

Conducting Internal Investigations of Caregiver Misconduct



caregivers

PREVENT  PROTECT  PROMOTE
abuse/neglect *clients* *dignity*

PARTICIPANT GUIDE

DHFS/DQA/OCQ

www.dhfs.state.wi.us/caregiver/training/trgIndex.HTM

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Learning Points

As a result of this workshop, participants will learn more about:

- Caregiver Misconduct Definitions
- Developing an Investigation Protocol
- Conducting an Internal Investigation
- Interviewing Skills
- Reporting Requirements

A Word about Prevention



Wisconsin implemented the Caregiver Law in October 1998. Since then, thousands of background checks have been conducted by health care entities statewide. Background checks are good but not enough to ensure safety. Most caregivers who mistreat clients don't have significant criminal histories. If they did, you wouldn't have hired them and misconduct would have stopped long ago.

Let's take a moment to review some thoughts on preventing caregiver misconduct:

- Focus on prevention. Detection is good, but too late.
- Training and open communication are the keys to prevention. Make sure everyone understands what "caregiver misconduct" means.
- Create an atmosphere that encourages communication between managers and staff
- Communication starts at the top. Managers must be approachable and very visible.
- A caregiver with no support system is more likely to mistreat a resident

- Create a facility wide team whose focus is the well-being of both residents and caregivers
- Direct caregivers are the key to the success of your facility. Invest in them with training and support.
- Make sure caregivers understand their duty to report anything that just doesn't feel right to them. Say it over and over.

Source: *Dr. Ted Bunck, Director, Central Wisconsin Center*



Take a moment to write down how you might specifically adapt some of these keys to prevention in your own facility or list any other strategies to prevention that you currently use.

Having said all that, caregiver misconduct is going to happen in your facility, despite your best efforts. When it does, you need to have a plan of action already in place in which everyone knows what to do.

What is Caregiver Misconduct?



Caregiver misconduct in Wisconsin includes the following:

- abuse of a resident
- neglect of a resident
- misappropriation of a resident's property

While most managers and supervisors have become quite familiar with the legal definitions of caregiver misconduct found at HFS 13.03(13), Wisconsin Administrative Code, let's take a moment to review those definitions along with some examples.

Legal Definitions

Please select the handout titled “**Caregiver Misconduct – State and Federal Definitions.**”

Because direct caregivers are your eyes and ears in detecting misconduct, it may be helpful to offer a plain-English or simplified version of those definitions. When we have provided this handout to caregivers in other trainings, they were surprised by some of the examples given—they were unaware that some of the actions could be caregiver misconduct.

Simplified Definitions

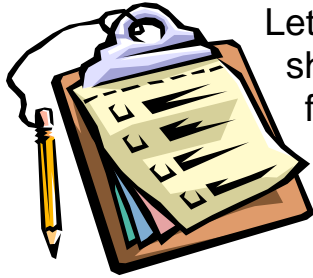
Please select the “**Caregiver Misconduct – Simplified Definitions**” handout.

You may find this one-page handout useful in educating your caregivers about the definitions. The most commonly misunderstood definition is neglect. While both abuse and neglect include an intentional act or failure to act, only abuse includes the *intent to harm* a person. It's interesting to note that a caregiver may be charged with neglect even if there was no

harm done, particularly if the negligent act had significant potential to do harm.

Above all, caregivers must be encouraged to report anything that just doesn't feel right to them.

Developing an Investigation Protocol



Let's move on to developing a protocol. Your protocol should be written down and shared with everyone in the facility. It's critical that every staff person knows your protocol and their role when caregiver misconduct is suspected.

Please select the “**Investigation Protocol**” **handout**. This protocol was developed and approved by DQA.

Checking Your Protocol

Develop a written protocol in advance of any allegation of caregiver misconduct. When everyone knows the steps to take, you can focus entirely on the alleged incident. In other words, be prepared!

