



ADULT-AT-RISK, INCLUDING ELDER ADULT-AT-RISK, REPORTING REQUIREMENTS FOR DQA-REGULATED ENTITIES

Wisconsin Department of Health Services / Division of Quality Assurance
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Page 1 of 3

Effective December 1, 2006, Wisconsin Act 388 revised the reporting of and responses to abuse, neglect, and exploitation of adults-at-risk (vulnerable adults age 18 and older), including elder adults-at-risk (age 60 and older). See <http://docs.legis.wisconsin.gov/2005/related/acts/388>.

To ensure that entities regulated by the Division of Quality Assurance (DQA) understand their responsibility to report both allegations of caregiver misconduct and other incidents involving adults-at-risk, this publication reviews the requirements outlined in the DQA publications P-00981, *Nursing Home Requirements for Reporting Alleged Incidents of Abuse, Neglect, and Misappropriation*, and P-00907, *Reporting Requirements for all Entities Regulated by the Division of Quality Assurance (Except Nursing Homes)*, and explains the adult-at-risk reporting requirements.

This memo contains important clarification regarding:

- Reporting Caregiver Misconduct Incidents
- Reporting Adult-at-Risk Incidents
- Response to Reports

REPORTING CAREGIVER MISCONDUCT INCIDENTS

Wis. Stat. §146.40(4r)(am)1 and Wis. Admin. Code § DHS 13.05(3) require that an entity report to the Department any allegation of misappropriation of property of a client or of neglect or abuse of a client by any person employed by, or under contract with, the entity if the person is under the control of the entity. There are no changes to these caregiver misconduct reporting requirements.

Entities should continue to follow the guidance provided at:

- Caregiver Misconduct Reporting and Investigating Requirement:
<https://www.dhs.wisconsin.gov/caregiver/complaints.htm>
- DQA publication P-00338, *The Wisconsin Caregiver Program Manual*:
<https://www.dhs.wisconsin.gov/publications/p0/p00038.pdf>

All Entities (Except Nursing Homes)

Reference DQA publication P-00907, *Reporting Requirements for all Entities Regulated by the Division of Quality Assurance (Except Nursing Homes)*, at <https://www.dhs.wisconsin.gov/publications/p00907.pdf>.

Nursing Homes Only

Reference DQA publication P-00981, *Nursing Home Requirements for Reporting Alleged Incidents of Abuse, Neglect, and Misappropriation*, at <https://www.dhs.wisconsin.gov/publications/p00981.pdf>.

Caregiver Misconduct Allegations Involving All Staff (non-credentialed and credentialed)

Submit DQA form F-62447, *Misconduct Incident Report*, available at <https://www.dhs.wisconsin.gov/forms1/f6/f62447.pdf> to:

Division of Quality Assurance (DQA)
Office of Caregiver Quality
P.O. Box 2969
Madison, WI 53701-2969

DQA will review reports involving non-credentialed staff (nurse aides, caregivers, housekeepers, etc.) for possible investigation. DQA will refer reports involving credentialed staff (doctors, RNs, LPNs, social workers, etc.) to the Department of Safety and Professional Services (DSPS) for review.

REPORTING ADULT-AT-RISK INCIDENTS

Wis. Stat. §§ 46.90(4)(ab)1 and 55.043(1m) (a) require that **any employee of any entity report** allegations of abuse, neglect, or exploitation if the adult-at-risk is seen in the course of the person's professional duties and **one** of the following conditions is true:

- **The adult-at-risk has requested the person to make the report.**
This first condition is self-explanatory: any entity employee must make a report if they are asked to do so.
- **There is reasonable cause to believe that the adult-at-risk is in imminent risk of serious bodily harm, death, sexual assault, or significant property loss and is unable to make an informed judgment about whether to report the risk.**
This second condition requires a concern about future, serious risk; it is not applicable to situations that involve past incidents only.
- **Other adults-at-risk are at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by the suspected perpetrator.**
This third condition applies to reporting past abuse perpetrated on an adult-at-risk only if there is a possibility of harm to others. For example, an entity employee must report if he or she is made aware of a situation involving a specialized transportation van driver who allegedly sexually assaulted a client. Even if the client no longer uses the transportation service, other adults-at-risk would likely be riding with that van driver in the future.

No reporting is required in two instances:

- The professional believes that filing the report would not be in the best interest of the adult-at-risk and the professional documents the reasons for this belief in the suspected victim's case file.
- A health care provider provides treatment by spiritual means through prayer for healing in lieu of medical care in accordance with his or her religious tradition, and his or her communications with patients are required by his or her religious denomination to be held confidential.

If you conclude that you must report an incident involving an adult-at-risk, including an elder adult-at-risk:

1. Complete DQA form F-62447, *Misconduct Incident Report*, located at <https://www.dhs.wisconsin.gov/forms1/f6/f62447.pdf> and attach relevant internal investigation documents.
2. For **allegations involving all perpetrators** (family member, friend, visitor, resident, stranger, etc.), submit the *Misconduct Incident Report* within five days to:

Division of Quality Assurance
Office of Caregiver Quality
P.O. Box 2969
Madison, WI 53701-2969

All incident reports are submitted to DQA staff who will forward reports to other agencies, such as the county department, the elder/adult-at-risk agency, state or local law enforcement agency, or the Board on Aging and Long-Term Care, as appropriate. You may also submit a report directly to one of these agencies.

IMMUNITY PROVISION

Due to the increased reporting provisions, the law enhances protections for good-faith reporters of incidents involving adults-at-risk. Immunity provisions apply to all reporters, including situations when a report is filed with an incorrect agency, if the reporter had a good-faith belief that the initial report was filed appropriately.

If an employee of the entity, following the entity's incident response protocol, reports the necessary information concerning the allegation to someone who is expected to report on behalf of the entity (e.g., Director of Nursing, Facility Administrator) and that individual does report the information to the proper authorities (e.g., DQA), the employee does not also have to report to DQA. However, if the entity fails to report and the situation meets one of the three conditions that trigger limited-required reporting, the employee must make direct contact with DQA. If the employee does not, the immunity provisions will not apply.

To ensure immunity, an employee must report directly to DQA, a county department, the elder/adult-at-risk agency, state or local law enforcement agency, or the Board on Aging and Long-Term Care.

Wisconsin Act 388 creates a rebuttable presumption that any discharge or act of retaliation or discrimination taken against a reporter within 120 days of making the report is retaliatory. The penalty for retaliating against a reporter is increased to \$10,000.

RESPONSE TO REPORTS

The DHS Division of Quality Assurance responds to two types of health care complaints:

1. Complaints regarding entity activity (inappropriate or inadequate activity by an entity)
2. Complaints of caregiver misconduct (inappropriate activity by a caregiver, e.g., abuse, neglect, or misappropriation)

The DQA Office of Caregiver Quality (OCQ) may conduct a caregiver misconduct investigation by conducting on-site visits, in-person interviews, or telephone interviews. The entity's DQA regulatory program (Bureau of Assisted Living, Bureau of Health Services, or Bureau of Nursing Home Resident Care) 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.

Again, all incident reports must be submitted to DQA who will refer reports to agencies including the Department of Safety and Professional Services, the Department of Justice, county departments, adult-at-risk agencies, local law enforcement agencies, and others, as appropriate. One or more of these agencies may also respond to an allegation investigated by DQA.

QUESTIONS

Contact the Office of Caregiver Quality (OCQ) at DHSCaregiverIntake@dhs.wisconsin.gov or 608-261-8319.