

Responding to Allegations of Abuse and Neglect

**ANNUAL FOCUS CONFERENCE
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Exercise

CNA on 7-3 shift, shortly after report goes to room to help two residents out of bed. First resident is moderately cognitively impaired female (BIMS=9, short term and long term memory loss). She appears to be sound asleep when CNA arrives, but is moaning.

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Exercise

Resident says to her, "Thank God you're here. There was a man in here a minute ago. He slapped me in the face, twisted my arm, and pulled my hair. I thought he was going to pull my arm off. I screamed and he ran away."

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Exercise

CNA believes the resident must have been having a bad dream, but notifies Charge Nurse. There were no male staff on the outgoing or incoming shifts for that wing. A quick check reveals no one saw any men on the wing at any time.

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Exercise

Only description resident can provide is that he was a big white man wearing a mask. Resident's room mate says she heard no commotion. Charge nurse reports incident to DON.

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Exercise

Describe the next steps that should be taken by management of the facility.

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Federal Regulatory Requirements Self-Investigations

F225

42 CFR §483.13(c)(2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency).

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Federal Regulatory Requirements Self-Investigations

F225

42 CFR §483.13(c)(3) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

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Federal Regulatory Requirements Self-Investigations

F225

42 CFR §483.13(c)(4) The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

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Regulatory Requirements Self-Investigations

The 24 hour requirement means within 24 clock hours after any staff member becomes aware of the allegation. This is for the report to the state agency. This is independent of the obligation to notify the attending physician and the family or sponsor, which should always be done as soon as possible.

This means all staff must be aware of this obligation!

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Regulatory Requirements Self-Investigations

The 24 hour requirement means within 24 clock hours after any staff member becomes aware of the allegation. This is for the report to the state agency. This is independent of the obligation to notify the family, which should always be done as soon as possible.

Do the staff know who to report to?

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Regulatory Requirements- Self-Investigations

The 24 hour requirement means within 24 clock hours after any staff member becomes aware of the allegation. This is for the report to the state agency. This is independent of the obligation to notify the family, which should always be done as soon as possible.

Do all staff know what should be reported?

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Exercise

DON reports to work at 7 a.m., is met by CNA who pulls her into resident's room. Resident has black eye, multiple bruises on arms bilaterally. They ask resident what happened to her, she says she doesn't remember. She denies being in pain.

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Exercise

A review of nurses notes for the resident shows that on previous Saturday morning, a CNA had notified the charge nurse that she had a knot on her head. The resident denied knowing what happened.

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Exercise

Weekend staff say they thought she fell. There is no incident report and no report of a fall or resident found on floor. Resident has a known history of being combative during baths. ADL records show resident was given a bath Saturday morning.

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Exercise

CNA who bathed resident continued to work the entire weekend. She states that the resident became combative during her bath and she stopped bathing her.

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Exercise

Describe the next steps that should be taken by management of the facility.

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Regulatory Requirements Self-Investigations

Any allegation of abuse is reportable. Allegations may come from residents themselves ("I was abused" or "I saw another resident being abused"), family members, other visitors, or staff. Once the allegation is made known to any staff member, the clock is ticking.

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Regulatory Requirements Self-Investigations

Suspicious injury of unknown origin means any injury--

a)When staff cannot be absolutely positive what the cause of the injury is; and

a)That is of a nature that abuse cannot be ruled out, such as injury to or near a private area of the body, an injury to the face or neck, an injury that is consistent with finger marks.

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Regulatory Requirements Self-Investigations

Suspicious injury of unknown origin means any injury--

a)When staff cannot be absolutely positive what the cause of the injury is— *this means that if staff believe the resident fell, the fall should be documented consistently with the facility's policy for reporting and documenting falls. If staff "think" the resident "may have" fallen, and the resident is injured, this is a suspicious injury of unknown origin.*

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Regulatory Requirements Self-Investigations

Failure of staff to respond appropriately to allegations of abuse or suspicious injuries of unknown origin can result in severe regulatory liability as well as civil liability.

Any allegation of abuse and any suspicious injury or unknown origin requires the facility's abuse protocol to be immediately invoked. This includes removing any alleged or suspected perpetrators from resident contact, notifying the facility administrator, notifying the survey agency within 24 hours, and beginning a thorough investigation.

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Regulatory Requirements Self-Investigations

Failure of staff to respond appropriately to allegations of abuse or suspicious injuries of unknown origin can result in severe regulatory liability as well as civil liability.