Identify a lead investigator and other supervisory/professional staff who will comprise the investigation team. Document a reporting hierarchy and timeline for team notification—most administrators want to be notified immediately (at home, in the middle of the night) when an allegation of caregiver misconduct is received.

Share the protocol with all staff and ensure that caregivers, residents and family members know to whom they should report a concern.

Create an atmosphere that welcomes reporting of concerns.

Know when to implement the protocol (immediately when any of the following occurs):

- Receiving a verbal or written statement of a resident, caregiver or anyone with knowledge of an incident
- Discovery of an incident after it occurs
- Hearing about an incident from others
- Observing injuries (physical, emotional or mental) to a resident
- Observing theft of a resident's property
- Otherwise becoming aware of an incident
- Treat all allegations as potential misconduct. Make no decisions until the investigation is complete.

Investigating the Allegation



Let's focus in on Step # 3 in the Protocol, Investigating the Allegation. It's vital to treat the investigation as a fact-finding mission. Remaining neutral and fair are top priorities. Make no conclusions until you have all the facts.

1. Focus on the specific incident: Who, What, Where, When, Why and How?

- What exactly is the allegation? Write it down. This is the basis of your investigation. Refer to it often. Compare the allegation to the definitions of caregiver misconduct. Ask yourself if the information you are gathering is related to the incident and addresses the elements of the offense.
- Who was present at the time of the incident? (Victim, perpetrator, witness?)
- Who else might have information about the incident? (Other caregivers on duty, supervisors, visitors, maintenance or kitchen staff, social workers?)
- Where did it happen? (Specifically where.)
- When (date and time) did it happen?
- How did it happen? (Recreate the alleged incident. Could it have happened the way the reporter stated?)
- Why did it happen? What was happening immediately prior to the incident? What happened immediately afterward?

2. Contact law enforcement if appropriate. Facilities are strongly encouraged to contact local law enforcement in the event of a serious crime, e.g. physical or sexual abuse or assault, negligence that leads to injury, significant loss of property or a pattern of lost property, etc. A 2002 report from the GAO (General Accountability Office—Congress's “watchdog” agency) states that local law enforcement officials are

seldom summoned to nursing homes to immediately investigate allegations of physical or sexual abuse. Some of these officials indicated that when they were called, evidence had been compromised.

Trained law enforcement officials have vast experience in conducting criminal investigations and have the added advantage of being a neutral third-party to the events. Law enforcement officers may ask you to suspend your own investigation if they are investigating. In that event, you must still report to the state agency within timelines for your facility type. Inform the agency that law enforcement is involved and attach any available reports.

3. Preserve evidence. Take photos of injuries, broken or overturned furniture, other physical evidence that is relevant to the incident and may change over time. Label your photos or other evidence with date, time, location and signature. Keep them in a safe and secure place. Why a secure place? You want to be able to truthfully state at a hearing or in circuit court that your evidence could not have been tampered with. In the event of a sexual assault, it is best to immediately contact law enforcement so that evidence can be collected properly and a chain of evidence maintained.

4. Document the effect on the victim. Findings of caregiver misconduct and criminal prosecutions often take into account the effect on the victim. While it's important to photograph physical injuries, it's also important to document psychosocial effects such as fear, withdrawal, depression, etc. Document the victim's diagnosis and any physical limitations (dementia, physical or cognitive disabilities, etc.)

In the event of neglect without injuries, document details that demonstrate the potential for harm. For example,

A caregiver props open and deactivates an alarmed door in order to go out to her car and get back into the facility quickly. A resident with a history of absconding slips away unnoticed through the open door and walks to a local convenience store four blocks away. The resident is recovered quickly and returned to the CBRF unharmed.

However, a thorough investigation adds the following critical information:

- The resident has dementia and often becomes disoriented to time and place.
- The resident carried no identification.
- The CBRF and the convenience store are located on a divided highway where the speed limit is 55 mph.
- The temperature at the time was approximately 30 degrees. The resident wore a t-shirt, pants and tennis shoes.

