there is sufficient evidence to show the incident occurred (credible witness overheard the incident); **and**
- 2) The entity has reasonable cause to believe that the incident meets the definition of abuse of a client (abuse: a course of conduct when done with intent to harass, intimidate, humiliate or threaten a client, causes or could reasonably be expected to cause mental or emotional damage as exhibited by anxiety, depression, withdrawal, fear of harm, etc.).

**When these conditions are true, the entity must report the incident to BQA.**

**Example:**

On Monday morning, Nancy B., bookkeeper at a community based residential facility, discovers that the lock box containing the resident’s account money is missing from the file cabinet where it is stored. The file cabinet is located right outside of Nancy’s office, within her vision. Nancy opens the file cabinet every morning, leaves it open during the day and locks it in the evening. Rita J., Facility Manager, conducts a thorough investigation. She interviews Nancy, who states that she last counted \$1500 the Friday before at 5:00 p.m., when she locked up the file cabinet at the end of the day. Rita conducts an interview with all staff members. No staff member could provide any information on what might have happened to the money. Because Rita thinks that the police might be able to identify a suspect or prove that a theft occurred, she calls the local police department to report the missing money.

In this example:

- 1) The entity has reasonable cause to believe it or another regulatory authority could obtain sufficient evidence to show the incident occurred (the entity believes the police may be able to obtain the evidence to indicate why the money is missing); **and**
- 2) The entity has reasonable cause to believe the incident meets the definition of caregiver misconduct (misappropriation: the intentional taking of a client’s moveable property without the client’s consent and with the intent to deprive the client of possession of the property).

**When these conditions are true, the entity must report the incident to BQA.**

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If one of the following conditions is true, then the entity must decide whether the incident must be reported (see 6.5.2):

1. The entity has less than reasonable cause to believe it has or that any other regulatory authority could obtain sufficient evidence to show the incident occurred; or
2. The entity has less than reasonable cause to believe the incident meets one or more of the definitions of abuse, neglect, or misappropriation in HFS 13.

### 6.5.2 Optional Incident Reporting

The entity is **not** required to report an incident when:

- The entity does not believe it has or another regulatory authority could get sufficient evidence to show the incident actually occurred, **or**
- The entity does not believe that the incident meets the definition of abuse, neglect or misappropriation, **and**
- The entity is reasonably certain that the incident does not meet the definition of caregiver misconduct or the definition of an injury of unknown source (e.g., the entity investigation includes documentation, nurse's notes, and/or witnesses to support that the incident is not caregiver misconduct or an injury of unknown source).

The entity must conduct an internal investigation and document the incident but it is **not** necessary to report the incident to BQA.

**EXAMPLE:**

Corrine M., nurse aide notices a large bruise on the arm of Paula L. Corrine reports the injury to her supervisor, Rachel W.

Rachel immediately begins an investigation and discovers documentation on the resident's care chart over the previous weekend, noting that Paula bumped into a wall in the hallway. The nurse aide who observed the incident noticed the bruising on Paula's arm later that same day.

1. The entity does not have reasonable cause to believe it or another regulatory authority could name the person they believe committed the incident; **and**
2. The entity determines that the incident does not meet the definition of caregiver misconduct (there is credible documentation that the bruise was the result of everyday living).

The entity must conduct an internal investigation and document the incident but it is **not** mandatory to report the incident to BQA.

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6.5.2.1            *“Minor” Effect on the Client*

A minor effect on the client is one that causes no apparent physical, emotional, or mental pain or suffering to a client.

Examples include, but are not limited to:

- Taking a piece of a client’s candy;
- Food missing from a client’s plate after the client has finished eating;
- Mild profanities not directed at a client.

The entity is **not** required to report an incident when:

- The entity does not believe it has or another regulatory authority could get sufficient evidence to show the incident actually occurred, **or**
- The entity does not believe the incident meets the definition of abuse, neglect or misappropriation, **and**
- The entity cannot be reasonably certain that the incident is not misconduct **but** the effect on the client is minor.

