

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

UNDERSTANDING BODILY INJURY WHEN REPORTING SUSPICION OF A CRIME AGAINST A NURSING HOME RESIDENT

BACKGROUND

Under federal law, all “covered individuals” under the law (including owners, administrative and care staff, and contractors) must report any suspicion of crime that occurs in a nursing home. The law mandates that reporting is made to both law enforcement and the state survey agency (Health Department) in a timely manner. Failure to report within the following timeframe can result in significant penalties (over \$300,000 if the failure to report “exacerbates the harm to the victim of the crime or results in the harm to another individual”).

The purpose of this fact sheet is to help nursing home staff and other covered individuals, as well as residents, families, and ombudsmen, gain insights into what may constitute bodily injury—specifically serious bodily injury—when they suspect that a crime has occurred against a resident.

FEDERAL REPORTING REQUIREMENTS – TIMEFRAME

Did the events causing suspicion result in serious bodily injury?

- **If yes**, suspected crime must be reported immediately but not later than 2 hours after forming the suspicion.
- **If no**, suspected crime must be reported no later than 24 hours after forming the suspicion.¹

DEFINITION OF SERIOUS BODILY INJURY

What does “serious bodily injury” mean?

- An injury involving extreme physical pain;
- An injury involving substantial risk of death;
- An injury involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty;
- An injury requiring medical intervention such as surgery, hospitalization, or physical rehabilitation; or
- An injury resulting from criminal sexual abuse.²

DEFINITION OF BODILY INJURY

What does “bodily injury” mean?

- A cut, abrasion, bruise, burn, or disfigurement;
- Physical pain;
- Illness;
- Impairment of the function of a bodily member, organ, or mental faculty; or
- Any other injury to the body, no matter how temporary.³

¹ 42 U.S.C. § 1320b–25(b); *see also* 42 C.F.R. § 483.12(c) (extending similar reporting requirements to “alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property”).

² The Centers for Medicare & Medicaid Services (CMS) defines serious bodily injury in Interpretative Guidance to the implementing regulations of the federal Nursing Home Reform Law. Available at https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf.

³ 18 U.S.C. § 1515(a)(5).

TYPES OF POTENTIAL INJURIES

SERIOUS BODILY INJURIES	BODILY INJURIES	NON-BODILY INJURIES
Can include but are not limited to:	include but are not limited to:	include but are not limited to:
<ul style="list-style-type: none"> • Bruises, including black and blue marks • Cuts or scrapes requiring medical attention • Broken bones or fractures • Falls causing pain or impeding movement or function • Bleeding • Infection, such as from unattended wound • Pressure ulcers • Burns 	<ul style="list-style-type: none"> • Light scrapes or abrasions • Minor or superficial injury which does not cause more than momentary pain and from which individual quickly recovers without medical assistance 	<ul style="list-style-type: none"> • Making residents fearful or apprehensive of physical harm • Isolation due to seclusion in a room • Taking pictures of a resident that are embarrassing or humiliating (whether or not the resident is aware) • Verbal abuse from staff member or other resident

LIKELY INDICATORS OF CRIME

Crimes are defined by federal, state, and local laws. While the specific elements of any given crime may vary from one community to another, the existence of resident abuse and neglect likely indicate that a crime has been committed against a resident. LTCCC has identified the following types of abuse as likely indicators of crime:

- **Physical abuse** – Physical abuse may result in bruises, pressure ulcers, wounds, cuts, broken bones.
- **Psychological abuse** – Psychological abuse may include the inappropriate use of antipsychotic drugs, staff members not addressing resident needs in a timely/appropriate manner, and staff taking advantage of resident’s cognitively impaired state.
- **Emotional abuse** – Emotional abuse may include aggressive or hostile behavior/attitude towards a resident, staff looking down or speaking to residents with contempt, and staff ignoring residents or leaving them socially isolated.
- **Sexual abuse** – Sexual abuse may include inappropriate sexual/physical contact and staff using sexually-explicit language towards residents.

REPORTING FORMS & FURTHER INFORMATION

There is no specific form that must be used to report suspected crimes against a nursing home resident. The [Abuse, Neglect, & Crime Reporting Center](#) on our website, www.nursinghome411.org, provides free reporting forms and other resources that can be used to facilitate identification and reporting of abuse, neglect, and suspicion of a crime.

For more information about the federal reporting requirements, please see LTCCC’s 2019 report “Addressing Abuse, Neglect, and Suspicion of Crime against Nursing Home Residents: Policy Considerations & Promising Practices.” The report is available at <https://nursinghome411.org/learning-center/abuse-neglect-crime/>.