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**RESIDENT TO RESIDENT  
ABUSE**

**DHFS Webcast #1**

**Regulatory Requirements,  
Definitions of Abuse,  
and Competency Issues**

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**Training Objectives**

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- Regulatory requirements
  - Facilities/agencies/entities are required to respond to resident to resident abuse
- New Wisconsin definitions
  - A wide range of behavior is considered abuse
- Mental capacity of the abuser
  - The mental capacity of the abuser is irrelevant.

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**Regulatory Requirements**

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- Nursing homes
- Facilities serving people with developmental disabilities (FDDs)
- CBRFs
- RCACs
- Adult family homes (licensed & certified)
- Hospices
- Hospitals

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**Regulatory Requirements – cont'd**

- **Nursing home residents** have the right to –
  - be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.  
42 C.F.R. Sec. 483.13 (b)
  - live in an environment that remains as free of accident hazards as is possible.  
42 C.F.R. Sec. 483.25(h)



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**Regulatory Requirements – cont'd**

- **Nursing home residents** have the right to –
  - be free from mental and physical abuse, and from chemical and physical restraints except as authorized in writing .....  
Sec. 50.09 (1) (k), Wis. Stats.



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**Regulatory Requirements – cont'd**

- **FDD residents** have the right to -
  - be free from mental and physical abuse, and from physical restraints except as authorized in writing .....  
HFS 134.31 (3) (L), Wis. Admin. Code
- FDDs are responsible for the safety and security of residents.  
HFS 134.60 (1) (g), Wis. Admin. Code



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**Regulatory Requirements – cont'd**

- **CBRF residents** have the right to –
  - be free from mental and physical abuse, and from chemical and physical restraints except as authorized in writing . . . .Sec. 50.09 (1) (k), Wis. Stats



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**Regulatory Requirements – cont'd**

- **CBRF residents** have the right to –
    - be free from physical, sexual and mental abuse and neglect, and from financial exploitation and misappropriation of property.HFS 83.21 (4) (m), Wis. Admin. Code
  - live in a safe environment.
- HFS 83.21 (4) (w), Wis. Admin. Code



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**Regulatory Requirements – cont'd**

- **RCAC residents** have the right to –
    - be free from physical, sexual or emotional abuse, neglect or financial exploitation or misappropriation of property by the facility, its staff or any service provider under contract with the facility.HFS 89.34 (18), Wis. Admin. Code
  - a safe environment in which to live.
- HFS 89.34 (17), Wis. Admin. Code



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**Regulatory Requirements – cont'd**

- **Adult Family Home (licensed) residents** have the right to –
  - be free from physical, sexual or mental abuse, neglect, and financial exploitation or misappropriation of property.  
HFS 88.10 (3) (m), Wis. Admin. Code
  - a safe environment in which to live.  
HFS 88.10 (3) (L), Wis. Admin. Code



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**Regulatory Requirements – cont'd**

- **Adult Family Home (certified) residents** have the right to –
  - No sponsor or any other household member may subject a resident to mental, physical or sexual abuse or to neglect or otherwise mistreat a resident. Mental abuse includes but is not limited to persistent or excessive negative comments, deliberate inducement of anxiety, singling out one resident for inappropriate criticism or encouraging the resident's peers to do the same and similar acts when the resident has requested that these acts cease.  
HFS 82.10 (1), Wis. Admin Code



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**Regulatory Requirements – cont'd**

- **Hospice patients** have the right to –
  - be free from mental and physical abuse incurred from acts or omissions of hospice employees.  
HFS 131.21 (2) (i), Wis. Admin. Code



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**Regulatory Requirements – cont'd**

- **Hospital patients** have the right to -
  - be free from all forms of abuse or harassment.  
42 C.F.R. Sec. 482.13 (c) (3)
- Patients in critical access hospitals have the right to -
  - be free from verbal, sexual, physical and mental abuse, corporal punishment and involuntary seclusion.



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42 C.F. R. Sec. 483.16 (b)

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**Regulatory Requirements – cont'd**

- **Hospital patients** have the right to -
  - receive safe and adequate care and treatment and to have their health and safety protected.  
HFS 124.01, Wis. Admin. Code
- In addition, hospital patients receiving treatment for:
  - mental illness,
  - developmental disability,
  - alcohol abuse or dependency or
  - other drug abuse or dependency



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**Regulatory Requirements – cont'd**

- ... have the right to –
  - a clean, safe and humane environment.  
HFS 94.24 (1), Wis. Admin. Code
  - and staff shall take reasonable steps to ensure the physical safety of all patients.  
HFS 94.24 (2)(a), Wis. Admin. Code



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## What Is Abuse?

- a general term covering a wide range of conduct
- a specific term with a specific meaning



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## What is Abuse? – cont'd

- New definitions
  - included in Wisconsin's new law on reporting abuse of adults and elders
  - effective December 1, 2006
  - sec. 46.90, Wis. Stats. (age 60 & older)
  - sec. 55.043, Wis. Stats. (age 18-59)
- Applicable to all facilities/agencies/entities in WI
- Applicable to all adults in WI



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## What is Abuse? – cont'd

- Significance of new definitions
  - Educational
  - Triggers reports
    - Within facilities/agencies/entities
    - To designated county agencies
  - Voluntary
  - Mandatory
- Authorizes investigations by county agencies
- Does not criminalize conduct



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**What is Abuse? – cont'd**

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- When used as a general term, abuse means -
  - Abuse
  - Financial Exploitation
  - Neglect
  - Self-neglect



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**What is Abuse? – cont'd**

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- When used as a specific term, abuse means -
  - Physical abuse
  - Emotional abuse
  - Sexual abuse
  - Treatment without consent
  - Unreasonable confinement or restraint



