



# Identifying and Addressing Nursing Home Abuse, Neglect & Crimes Against Residents

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[www.nursinghome411.org](http://www.nursinghome411.org)

# + What Will I Be Talking About This Morning?

- **How the Nursing Home System Works**
- **Requirements for Ensuring that Residents are Protected from Abuse, Crime, & Neglect**





# The Nursing Home System

Brief Background

# + The Nursing Home System in a Nutshell

- Virtually all nursing homes participate in Medicaid and/or Medicare.
- In order to participate in Medicaid/Medicare, a facility agrees to meet the standards provided for in the federal **Nursing Home Reform Law**.
- States may have *additional* protections, but no state can have less protections.
- **Federal protections are for all residents** in a facility, whether their care is paid for by Medicare, Medicaid or private pay.
- The federal agency, CMS, contracts with the state DOH to ensure that residents are protected and receive the services they need and deserve.



## + The Nursing Home Reform Law

- The federal law requires that every nursing home resident is provided the care and quality of life services sufficient to attain and maintain her **highest practicable physical, emotional & social well-being**.
- The law emphasizes **individualized, patient-centered care**.
- Importantly, **the law lays out specific resident rights**, from good care and monitoring to a quality of life that maximizes choice, dignity & autonomy.
- The law passed in 1987. Regulatory standards came out in 1991. They were revised in 2016.





## + Federal Requirements for Protecting Residents from...

Abuse,  
Neglect, &  
Exploitation

## + Why Are We Talking About These Requirements?

**FOX NEWS:**  
“Florida nursing  
home deaths a  
criminal  
investigation”

**NBC NEWS:** “Elder  
Abuse Going  
Unreported Because of  
Coronavirus Pandemic”

**CNN:** “Sick, dying  
and raped in  
America's nursing  
homes”

**PBS NEWSHOUR:**  
“Health care  
watchdog sends  
urgent alert on  
potential nursing  
home abuse”

**A resident’s right to be free from abuse & neglect  
has not changed as a result of the pandemic.**



## **Freedom from Abuse, Neglect, & Exploitation**

**FEDERAL REQUIREMENT:**  
**42 CFR 483.12 [F600]**

*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.*



## + Freedom from Abuse, Neglect, & Exploitation

### KEY ELEMENTS OF NONCOMPLIANCE FOR ABUSE AND NEGLECT

*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.*

## + Freedom from Abuse, Neglect, & Exploitation

**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.*

Important  
Definitions

# + Freedom from Abuse, Neglect, & Exploitation

Selected Excerpts from the Federal Guidelines...

**What is the Facility Responsible For?** *The facility must provide a safe resident environment and protect residents from abuse.*

## **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.*

What should  
surveyors be  
looking for?

What should  
WE be  
looking for?

# + Freedom from Abuse, Neglect, & Exploitation

## Staff to Resident Abuse of Any Type

*Nursing homes have diverse populations including, among others, residents with dementia, mental disorders, intellectual disabilities, ethnic/cultural differences, speech/language challenges, and generational differences. **When a nursing home accepts a resident for admission, the facility assumes the responsibility of ensuring the safety and well-being of the resident.***

*It is the facility's responsibility to ensure that all staff are trained and are **knowledgeable** in how to react and respond appropriately to resident behavior. All staff are expected to be in control of their own behavior, are to behave professionally, and should appropriately understand how to work with the nursing home population.*

***A facility cannot disown the acts of staff....***

CMS does not consider striking a combative resident an appropriate response in any situation. ***It is also not acceptable for an employee to claim his/her action was "reflexive" or a "knee-jerk reaction" and was not intended to cause harm.*** Retaliation by staff is abuse, ***regardless of whether harm was intended, and must be cited.***

# + Freedom from Abuse, Neglect, & Exploitation

## Resident to Resident Abuse of Any Type

*A resident to resident altercation should be reviewed as a potential situation of abuse. When investigating an allegation of abuse between residents, the surveyor should not automatically assume that abuse did not occur, especially in cases where either or both residents have a cognitive impairment or mental disorder. **Having a mental disorder or cognitive impairment does not automatically preclude a resident from engaging in deliberate or non-accidental actions.***