While the resident was recovered quickly and suffered no injuries, the potential for harm was great.

Documenting the effect on the victim also extends to misappropriation. For example:

A nursing home resident's wallet disappears from his room. The resident states that there was \$20 in the wallet.

A thorough investigation into the incident reveals:

- The resident has only \$40 per month to spend.
- The loss represents 50% of the resident's total monthly income.

5. Document the caregiver's duty to provide care to the client. In other words, document whether or not the caregiver knew or should have known that her actions could result in harm to the client.

You may assume that a reasonable caregiver knows or should know that physical or sexual abuse or theft of a client's property will result in harm. However, think about how you would document that:

- Do your facility orientation materials or work rules state the definitions of caregiver misconduct?
- Do you have a written policy that prohibits caregiver misconduct?
- Can you demonstrate that the caregiver is aware of those definitions and rules?

What if neglect is the issue? How can you determine whether the caregiver's act was negligent? If the issue is an improper transfer, for example:

- What type of transfer is ordered for the resident?
- If a two-person transfer is ordered, where is that documented?
- Can you demonstrate that the caregiver knew or should have known the transfer method?
- Why did the caregiver choose the improper transfer?

Caregiver Sally attempts a solo transfer of Resident Ben. Ben falls to the floor and breaks his hip. Did Sally's act meet the definition of neglect of a resident?

A thorough investigation reveals:

- A two-person transfer was ordered for Ben several weeks ago, but it was never changed in Ben's care plan.
- There is no documentation that Sally and other direct care staff were notified of the change.

6. Diagram the scene. Diagram or photograph the scene of the incident (e.g. the resident's room) and the location's relationship to the rest of the facility. Include dimensions of the area and/or distances to other locations.

This will help you determine whether witnesses could actually see the incident from their vantage point. It will also help you visualize a witness's version of the incident.

7. Review facility/other records

- Check patient records, nurse's notes or other written records at your facility that document resident care around the time of the incident.
- Check time cards or schedules. Was the accused caregiver or witness actually at work on the day and time?

- Check personnel records of the alleged perpetrator and witnesses. Are there any positive or negative actions contained in the file? Any information about ability to get along with co-workers? A history of filing untrue allegations against others?
- Check the Wisconsin Circuit Court Automation Programs (CCAP) at <http://wcca.wicourts.gov/index.xsl> or request an updated Caregiver Background Check. Recent court actions may provide information on an accused caregiver's state of mind.

8. Develop a list of persons to interview.

- Interview the reporter
- Who else do you wish to interview? Who might have information about the allegation?
- Interview the victim when possible. The interviewer should be someone who has the ability to communicate well with the victim.
- Obtain written or recorded statements from witnesses.
- Interview the accused caregiver last when possible. Information from other resources and witnesses may give you a sense of whether or not the accused was actually involved. (For example, "Mary, four other employees told me they saw you coming out of the resident's room that night and that you seemed upset.") We'll discuss interviewing tips a bit later.

9. Write your report.

- Review the facts that you have gathered.
- Have you explored all the available resources?
- Do your actions include steps 1 through 7?
- Does your report include facts and give you sufficient information about reporting further or allowing the accused caregiver to resume contact with residents?

Incident-Specific Requirements

Additional elements must be included in your investigation based on the type of caregiver misconduct. Let's talk a bit about those additional elements.

Physical Abuse

1. Written statements by witnesses which include a description of the amount of physical force used. This may include, but isn't limited to, the acceleration of force, the range of motion of the perpetrator, open hand or closed fist.
2. A description of the victim's reaction to the physical force. For example, the victim fell backwards, victim vocalizations, or indications of pain.