**EXAMPLE:**

Georgia C., resident of a residential care apartment complex, reports to Joan P., personal attendant, that someone stole a small box of chocolate mints from her bedroom dresser. Georgia states that she received the box of candy from her granddaughter on her birthday the month before. Joan immediately reports the incident to her supervisor, Sally G.

Sally knows that the resident has several friends and family members that stop by weekly to visit. Sally asks the resident when she last saw the box of candy. Georgia states, “I can’t remember the last time I ate a piece of candy, but the box is missing now so someone must have stolen it.”

In this example:

The entity can’t be certain that caregiver misconduct did not occur **but** the effect of the incident on the client was minor (a small box of candy).

The entity must conduct an internal investigation and document the incident but it is **not** mandatory to report it to BQA.

The following examples are **not** considered minor effects on the client:

- Discomfort occurring as a result of a skin tear due to rough handling;
- Client cowering or crying due to verbal or physical threats;
- The loss of a client’s spending money, even though the amount was small.

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**6.6.0 ENTITY REPORTING REQUIREMENTS**

Refer to the following documents to assist in determining if an allegation or incident must be reported to BQA:

- Caregiver Misconduct Reporting Requirements Worksheet (10/2004)
- Flowchart for Investigating and Reporting Caregiver Misconduct or Injuries of Unknown Source (Rev. 10/2004)

**6.6.1 Reported Incidents**

Follow these steps to report an incident to BQA:

**s.146.40(4r)(am)1**  
**HFS 13.05(3)(a)**

1. Use [Incident Report](#) form (DDE-2447) and attach relevant internal investigation documents.
2. Ensure the completed incident report is submitted according to the appropriate timeframe.
  - Entities must submit reports of alleged caregiver misconduct to BQA within **seven (7) calendar days** of the incident or the date the entity knew or should have known of the incident.
  - Nursing homes and intermediate care facilities for persons with mental retardation (ICFs/MR) that are certified to receive Medicare and Medicaid funds, must submit reports of alleged caregiver misconduct to BQA within **five (5) working days** of the incident or the date the entity became aware of the incident. Note: See Chapter 7 for Nursing Home Reporting Requirements
3. For allegations involving all staff (noncredentialed and credentialed), submit the Incident Report to BQA at:

**Bureau of Quality Assurance**  
**Office of Caregiver Quality**  
**2917 International Lane, Suite 300**  
**Madison, WI 53704**

**6.6.1.1 Credentialed Staff**

In the past, entities were required to submit the report either to BQA or to the Department of Regulation and Licensing (DRL). This process has been streamlined to eliminate reporting to two different agencies. All caregiver misconduct reports are submitted to BQA, who will forward reports involving credentialed staff (doctors, RNs, LPNs, social workers, etc.) to DRL for review.

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**6.6.1.2**      *Continued Employment*

Any employment action taken against the caregiver while a complaint is pending is an internal entity decision. An entity is not required to suspend or terminate a caregiver against whom an allegation has been made and reported. During this period, options available to the employer include, but are not limited to:

- Increased supervision;
- Alternative work assignment;
- Training;
- Employment sanctions.

Until final decision is made, it is up to the employer to choose appropriate interim options.

**6.6.2**      **Unreported Incidents**

Entities must maintain the results of the 30 most recent internal investigations that were not forwarded to BQA. Entities may still use the Incident Report form (DDE-2447) to document the incident and the internal investigation results. Upon reviewing the results of unreported incidents, BQA survey staff may still refer the allegations to the Office of Caregiver Quality (OCQ) for further review and possible investigation.

Entities may be sanctioned for failing to meet caregiver misconduct reporting requirements if the following actions did not occur:

- The entity maintains written policies and procedures regarding caregiver misconduct, including internal reporting requirements;
- The entity trains all staff on those written policies and procedures;
- The entity immediately takes steps to protect the client(s);
- The entity begins an internal investigation immediately upon learning of an incident;
- The entity conducts a thorough internal investigation and documents the results; and
- The entity makes good-faith decisions in determining whether or not to report an incident.