Failure to immediately invoke the abuse protocol and relieve any suspected or alleged perpetrators from resident care duties can be grounds for an immediate jeopardy citation. Reluctance— often caused by not wanting to believe that abuse has occurred— is fatal.

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Exercise

Resident tells DON that CNA Jones “murdered” a neighboring resident last year. “She didn’t think I saw her, but I did. She went into the room and pulled out all the tubes going into her. Then she died.”

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Exercise

The DON checks the records and finds that this resident has been in the facility for two years. Nobody living in her vicinity, including her room mate, had a feeding tube nor were there any devices attached to tubes going to the body.

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Exercise

Describe the next steps that should be taken by management of the facility.

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Abuse Protocol

Three elements, non-negotiable

1. **Protect victim and other residents from abuse while investigation is underway**
2. **Notify state survey agency as soon as possible, but not later than 24 hours after allegation is made or situation discovered**
3. **Conduct thorough investigation, report due in five days**

Also— notify corporate immediately whether or not you think incident is reportable.

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Minimum Requirements for Incident Investigation Documentation

Circumstances under which the incident occurred.

When the incident occurred (date and time).

Where the incident occurred (for example, bathroom, bedroom, street, or lawn).

Immediate treatment rendered.

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Minimum Requirements for Incident Investigation Documentation

Names, telephone numbers, and addresses of witnesses.

Date and time relatives or sponsor were notified.

Out-of-facility treatment.



Minimum Requirements for Incident Investigation Documentation

Symptoms of pain and injury discussed with the physician, and the date and time the physician was notified.

The extent of injury, if any, to the affected resident or residents.



Minimum Requirements for Incident Investigation Documentation

For interviews:

Provenance of the interview, including date/time, name of person conducting interview, name of person being interviewed, brief statement of reason for interview.



Minimum Requirements for Incident Investigation Documentation

Follow-up care and outcome resolution.

The action taken by the facility to prevent the occurrence of similar incidents in the future. *This is a systems question.*

Anything else specified in facility's own P&Ps.

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Common Systems Failures in LTC and their Root Causes

If the leadership in the building does not understand how to create an environment with zero tolerance for abuse, and does not see to it that such an environment is created, no one else will do this for them. This places the residents at risk for being abused and the facility at risk for serious regulatory citations as well as civil liability.

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Common Systems Failures in LTC and their Root Causes

Elements of zero tolerance culture:

Abuse protocol is well understood by all staff

Abuse protocol is immediately invoked when required

All staff understand and appreciate that this is only way to prevent abuse

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***Investigating is a
unique and
challenging task for
which very few have
been adequately
trained!***

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INVESTIGATING IS UNIQUE

Investigating is more related to the work done by police detectives and accident scene investigators than it is to clinical practices.

A clinical background is valuable training that helps staff members understand what they are investigating.

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INVESTIGATING IS UNIQUE

An investigator's job is to:

- * Gather and document evidence relating to the matter of interest.
- * Analyze the evidence to ascertain the facts.
- * Write a report that sets out facts (based upon the evidence) and draws reasoned conclusions based upon these facts.

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INVESTIGATING IS UNIQUE

- * Facility staff members, like other investigators, must also be prepared to defend their facts and conclusions.

INVESTIGATING IS NOT FOR THE TIMID!

An investigator must . . .

- * Maintain composure and professional demeanor and to create an environment where those you interview feel comfortable telling their true experiences;
- * Write a concise, accurate and defensible summary of his or her investigation; and
- * Defend his or her findings to supervisors or corporate staff and possibly to surveyors and lawyers.

INVESTIGATING IS NOT FOR THE TIMID!

To be successful in their job functions, those with management responsibilities must understand the basics of conducting investigations.

INVESTIGATING IS NOT FOR THE TIMID!

Investigative work must always be undertaken with thoughtfulness and care, while being mindful that most investigations are extremely time sensitive. You must resist the temptation to take intellectual shortcuts.

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OVERSIGHT AND FOLLOW-UP

- * All management staff, including those at corporate levels, must be expected to show by word and deed that conducting thorough investigations is a top priority. *What does this communicate to staff?*

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Exercise

Resident reports that “A girl woke me up this morning by pouring boiling hot water on me.” Resident has some reddened area and blisters on buttocks. Dermatologist is called in to examine resident, says he thinks the resident is suffering from cellulitis.

