

**Policy & Procedures
Regarding Resident To
Resident Abuse**

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Objectives

- Understand the purpose of Policies & Procedures (P & P).
- Ensure staff are familiar with P & P.
- Identify content of written procedures.
- P & P in the survey process.
- Examples of P & P.

Purpose of Policy & Procedures

- Living document
- Consistent with requirements
- Guidelines
- Risk management
- Reinforcement
- Facility Expectation

Written Procedures

- How and to whom staff are to report incidents.
- How internal investigations will be completed.
- How staff will be trained on the procedures related to allegations of resident to resident abuse.

Written Procedures Continued

- How residents will be informed of procedures.
- Define key words clearly.
- Document training.
- Culture change.

Ensure Staff Are Up-To Date

- Review P & P regularly.
- Posters to remind staff of location.
- Ensure staff are informed of updates.
- Make sure those responsible for procedures are on current list serves.

Examples Of Policies & Procedures

- Background Screening
- Abuse Investigation
- Investigation of Injuries of unknown sources
- Preventing Resident Abuse
- Protection of Residents
- Reporting Abuse or Neglect

Policies & Procedures Related To The Survey Process

- Survey Process
- Review of facility's Policies & Procedures
- Are the Policies & Procedures current
- Did the facility staff follow the Policies & Procedures

Summary

- Facility's Policies & Procedures in compliance with requirements.
- Use P & P as a proactive measure for risk management.
- Ensure staff are aware of the P & P and its location.
- Ensure staff are trained on abuse and policy.
- Document staff training.
- Remember it's a living document.

Beyond DQA – Civil and Criminal Issues of Resident Abuse

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October 30, 2007

Objectives

- Describe the risks of civil liability associated with incidents of resident to resident abuse and how to reduce the risks
- Describe the criminal justice systems' response to reported resident to resident abuse
- Identify the key components of a thorough investigation of resident to resident abuse

Where to start?

- What do the applicable regulations require?
- What is required by your policies and procedures?
- What did you know?
- When did you know it?
- What did you do about it?

Documentation is Key!

- Shows that you know and understand what is required of you
- Shows that you evaluated and analyzed the information available to you
- Shows the interventions implemented and attempted
- Shows the effectiveness of each and any changes made

Keep It Real!

- Focus on an identified issue until it is no longer an issue – then document that the goal was met or resolved and remove it!
- Prevent fatigue or "same ol', same ol'" documentation
- Licensed staff: monitor the quality of the documentation of all staff

Resident Safety

- Culture of Safety
- Applies to staff, visitors and residents
- Encourage "*Blame free*" reporting
- Sort: Unavoidable accident? Or foreseeable (and therefore preventable) harm?
- Use the assessment and care planning process to reduce or eliminate known risks of harm

Civil Liability

- If you assume the responsibility, you may assume the risk (duty of care) – so, know & evaluate the risks of harm
 - Did you know about the risk?
 - Should you reasonably have known?
 - How did you respond? Or fail to respond?
- Culpability
 - Neglect? Reckless? Intentional?

Civil Liability

- Possible civil outcomes:
 - Restitution – Repay costs or expenses incurred
 - Compensatory Damages – Make the victim whole
 - Punitive Damages – Punish the responsible party for failing to act to prevent the foreseeable harm

Avoiding Liability

- What was done to identify the hazards?
 - Things
 - Other persons
 - Individual's risks, including need for supervision
- Where & How did you look for the hazards?
- How did you identify them?

Avoiding Liability

- Show what was done:
 - What did you do?
 - What should or could have been done differently?
 - What is the current standard of practice?
 - What are best practices?
 - What is required?

Avoiding Liability

- Why and for what purpose did you act?
- Was the resident aware of the hazard?
- Was the family or guardian aware of the hazard?
- Was the staff aware of the hazard? Did they know what to do? How did they know? Did they understand the purpose and desired outcome of the intervention?

Avoiding Liability

- How do you determine the effectiveness of your actions?
- How is the effectiveness measured?
- What is the result?
- Get to the "root cause" to find effective solutions and limit your risk!

Learning Points:

To avoid or limit your liability:

- Know & evaluate the risks
- Use admissions information, assessments and care planning to reduce or eliminate foreseeable and preventable harm
- Encourage reporting and problem-solving
- Act promptly and responsibly on information
- Document – what, when, who, why, how?

Criminal liability

- Criminal law is premised on individualized culpability (guilt) and notice -
 - That certain actions are wrong and subject to punishment
 - Laws identify the conduct and the sanctions
 - Deter - individually and generally
- Focus in Resident to Resident Abuse -
 - Against the law vs. "programming" or care issue?
 - Options: Custody? Sentencing? Resources? Protection?

