

MISCONDUCT DEFINITIONS

Federal Language 42 C.F.R. §488.301	WI Caregiver Law Ch. DHS 13
<u>ABUSE</u>	<u>ABUSE</u>
<p>Abuse – the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.</p> <p>This 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.</p> <p>This presumes that instances of abuse of all residents, even those in a coma, cause physical harm or pain or mental anguish.</p> <ul style="list-style-type: none"> • Verbal abuse – the use of oral, written or gestured language that willfully includes disparaging and derogatory terms to residents or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse include, but are not limited to: threats of harm saying things to frighten a resident, such as telling a resident that he/she will never be able to see his/her family again. • Sexual abuse – includes, but is not limited to, sexual harassment, sexual coercion, or sexual assault. • Physical abuse – includes hitting, slapping, pinching and kicking. It also includes controlling behavior through corporal punishment. • Mental abuse – includes, but is not limited to, humiliation, harassment, threats of punishment or deprivation. <p>Note that the federal definition of abuse indicates that the act needs to be "willful" and that it needs to have resulted in physical or psychosocial harm to the resident or would be expected to have caused harm to a "reasonable person" if the resident cannot provide a response.</p> <p>For a definition of "willful," please refer to the interpretive guidelines at F323 where, under Resident-to-Resident Altercations, it notes, "An incident involving a resident who willfully inflicts injury upon other resident should be reviewed as abuse under the guidance for 42 CFR 483.13(b) at F223.</p> <p>"Willful" means that the individual intended the action itself that he/she knew or should have known could cause physical harm, pain or mental anguish. Even though a resident may have a cognitive impairment, he/she could still commit a willful act."</p>	<ol style="list-style-type: none"> 1. <u>An act or repeated acts by a caregiver or nonclient resident</u>, 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 <u>done intentionally to cause harm</u>, does any of the following: <ol style="list-style-type: none"> 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 <u>sexual intercourse or sexual contact</u> under s. 940.225, Stats., by a caregiver and involving a client. 3. The <u>forcible administration of medication</u> or the <u>performance of psychosurgery, electroconvulsive therapy or experimental research</u> on a client with the knowledge that no lawful authority exists for the administration or performance. 4. <u>A course of conduct or repeated acts</u> by a caregiver which serve no legitimate purpose and which, when <u>done with intent to harass, intimidate, humiliate, threaten or frighten a client</u>, causes or could be reasonably expected to cause the client to be harassed, intimidated, humiliated, threatened or frightened. <p>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.</p>

MISCONDUCT DEFINITIONS

FEDERAL LANGUAGE 42 C.F.R. §488.301	WI CAREGIVER LAW CH. DHS 13
<p><u>NEGLECT</u></p> <p>Failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness.</p>	<p><u>NEGLECT</u></p> <p>An <u>intentional omission or intentional course of conduct by a caregiver</u> 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:</p> <ol style="list-style-type: none"> 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. <p>Neglect is the intentional carelessness, negligence, or disregard of policy, or care plan, which causes, or could be reasonably expected to cause pain, injury, or death.</p> <p>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.</p>

MISCONDUCT DEFINITIONS

FEDERAL LANGUAGE 42 C.F.R. §488.301	WI CAREGIVER LAW CH. DHS 13
<p style="text-align: center;"><u>MISAPPROPRIATION OF RESIDENT PROPERTY</u></p> <p>The deliberate misplacement, exploitation or wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent.</p>	<p style="text-align: center;"><u>MISAPPROPRIATION OF PROPERTY</u></p> <ol style="list-style-type: none"> 1. The intentional taking, carrying away, using, transferring, concealing or retaining possession of a <u>client’s movable property</u> 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 <u>false representation</u> 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 <u>possession or custody of money or of a negotiable security, instrument, paper or other negotiable writing of a client</u>, 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 <u>personal identifying information</u> 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 <u>financial transaction card</u>.
<p style="text-align: center;"><u>INJURY OF UNKNOWN SOURCE</u></p> <p>An injury should be classified as an “injury of unknown source” when both of the following conditions are met:</p> <ul style="list-style-type: none"> • The source of the injury was not observed by any person or the source of the injury could not be explained by the resident; <u>and</u>, • 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. 	<p style="text-align: center;"><u>INJURY OF UNKNOWN SOURCE</u></p> <p>Refer to federal definition.</p>