

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

FACT SHEET: REQUIREMENTS FOR NURSING HOMES TO PROTECT RESIDENTS FROM ABUSE, NEGLECT & EXPLOITATION

Following are several standards and guidelines that we have identified as important when it comes to protecting residents from abuse, neglect and exploitation. The descriptions are taken directly from the federal regulations and guidelines (as indicated by text in italics). The excerpts are formatted into bulleted lists to make it easier to identify the points that we believe are most relevant. For more detailed information, see the webinar program & other resources on our website, www.nursinghome411.org.

[Notes: (1) The brackets below provide the citation to the federal regulation. (42 CFR 483.xx) and the F-tag used when a facility is cited for failing to meet the requirement. (2) All emphases added.]

I. Freedom From Abuse, Neglect & Exploitation [42 CFR 483.30(A) F-710]

The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation.... This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident's medical symptoms.

II. Key Elements Of Noncompliance With This Standard

The facility...

- Failed to protect a resident's right to be free from any type of abuse, including corporal punishment, and neglect, that results in, or has the likelihood to result in physical harm, pain, or mental anguish; or
- Failed to ensure that a resident was free from neglect when it failed to provide the required structures and processes in order to meet the needs of one or more residents.

III. Key Definitions

- **Abuse:** the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. **Abuse also 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 or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology.

- **Neglect:** *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.*
- **Sexual abuse:** *non-consensual sexual contact of any type with a resident.*
- **Willful:** *means the individual must have acted deliberately, **not** that the individual must have intended to inflict injury or harm.*

IV. Federal Guidelines - Facility Characteristics Associated With Increased Risk of Abuse.

Identified facility characteristics, that could increase the risk for abuse include, but are not limited to:

- *Unsympathetic or negative attitudes toward residents;*
- *Chronic staffing problems;*
- *Lack of administrative oversight, staff burnout, and stressful working conditions;*
- *Poor or inadequate preparation or training for care giving responsibilities;*
- *Deficiencies of the physical environment; and*
- *Facility policies operate in the interests of the institution rather than the residents.*

V. Reporting Requirements for Abuse, Neglect & Suspicion of a Crime Against a Nursing Home Resident

There are both state and federal requirements for reporting abuse or neglect. Nevertheless, far too much resident abuse, neglect, theft of personal property, etc... goes unreported. To help address this problem, **the Affordable Care Act established important requirements for reporting any reasonable suspicion of a crime against a nursing home resident.**

Requirements for reporting all alleged abuse, neglect, exploitation or mistreatment:

- **Duty:** Must report *all alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property.*
- **For Whom?:** The nursing home.
- **When?** *All alleged violations-Immediately but not later than (1) 2 hours- if the alleged violation involves abuse or results in serious bodily injury (2) 24 hours- if the alleged violation does not involve abuse and does not result in serious bodily injury.*
- **To Whom?:** *The facility administrator and to other officials in accordance with State law, including to the SA [survey agency, i.e., Department of Health] and the adult protective services where state law provides for jurisdiction in long-term care facilities.*

Requirements for reporting suspicion of a crime against a nursing home resident include:

- **Duty:** Must report any "reasonable suspicion" that a crime has been committed against a resident of the facility.
- **For Whom?:** Any and all of a nursing home's employees, owners, operators, managers, agents and contract workers.
- **When?** Immediately! Must be within 2-hours if the act or incident suspected to be a crime resulted in physical injury to a resident; otherwise, within 24-hours.
- **To Whom?:** Local law enforcement and the state survey agency (Dept. of Health).
- **Penalty:** Failure to report carries a fine of up to \$221,048; if the failure results in increased harm to the original victim, or harm to another resident, the fine can be up to \$331,752.

RESOURCES

WWW.NURSINGHOME411.ORG. LTCCC's website includes materials on the relevant standards for nursing home care and a variety of resources on specific issues, such as dementia care, resident assessment and care planning, dignity and quality of life.