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Exercise

Administrator interviews resident, who tells him he (the resident) does not think it was abuse.

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Exercise

Describe the next steps that should be taken by management of the facility.

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Review Regulations and Policies and Procedures

What is abuse?

What type of abuse allegation am I investigating?

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Every kind of abuse has essential elements that must be proven in order to sustain a finding of abuse. If a supervisor assumes he or she knows the elements of, say, physical abuse, and fails to actually review the regulatory language and the facility's policies and procedures before proceeding with the investigation, the likelihood that he will fail to get needed evidence or reach the wrong conclusion is greatly increased. No matter how much experience an investigator may have, it is critical to undertake this review before conducting an investigation. This step must never be omitted.

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Review Regulations and Policies and Procedures

Abuse means the willful infliction of injury, confinement, intimidation or punishment with resulting physical harm, pain, or mental anguish. Abuse shall also include verbal abuse, sexual abuse, physical abuse, and mental abuse.

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Review Regulations and Policies and Procedures

Verbal abuse means the use of oral, written, or gestured language that willfully includes disparaging or derogatory terms to residents or their families, or that is used or uttered within the hearing distance of residents or their families, regardless of their age, ability to comprehend, or disability.

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**Review Regulations and Policies
and Procedures**

- Examples of verbal abuse include threats of harm, or saying things to frighten a resident, such as telling a resident that the resident will never see his or her family again.

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**Review Regulations and Policies
and Procedures**

- Sexual abuse means any sexually oriented behavior directed at a resident by a staff member, any sexually oriented behavior between residents that is not fully and freely consented to by both residents involved, or any sexually oriented behavior between residents when either or both residents are incapable of consenting to the behavior because of cognitive impairment.

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**Review Regulations and Policies
and Procedures**

- Special issues when sexual abuse is involved:
- Consent
- Cognitive ability to consent
- Relationship between parties

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**Review Regulations and Policies
and Procedures**

- Physical abuse means any willful act directed at a resident that is intended to result in or that is likely to result in injury or pain. Physical abuse includes slapping, pinching, kicking, shoving, and corporal punishment of any kind.

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**Review Regulations and Policies
and Procedures**

- Mental abuse means any willful act directed at a resident that is intended to result in or that is likely to result in mental distress or mental anguish. It includes humiliation, harassment, threats of punishment, and threats of deprivation.

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**Review Regulations and Policies
and Procedures**

Neglect means the failure to provide goods and services necessary to avoid physical harm or mental distress or anguish.

This could involve attempting to care for residents that are inappropriately placed, or failure to follow the resident's assessed needs for assistance, for example, resident coded as needing 2 person assistance and is transferred by one CNA who did not want to ask for assistance.

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Review Regulations and Policies and Procedures

- Exploitation means the deliberate misplacement or wrongful temporary or permanent use of a resident's belongings, money, or property without the resident's consent. This could be a resident, a visitor, or a staff member.

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An abuse allegation must involve actual abuse, neglect, or misappropriation of property or it should not be treated as abuse.

Rude or disrespectful behavior may and usually does violate a facility's policies and procedures, but it is not true abuse unless it is of such nature that it would be expected to frighten a resident.

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Investigator decides what evidence is needed to determine if abuse has actually occurred

Much planning needs to take place before the investigator reviews any evidence or conducts any interviews. **Think** about the elements that define the type of abuse you are investigating.

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Example— Allegation of physical abuse

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Example:

If the allegation is “resident with dementia complained that caregiver Jones slapped her on the mouth,” just some of the questions to be answered are:

- What are the elements of physical abuse?
- How can I determine whether those are present?
- What does “willful” mean?
- How can I organize my investigation to make sure all elements are covered?

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- Who do I need to interview?
- When can I interview the person? (During the person’s shift? Right after shift change?)
- Where should I interview the person? (At the nursing station? In a particular office or conference room? On the phone?)
- How do I want to conduct my interviews— in what order, do I want to separate those who have been interviewed from those who have not?
- What records should I review?

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Let's discuss a situation:

Cognitively intact Resident tells you 2 CNAs "fussed me out," during WC transfer last week. "They yelled and were disrespectful."

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You obtain new information

- You interview roommate, family members, nurses and other CNAs – nothing. Nurses notes – nothing. Then you interview neighboring Resident's granddaughter and she hands you a written statement:

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What do you make of this?