**6.6.3**      **Reporting Requirement Penalties**

**s.146.40(4r)(am)3**  
**HFS 13.05(3)(e)**

Entities that intentionally fail to follow the reporting requirement procedures for caregiver misconduct, including for contracted employees, may be subject to one or more of the following sanctions:

- Forfeiture of not more than \$1000;
- BQA approved or imposed corrective plan;
- BQA imposed regulatory limits;

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- Suspension or revocation of license; or,
- Notification of the act and any corresponding forfeiture in the local newspaper.

**6.7.0****BQA CAREGIVER MISCONDUCT INVESTIGATION**

**s.146.40(4r)(b)**  
**HFS 13.05(6)**

When BQA receives a complaint of caregiver misconduct from an entity or another source, the report is promptly screened by BQA's Office of Caregiver Quality (OCQ) to determine whether further investigation is warranted. Investigation screening decisions are made on a case-by-case basis. OCQ notifies the accused person, entity, staffing agency (if applicable) and complainant by letter whether an investigation will be conducted by OCQ.

Not all reported incidents are investigated by BQA. However, BQA does track and monitor all incident reports. When a pattern of reported incidents by a caregiver occurs, an investigation may be opened at a later date.

BQA may conduct a caregiver misconduct investigation by conducting on-site visits, in-person interviews or telephone interviews. Both state investigators and contracted private investigators complete caregiver misconduct investigations. During BQA's investigation, the entity must continue to protect the client. Entities must cooperate with BQA in completing the caregiver misconduct investigation.

BQA investigators may request:

- Resident records to include medical records, care plan, nursing notes, statements from the resident, etc.
- Personnel records of the alleged caregiver to include employment application, orientation records, time sheets, assignment sheets, in-service records, background check information, etc.
- Personnel records of witnesses to include time sheets, assignment sheets, disciplinary records, etc.
- Entity internal investigation documents to include floor plans, photographs, diagrams, incident/accident reports, policy and procedures, etc.
- Incident/accident reports
- Other information or evidence as needed

The entity's BQA regulatory programs (Assisted Living Section, Health Services Section or Resident Care Review Section) may also conduct a parallel investigation regarding the incident, to determine if the entity's program requirements were met and if the entity bears culpability regarding the incident.

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**6.7.1 Release of Records**

Entities are required under Chapters 50, 51 and 146 Wis. Stats., to release records to BQA investigators (both state investigators and contracted private investigators).

**6.7.1.1 Health care records**

**s.146.82(2)(a)5  
HFS 34-134**

Health care records include all records related to the health of a patient prepared by or under the supervision of a health care provider but do not include those records relating to a patient's mental illness, developmental disabilities, alcoholism or drug dependence. Per Section 146.82(2)(a)5, Wis. Stats., no release or informed consent is necessary to supply medical records of:

- An abused client or resident,
- A client or resident who is an eyewitness or otherwise involved in an incident of misconduct, or
- A caregiver or entity employee if those medical records are contained in the entity's personnel files (a release or informed consent is needed for other health care records of a caregiver or entity employee).

**6.7.1.2 Treatment records**

**s.51.30(4)(b)1 & 5  
HFS 34-134**

Treatment records, as defined in Section 51.30(1)(b), Wis. Stats., are registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under s. 51.42 or 51.437 and their staffs, and by treatment facilities. Per Section 51.30(4)(b)1 and 5, Wis. Stats., no release or informed consent is necessary to supply treatment records maintained by the entity at which the investigation is being conducted for:

- An abused client or resident,
- A client or resident who is an eyewitness or otherwise involved in an incident of misconduct, or
- A caregiver or employee.

For treatment records maintained by a provider or agency other than the entity at which the investigation is being conducted, a release or informed consent signed by the client, resident (or his/her agent), caregiver or employee is necessary to obtain such records.

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**6.7.1.3**      *Personnel Records***HFS 34-134**

No release or informed consent is necessary for personnel records of a caregiver or entity employee. The Department has the authority under several Wisconsin Administrative Code HFS sections to obtain any information from the entity that is necessary to document compliance with HFS rules and state statutes.

**6.7.2**      **Confidentiality of Alleged Misconduct****HFS 13.05(8)**

While a caregiver misconduct investigation is pending, BQA maintains confidentiality regarding all information pertaining to the alleged incident. Once the caregiver misconduct investigation is complete, BQA issues a written decision regarding the investigation outcome. All information regarding alleged incidents that are not substantiated remains confidential. BQA investigations that result in substantiated findings become public record. A case summary of a person's substantiated finding of caregiver misconduct may be requested in writing.