Verbal Abuse/Psychological Abuse

1. A statement of the exact words used to the best of the witnesses' or victim's recollection
2. The volume and tone of voice of the caregiver, e.g. loud or soft
3. A description of the caregiver's body language or any accompanying gestures
4. The effect of the words on the victim, e.g. fear, crying, angry, etc.

Sexual Abuse

1. The results of any physical assessment conducted by a medical professional including doctors, Sexual Assault Nurse Examiners (SANE nurses)
2. The results of any psychological assessment conducted by a mental health professional or social worker
3. A copy of the police report
4. All medical information related to the incident

Neglect

1. Documentation of the treatment, service, care, goods or supervision required but not provided
2. Documentation verifying the caregiver's duty to provide care to the individual
3. Verification that the caregiver's act or failure to act resulted in or could reasonably have resulted in harm

Misappropriation

1. A description of any stolen items
2. Copies of all financial records related to the incident including cancelled checks or credit card statements
3. A copy of the police report
4. Verification that the stolen items belonged to the victim
5. Verification that the victim did not/could not give consent to the caregiver

Activity: Case Studies of Caregiver Misconduct



Now that we've explored the protocol and investigation steps, let's use some real-life examples to determine how you would investigate an allegation of caregiver misconduct. All these examples are taken from actual allegations of caregiver misconduct, reported to DQA.

You may use the training materials that we've reviewed so far in planning your investigation. You will notice that we did not include an example of investigating sexual abuse. In all suspected cases of sexual abuse or assault, we highly recommend contacting law enforcement immediately.

Please discuss what steps you need to take to ensure a thorough investigation. You may use the "Investigating the Allegation" and "Incident Specific Requirements" steps to help out. **Jot down some elements of the investigation that you see as particularly important in the example.**

You can assume that you have already taken steps to protect and/or treat the resident. You have also determined how to deal with the accused caregiver, and notified all appropriate managers of the alleged incident.

In each example, you may assume that you (or your group) represent the person responsible for investigating the alleged incident and that only the information in each example was reported to you.

The Art of Interviewing



Interviewing witnesses, accused caregivers and victims is critical to the success of your investigation. Please go to the handout in your folder titled “**Tips for Successful Interviews.**”

Let’s review those tips.

Tips for Successful Interviews

1. **Ensure privacy without interruptions.** You may bring a witness, but only one.
2. **Prepare.** Make notes in advance of the essential things you need to learn.
3. **Adopt a relaxed and open demeanor.** Put the person at ease—you’re likely to get more information that way.
4. **Arrange the seating in an informal way.** Don’t sit behind a desk directly facing the witness. It creates an unspoken barrier between you and the witness.
5. **Begin by explaining clearly and concisely the reason for the interview.** You’re on a fact finding mission, not looking to place blame.
6. **Clarify dates, times, witnesses.**
7. **Ask open questions.** Avoid leading the witness. For example, “You don’t get along with Mary, do you?” Rather, “What is your relationship with Mary like?” Ask open questions that encourage the flow of information. Open questions usually begin with who, what, where, etc. Closed questions can usually be answered with a “yes” or “no.”

8. **Stay on the subject.** If the person strays from the topic, gently steer them back.
9. **Show empathy.** Support the interviewee by acknowledging their feelings. If they are struggling with giving you information, encourage his/her decision to do the right thing.
10. **Listen well!** Make sure the interviewee does most of the talking. Use silence to your advantage. Don't interrupt.

Activity: Interviewing Skills Video

Now that we've discussed some interviewing tips, we have a video clip that demonstrates those skills. While you're watching the video, think about some good approaches that you see. I'll give you a few minutes after the video to jot down your thoughts.

This interview occurs at Havenhill CBRF on Thursday, March 23rd. Juan, the Administrator, is preparing to interview Amy, a CNA at Havenhill. Juan has discovered that Amy may have witnessed an incident between another CNA named Suzy and a resident named Emma. Let's watch as Juan prepares for the interview.

Activity: Video Discussion



I'd like to give you a moment to compare the Interviewing Tips handout with the conversation in the video. How did Juan use the tips effectively in his interview?