Strict Liability

- In civil and criminal law
- No intent required
- Violation = punishment regardless of intent
- Example: sexual contact with a small child

When abuse is a crime:

- Contact the police
- Law Enforcement's Investigation:
 - What happened?
 - Who was involved?
 - What was the actor's intent?
 - Take or conceal property of another?
 - Hit or bite – harm?
 - Touch intimately?
 - Fail to meet needs?
 - Consent?
 - Evidence? Proof?

Criminal Culpability

- Negligent: Knew or should have known better – high degree of carelessness
- Reckless: Didn't care; conscious disregard
- Intentional: Mental purpose

What's Important to Law Enforcement?

- Proof!
- The elements of crimes
- Whether the actor had the ability to understand the nature of the conduct and consequences of the action? Ability to conform conduct? Capacity to form mental purpose?
- Self-defense?
- Consent?
- Competence to give consent?

Who responds?

- Patrol Officer: Uniformed officer – Investigates, first on scene
- Detective: plain clothes – Follow up or specialized investigation
- Specialized Officers: CSI; Coroner; Victim advocates

Investigation & Prosecution

- Investigation
- Report
- Referral
- Charging decision
- Bail conditions
- Prosecution
- Conviction

Learning Points:

- Criminal negligence is carelessness to a high degree
- Recklessness is the conscious disregard for safety or welfare of another
- Intent – mental purpose to achieve a result
- Investigation, arrest & prosecution depend in part on evidence, intent, competence

Duty to Investigate

- Regardless of who the perpetrator is:
 - Caregiver
 - Resident
 - Family or visitor
 - Other

Conduct Your Investigation:

- Interview, Observe, Review, Collect Evidence, Document!
- Rule in/rule out
- Even if cause is unknown, a good investigation can identify things or individuals that did not cause the harm
- Investigation: Thorough; shows all options considered and how you reached your conclusion

If law enforcement is involved:

- Ask whether you can conduct your own investigation
- If you are asked to wait – document the officer's name, agency, date, and agency case number
- Send your report to DOA – include the plan for further investigation, if needed

Learning Points:

- A thorough investigation includes interviews, physical or documentary evidence.
- Report to DQA even if law enforcement is involved
- Communicate how and why you made your decisions
- Work collaboratively and coordinate efforts with other agencies to complete the investigation in order to determine what happened and hold perpetrators accountable, as appropriate

Reporting Requirements

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Requirements

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

Caregiver Misconduct Incidents

Caregiver Misconduct Complaints

<http://www.dhfs.state.wi.us/caregiver/contacts/Complaints.htm>

All Entities (except nursing homes)

- BOA Memo 04-028, Revised Caregiver Misconduct Reporting Requirements for BOA Entities

Nursing Homes Only

- BOA memo 05-004, Requirements for Reporting Allegations of Abuse, Neglect, Misappropriation, Injuries of Unknown Source
- BOA memo 05-012, UPDATE - Requirements for Reporting Allegations of Abuse, Neglect, Misappropriation, Injuries of Unknown Source

Adults-at-Risk Incidents

- The adult-at-risk has requested to make the report;
- Reasonable cause to believe that adult-at-risk is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss & unable to make an informed judgment
- Other adults-at-risk are at risk of serious bodily harm, death, sexual assault, or significant property loss

Adults-at-Risk Incidents

No reporting is required in two instances:

- Not be in the best interest of the adult-at-risk (must document reasons for belief);
or
- Provides treatment by spiritual means through prayer for healing in lieu of medical care in accordance with his or her religious tradition

Immunity Provisions

- Protections for good-faith reporters of incidents involving adults-at-risk
- Immunity provisions apply to all reporters

Response to Reports

DQA responds to two types of health care complaints:

Complaints regarding entity activity (inappropriate or inadequate activity by an entity); and

Complaints of caregiver misconduct (inappropriate activity by a caregiver, e.g., abuse, neglect or misappropriation).

Resources

OQA Memo 06-028

- **Adult-at-Risk, including Elder Adult-at-Risk, Reporting Requirements For Entities Regulated by the Office of Quality Assurance**

http://dhfs.wisconsin.gov/ri_dsl/Publications/06-028.htm

DDES INFO MEMO 2006-20

- **Adult-at-Risk, including Elder Adult-at-Risk, Reporting Requirements**

http://dhfs.wisconsin.gov/dsl_info/InfoMemos/InfoMemos_2006.htm

Questions

Contact the Office of Caregiver Quality
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