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**What is Abuse? – cont'd**

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- Abuse
  - *Physical abuse*
    - the intentional or reckless infliction of bodily harm
    - bodily harm - physical pain or injury, illness, or any impairment of physical condition



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**What is Abuse? – cont'd**

- Abuse
  - *Emotional abuse*
    - language or behavior
    - that serves no legitimate purpose
    - and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing,
    - and that does or reasonably could intimidate, humiliate, threaten, frighten, or otherwise harass the individual to whom the conduct or language is directed



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**What is Abuse? – cont'd**

- Abuse
  - *Sexual abuse (sexual assault)* – selected definitions
    - .. sexual contact or sexual intercourse with another person without consent of that person, causing pregnancy or great bodily harm to that person
    - sexual contact - touching of the clothed or unclothed intimate parts of another person



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**What is Abuse? – cont'd**

- Abuse
  - *Sexual abuse (sexual assault)* – cont'd
    - .. sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence
    - .. sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim



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**What is Abuse? – cont'd**

- Abuse
  - *Sexual abuse (sexual assault) – cont'd*
    - “ sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person’s conduct, and the defendant knows of such condition.



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**What is Abuse? – cont'd**

- Abuse
  - *Sexual abuse (sexual assault) – cont'd*
    - “ sexual intercourse with a person without the consent
    - “ sexual contact with a person without the consent



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**What is Abuse? – cont'd**

- Abuse
  - *Treatment without consent*
    - The administration of medication w/o informed consent or
    - The performance of psychosurgery, ECT or experimental research w/o informed consent with the knowledge that no lawful authority exists for the administration or performance.



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**What is Abuse? – cont'd**

- Abuse
  - *Unreasonable confinement or restraint*
    - Intentional & unreasonable confinement of an individual in a locked room *or*
    - Involuntary separation from living area *or*



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**What is Abuse? – cont'd**

- Abuse
  - *Unreasonable confinement or restraint – cont'd*
    - Use of physical restraining devices *or...*
    - Provision of unnecessary or excessive medication *but ...*
  - ... does not include the use of these methods or devices in entities regulated by DHFS if the methods or devices are employed in conformance with state and federal standards governing confinement and restraint.



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**What is Abuse? – cont'd**

- *Financial Exploitation*
  - Theft
  - Obtaining money or property
    - ... by deceiving or enticing or by forcing, compelling, or coercing the individual to *give, sell at less than fair market value, or in other ways convey money or property against his/her will w/o informed consent*



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**What is Abuse? – cont'd**

- *Financial Exploitation* – cont'd
  - Unauthorized use of personal identifying info or document
  - Unauthorized use of an entity's identifying info or document
  - Forgery
  - Financial transaction card crimes



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**What is Abuse? – cont'd**

- *Financial Exploitation* – cont'd
  - Substantial failure or neglect of a fiscal agent to fulfill his/her responsibilities
    - Guardian of the estate
    - Conservator
    - Agent under POA for Finances
    - Rep payee
    - VA conservatorship



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**What is Abuse? – cont'd**

- *Neglect*
  - Failure of caregiver, as evidenced by an act, omission, or course of conduct,
  - to endeavor to secure or maintain adequate care, services, or supervision, including food, clothing, shelter, or physical or mental health care,
  - and creating significant risk or danger to the individual's physical or mental health.



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**What is Abuse? – cont'd**

- *Neglect* – cont'd
  - Caregiver – person who has assumed responsibility for all or a portion of an individual's care voluntarily, by contract, or by agreement, including a person acting or claiming to act as a legal guardian.



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**What is Abuse? – cont'd**

- *Self-neglect*
  - A significant danger to physical or mental health
  - Because the individual is responsible for his/her own care
  - But fails to obtain adequate care, including food, shelter, clothing or medical or dental care



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**Mental Capacity of the Abuser**

- What if the abuser is mentally incapacitated or incompetent?
  - Facilities/agencies/entities should *not* ignore abuse when the abuser is mentally incapacitated or incompetent.



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**Mental Capacity of the Abuser – cont'd**

- Per CMS, an incident involving a nursing home resident who willfully inflicts injury upon another resident should be reviewed as abuse under the guidance for 42 C.F.R sec 483.13 (b) at F223.
  - “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.



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**Mental Capacity of the Abuser – cont'd**

- Even though a resident may have a cognitive impairment, s/he can still commit a willful act.
- When a resident's willful intent cannot be determined, a resident-to-resident altercation should be reviewed under nursing home tag F323.



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**Mental Capacity of the Abuser – cont'd**

- Federal & state law requires you to protect the safety & welfare of the victim
  - regardless of the mental capacity of the abuser.
- Avoid basing your response on the higher standards of the criminal justice system
  - criminal intent
  - beyond a reasonable doubt



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**Mental Capacity of the Abuser – cont'd**

- People with mental incapacity/incompetency are capable of forming the intent to harm another.
  - they understand their behavior
  - they are capable of controlling their behavior
  - they understand the consequences of their behavior
- The law presumes that people intend the “natural and probable consequences of their actions.”



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**Mental Capacity of the Abuser – cont'd**

- Even if the abuser is incapable of forming intent -
  - the victim must be protected and
  - the adequacy of the care plan of the abuser must be addressed
- The only impact of the inability to form intent is -
  - whether law enforcement should be called



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Ellen J. Henningsen, J.D.  
608-224-0606 ext 314  
Fax 608-224-0607  
guardian@cwag.org

Wisconsin Guardianship Support Center  
Coalition of Wisconsin Aging Groups

[www.cwag.org/legal/guardian-support](http://www.cwag.org/legal/guardian-support)



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If you have questions regarding the  
content in this webcast, please submit  
them by Email to:

trandv@dhfs.state.wi.us



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