- In her written statement, she said she heard the CNAs on the day in question and she characterized the CNAs as fussing at a resident, and she characterized their "tone" as "disrespectful and nasty." "They did not use profanity, but were very nasty with their words. They faulted the resident for falling."

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What do you make of this?

- Do you know at this point whether your CNAs are guilty of abuse? (Assume there is no other source of evidence)

Yes? No? Why?

Scrupulously Document and Keep It Organized.

Scrupulously Document

- * Documentation of observations must include date, time, location, and a detailed and descriptive account of what is observed.
- * Documentation of interviews must include the date, time, identity and position of each person interviewed, and record exactly what was asked and what was answered. Try to verify. This should also include the provenance of the interview– who was interviewing, and why.

After completing the original investigative plan, the investigator must stop and assess what questions remain unanswered and in what areas there is a conflict in the information that may be cleared up with additional investigation.

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**Mistakes we frequently make—
all resulting from failure to develop an
investigative plan**

- * We stop short and don't finish the investigation.
- * We go down the "rabbit trail," instead of prioritizing and staying focused.
- * We leap to questionable conclusions.
- * We ruin the investigation by interviewing perpetrator first, rather than at the end.

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Mistakes we frequently make

- * WE FAIL to implement our carefully-crafted plan.
- * As soon as we obtain any evidence to say that the allegation is not true, we quit.
- * We fail to gather documentation to show we conducted a thorough investigation.
Carry out your plan!
- * It is just as important that allegations be investigated thoroughly as it is to determine the validity of the allegations.
- * We need to protect ourselves, and we must be able to defend our work.

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Mistakes we frequently make

We fail to recognize patterns when they occur.
We correctly identify abuse and a perpetrator as a result of the abuse investigation, BUT WE FAIL to identify the cause or system failure that permitted abuse to occur.
Does our facility have a culture that discourages abuse?
Has our abuse training been effective?

What Do We Do If We Find Abuse?

Discussion

JOB WELL DONE!

- * We planned a thorough investigation of the allegation.
- * We conducted and documented a thorough investigation of the allegation.
- * We documented our work in a way that can convince anyone that we conducted a thorough investigation whether we validated the abuse or not.

Interviews should follow
the **PEACE** model

- P PREPARATION and planning
- E ENGAGE and explain
- A ACCOUNT
- C CLOSURE
- E EVALUATE

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Other important points

ALWAYS Follow-up.
*If witnesses become evasive,
document the answer and
gradually shift to leading
questions.*

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Always Being Ready for Survey

- Thoroughness of investigation—
- Were all potential witnesses interviewed?
 - Were witnesses interviewed in person?
 - Were Q&A's recorded for interviews?
 - Did interviewer establish where witnesses were during time of alleged incident?
 - Were ultimate questions asked?

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Always Being Ready for Survey

Thoroughness of investigation—

Did interviewer challenge witnesses who should have seen or heard something and say that they did not?

Were all charts and written reports related to incident reviewed?

Was alleged victim protected?

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When is a facility responsible for abuse?

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N.C. State Veterans Home v. CMS, DABCR 1855 (2008)

"Petitioner cannot escape responsibility by arguing that the facility was diligent in its hiring practices and the staff understood the facility's abuse reporting and investigation requirements. **Contrary to Petitioner's contention, I do not have to look for a deficient facility practice outside the actions of the staff entrusted to act on behalf of the facility. Consequently, the deficient facility practice, in this case, is unequivocally found in the improper conduct of those that the facility empowered to act on its behalf. The facility, as a business entity, exists only in contemplation of the law, and can only perform the functions of a long-term care provider through the employees it chooses and empowers to act on its behalf.** Acceptance of Petitioner's argument as sufficient justification for a finding of substantial compliance would render the law and regulations applicable here, meaningless."

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Exercise

Male resident with moderate cognitive impairment is observed by CNA with hand inside diaper of severely cognitively impaired female resident. When male resident sees the CNA, he removes his hand. He tells the CNA he was just playing around.

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Exercise

Male resident has been care planned for inappropriate sexual behavior toward staff members. This is the first known instance of inappropriate behavior toward a resident.

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Exercise

Describe the next steps that should be taken by management of the facility.

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Always Being Ready for Survey—
In General

Review Policies & Procedures.

Goals: P&Ps are useful, handy, and reflect actual facility practice.

This starts at
Administrator/DON/Management level.

If leaders not following P&Ps, why would other staff?

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**Questions?
Comments?**

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**THANK YOU
VERY MUCH!**

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