Use the chart below to list some examples from the video in the right column.

Tips for Successful Interviews

Interviewing Tip	Video Example:
1. Ensure privacy	
2. Be prepared	
3. Relaxed Demeanor	
4. Seating	
5. Explain the reason for the interview	
6. Clarify dates, times, witnesses	
7. Ask open questions	

8. Stay on the subject	
9. Show empathy	
10. Listen well	

Signs of Deception



Is the person lying? Odds are, you'll never know. Although people have been communicating with one another for tens of thousands of years, more than 3 decades of psychological research have found that most people make poor lie detectors. In a worldwide study, scientists asked more than 2,000 people from nearly 60 countries, "How can you tell when people are lying?" The number-one answer was the same: Liars avert their gaze.

But averting one's gaze or looking away, like other commonly held stereotypes about liars, isn't linked automatically with lying, studies have shown. Liars don't shift around or touch their noses or clear their throats any more than truth tellers do.

One thing, however, is certain: There is no single telltale sign for a lie.

Clues to Behavior

By studying large groups of participants, researchers have identified certain general behaviors that liars are more likely to exhibit than are people telling the truth.

Fibbers may:

- move their arms, hands, and fingers less and blink less than people telling the truth. The extra effort needed to remember what they've already said and to keep their stories consistent may cause liars to restrain their movements.
- speak in a tense or high-pitched voice and pause more often.
- make fewer speech errors than truth tellers do, and they rarely backtrack to fill in forgotten or incorrect details.
- tell stories that are too good to be true or don't make sense.
- adopt a closed posture (arms crossed, body turned away).

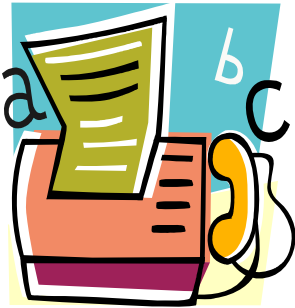
- place an object between himself/herself and the interviewer (creating a “barrier” of sorts).
- repeat questions instead of answering (stalling for time to make up an answer).
- speak in incomplete sentences, hesitating.
- make jokes or use sarcasm.
- change the subject.

But not all liars display these signals, and one can't conclude people are lying because they don't move their arms or pause while telling their stories. These could be natural behaviors for them, not signs of lying.

People don't seem to be very good at spotting deception signals. On average, over hundreds of laboratory studies, participants distinguish correctly between truths and lies only about 55 percent of the time. This success rate holds for groups as diverse as students and police officers.

The best way to tell whether someone is lying is by comparing their expressions, body language and speech patterns during an interview to more normal circumstances. It's important to keep in mind that statistics tell us that we aren't very good at picking out liars—another good reason to base your investigation on facts!

Reporting Requirement Resources



There are a variety of requirements and timelines in Wisconsin for reporting caregiver misconduct, depending on facility type. Because the Caregiver Law has been in effect since 1998, and nursing home reporting began in 1993, most of you are very familiar with how and to whom you must report.

Listed below are some online resources that you may find helpful when reporting and investigating caregiver misconduct. Begin by accessing:

<http://www.dhfs.state.wi.us/caregiver>

Listed on this website are links to the most current version of information pertaining to reporting requirements.

- **The Wisconsin Caregiver Program Manual.** Chapters 6 and 7 cover misconduct reporting and investigations.
- **Caregiver Misconduct Complaints.** Includes report forms (DDE 2447 and DDE 2617) as well as reporting requirements and DQA memos concerning the caregiver law. Also includes the caregiver reporting worksheet and flow chart for help in determining whether an incident must be reported.
- **Elder Abuse Resource Information.** Contains links to state and national organizations concerned with the prevention of elder abuse.
- **Caregiver Misconduct Registry.** A link to a list of non-credentialed caregivers with findings of caregiver misconduct.