**6.7.3**      **BQA Caregiver Misconduct Investigation Outcome****HFS 13.05(6)(c)**

In order for the Department to substantiate misconduct against a caregiver, the incident must meet the definition of caregiver abuse, neglect or misappropriation. An incident may violate the work rules or procedures of a facility but at the same time not meet the definitions or the evidentiary standards of HFS 13. Therefore, it is possible that an employer may appropriately discipline or terminate a caregiver for a particular incident, but BQA may determine that it is unable to substantiate caregiver misconduct. After completing a caregiver misconduct investigation, BQA determines whether there is sufficient evidence to substantiate the complaint. BQA notifies the accused person, the entity, the complainant and other appropriate agencies of the outcome of the investigation, i.e., whether or not the complaint was substantiated.

**6.7.4**      **Substantiated Caregiver Misconduct****s.146.40(4r)(b)  
HFS 13(6)(c)2**

Caregivers are provided written notice that DHFS determined caregiver misconduct occurred and that the substantiated finding under their name will be entered on the Wisconsin Caregiver Misconduct Registry (see 6.8.0). The reporting facility, the complainant and other appropriate agencies also receive a copy of this written notice.

**HFS 13.05(7)**

Caregivers are allowed 30 days to appeal the Department's decision by submitting a written appeal to the Department of Administration, Division of Hearings and Appeals. A fair hearing will be scheduled. While the fair

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hearing decision is pending no information is entered on the Caregiver Misconduct Registry or given to the public. A person may continue to be employed pending the hearing decision (see 6.6.1.2).

**HFS 13.05(7)(c)**

If the caregiver does not appeal or the hearing examiner upholds the Department's decision, the substantiated finding results in the person's name being entered on the Wisconsin Caregiver Misconduct Registry. All caregivers who have a finding entered on the Wisconsin Caregiver Misconduct Registry may request a Rehabilitation Review with the Department (see Chapter 5). An approval through the Rehabilitation Review process allows a caregiver to work in a state-regulated facility.

Federal regulations require that nurse aides with a finding of caregiver misconduct be permanently barred from working in any capacity in federally regulated nursing homes and may be barred from working in intermediate care facilities for persons with mental retardation (ICFs/MR). The Rehabilitation Review process cannot change this permanent bar.

**6.8.0**

**WISCONSIN CAREGIVER MISCONDUCT REGISTRY**

**HFS 13.03(4)  
HFS 13.04(1)**

The Wisconsin Caregiver Misconduct Registry is a record of the names of nurse aides and other noncredentialed caregivers with a substantiated finding of caregiver misconduct. Providers have an ongoing obligation to review on a monthly basis the caregivers whose names have been most recently added to the Misconduct Registry due to a substantiated finding. Some individuals, who upon hire did not have a finding, may receive one while employed and may not report that to the entity; therefore, entities must check the updated Misconduct Registry each month. These monthly additions of caregivers with a finding of misconduct are posted by the 15<sup>th</sup> of the month and may be viewed at <http://dhfs.wisconsin.gov/caregiver/misconduct.HTM>. Wisconsin law prohibits the publication of a person's Social Security Number so the Misconduct Registry identifies each caregiver by name, date of birth and type of caregiver. More detailed information is available at Wisconsin's Internet-based Nurse Aide Registry at [www.promissor.com](http://www.promissor.com), click on "Registry Services," then on "Wisconsin Nurse Aides" and "Search the Nurse Aide Registry."

- For a nurse aide (NA): Information will be provided regarding the aide's employment eligibility and whether a finding of misconduct has been placed under the aide's name.
- For any other noncredentialed caregiver (CGE): An individual, such as a personal care worker, maintenance worker, laundry aide, etc., identified as a caregiver (CGE) with a finding may not be employed as a caregiver as that term is defined in s. 50.065 or 48.685, Wisconsin Stats., in any entity regulated by the Wisconsin DHFS unless approved through the Rehabilitation Review process.