



MISCONDUCT DEFINITIONS

Wisconsin Department of Health Services / Division of Quality Assurance

P-00976 (11/2017)

Federal requirements under 42 CFR and state law under Wisconsin Administrative Code, Chapter DHS 13 establish reporting and investigation requirements of caregiver misconduct for both nursing homes and for all other entities regulated by the Division of Quality Assurance.

Each resident has the right to be free from abuse, corporal punishment, and involuntary seclusion. Residents must not be subjected to abuse by anyone, including but not limited to facility staff, other residents, consultants or volunteers, staff of other agencies serving the resident, family members or legal guardians, friends, or other individuals.

The purpose of this publication is to provide a comparison of federal definitions of misconduct under 42 CFR § 483.5 and state definitions under ch. DHS 13. Participating Medicare and Medicaid nursing homes must first review the federal definitions; if an incident potentially meets the federal definition, it is not necessary to review the state definitions found in § DHS 13.05.

Code of Federal Regulations – 42 CFR § 483.5	Wis. Admin. Code – Chapter DHS 13 Caregiver Misconduct Definitions
ABUSE	ABUSE
<p>“Abuse” is defined as 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. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain, and 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 that the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.</p> <ul style="list-style-type: none"> • Verbal Abuse involves the use of speech, sound, writing, or gestures when communicating with residents or their families or when within their hearing or sight, regardless of their age, ability to comprehend, or disability. Examples include, but are not limited to threats of harm or frightening a resident (e.g., telling a resident that he/she will never be able to see his/her family again). • Sexual Abuse is the non-consensual sexual contact of any type with a resident. Sexual abuse includes, but is not limited to sexual harassment, sexual coercion, or sexual assault. • Physical Abuse includes, but is not limited to hitting, slapping, punching, biting, and kicking. It also includes controlling behavior through corporal punishment. • 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. <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 --- if the resident cannot provide a response --- would be expected to have caused harm to a “reasonable person.”</p> <p>For a definition of “willful,” refer to the interpretive guidelines at F689 where, under “Resident-to-Resident Altercations,” it notes: “A resident-to-resident altercation should be reviewed as a potential situation of abuse which should be investigated under the guidance for 42 CFR §</p>	<p>“Abuse” is defined as:</p> <ol style="list-style-type: none"> 1. An act or repeated acts by a caregiver or non-client 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: <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 Wis. Stat. § 939.48. b. Substantially disregards a client’s rights under Wis. Stat. chs. 50 or 51, 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 Wis. Stat. § 940.225, by a caregiver and involving a client 3. The forcible administration of medication or the performance of psychosurgery, electroconvulsive therapy, or experimental research 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 <p>Examples of abuse include, but are not limited to:</p> <ul style="list-style-type: none"> • Physical Abuse – Hitting, slapping, pinching, kicking, or intentionally causing harm

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<p>483.12 (F600).”</p> <p>“Willful” means that the individual intended the action itself, regardless of whether or not the individual intended to inflict injury or harm. Even though a resident may have a cognitive impairment, he/she could still commit a “willful act”.</p>	<ul style="list-style-type: none"> • Sexual Abuse – Harassment, inappropriate touching, or assault • Verbal Abuse – Threats of harm, saying things to intentionally frighten a client • Mental Abuse – Humiliation, harassment, and intimidation with threats of punishment or threats of depriving care or possessions <p>Abuse does not include an act or acts of mere inefficiency, unsatisfactory conduct, or failure of good performance as the result of inability, incapacity, inadvertency, or ordinary negligence in isolated instances, or good faith errors in judgment or discretion.</p>
NEGLECT	NEGLECT
<p>“Neglect” is defined as 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.</p>	<p>“Neglect” is defined as an intentional omission or intentional course of conduct by a caregiver or a non-client 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> <ul style="list-style-type: none"> • Causes or could reasonably be expected to cause pain or injury to a client or the death of a client • Substantially disregards a client’s rights under either Wis. Stat. chs. 50 or 51 or a caregiver’s duties and obligations to a client • 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 <p>This paragraph does not apply to permissible restraint, isolation, or confinement implemented by order of a court or as permitted by statute.</p> <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>
EXPLOITATION	EXPLOITATION
<p>“Exploitation” is defined as taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats, or coercion.</p>	<p>Refer to federal definition.</p>
MISAPPROPRIATION OF RESIDENT PROPERTY	MISAPPROPRIATION OF RESIDENT PROPERTY
<p>“Misappropriation of resident property” is defined as the deliberate misplacement, exploitation, or wrongful temporary or permanent use of a resident’s belongings or money without the resident’s consent.</p>	<p>Misappropriation of property includes any of the following:</p> <ol style="list-style-type: none"> 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

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	<p>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.</p> <ol style="list-style-type: none"> 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 Wis. Stat. § 943.201 (1)(b) or a client’s birth certificate or financial transaction card as defined in Wis. Stat. § 943.41(1)(em) 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 Wis. Stat. § 943.38, involving the property of a client, or Wis. Stat. § 943.41, involving fraudulent use of a client’s financial transaction card <p>Examples of misappropriation include:</p> <ul style="list-style-type: none"> • Theft of money, credit cards, or jewelry • Misuse of property, such as a client’s phone or other personal items, without consent
INJURY OF UNKNOWN SOURCE	INJURY OF UNKNOWN SOURCE
<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 <p>AND</p> <ul style="list-style-type: none"> • 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>Refer to federal definition.</p>