Federal guidance states that *it is important to remember that abuse includes the term “willful.” The word “willful” means that the individual’s action was deliberate (not inadvertent or accidental), regardless of whether the individual intended to inflict injury or harm. An example of a deliberate (“willful”) action would be a cognitively impaired resident who strikes out at a resident within his/her reach, as opposed to a resident with a neurological disease who has involuntary movements (e.g., muscle spasms, twitching, jerking...) and his/her body movements impact a resident who is nearby.*

Nursing homes are responsible for protecting residents from all forms of abuse, including resident to resident abuse and including when one or both resident has dementia.

## + Freedom from Abuse, Neglect, & Exploitation

### Resident to Resident Abuse of Any Type (continued)

*If it is determined that the action was not willful (a deliberate action), **the surveyor must investigate** whether the facility is in compliance with the requirement to **maintain an environment as free of accident hazards** as possible, and that each resident receives adequate **supervision**.*

*The facility may provide evidence that it completed a resident assessment and provided care planning interventions to address a resident's distressed behaviors such as physical, sexual or verbal aggression. However, **based on the presence of resident to resident altercations, if the facility did not evaluate the effectiveness of the interventions and staff did not provide immediate interventions to assure the safety of residents, then the facility did not provide sufficient protection to prevent resident to resident abuse.***

Expectations  
of  
Facilities

## + Cracking Down on Crimes Against Nursing Home Residents

For too many nursing home residents, the rights we all have as residents of the United States go out the door the moment they enter the door of a nursing home.

The Affordable Care Act includes important provisions to change this:

- **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 agency (Dept. of Health).
- **Penalty:** Failure to report carries penalty of up to \$225,000 (approx.). If the failure exacerbates resident harm, the fine can be \$340,000 (approx.).



# + Requirements for Reporting Abuse, Neglect & Suspicion of a Crime Against a Resident

Regulation	42CFR483.12(b)(5) [And 1150B of the Act]	42CFR483.12(c)
F-tag	F608	F609
What	Any reasonable suspicion of a crime against a resident	1) All alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property 2) The results of all investigations of alleged violations
Who is required to report?	Any covered individual, including the owner, operator, employee, manager, agent or contractor of the facility	The facility
To whom	State Survey Agency (SA) and one or more law enforcement entities for the political subdivision in which the facility is located (i.e., police, sheriffs, detectives, public safety officers; corrections personnel; prosecutors; medical examiners; investigators; and coroners)	The facility administrator and other officials in accordance with state law, including to the SA and the adult protective services where state law provides for jurisdiction in long-term care facilities
When	Serious bodily injury - Immediately but not later than 24 hours after forming the suspicion. No serious bodily injury - not later than 24 hours. [Note: Reporting requirements under this regulation are based on real (clock) time, not business hours]	All alleged violations - Immediately but not later than (1) 24 hours - if the alleged violation involves abuse or results in serious bodily injury or (2) 24 hours - if the alleged violation does not involve abuse and does not result in serious bodily injury.



# Summary: Resources @ [www.nursinghome411.org](http://www.nursinghome411.org)

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### 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](http://www.nursinghome411.org). [Notes: (1) The brackets below provide the citation to the federal regulation. (42 CFR 83.33) and the F-tag used when the facility is cited for failing to meet the requirement. (2) All emphases added.]

#### I. Freedom From Abuse, Neglect & Exploitation (42 CFR 83.30(A)-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 required to treat the resident's medical symptoms.*

#### II. Key Elements of Noncompliance With this Standard

The facility...

- Failed to protect 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 the 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 the resident that are necessary to avoid physical harm, pain, mental anguish or emotional distress.*
- Sexual abuse:** *non-consensual sexual contact of any type with the resident.*
- Willful:** *means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.*

LTCCC Fact Sheet: Protection From Abuse, Neglect & Exploitation

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#### 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 to operate in the interests of the institution rather than the residents.

#### V. Reporting Requirements for Abuse, Neglect & Suspicion of Crime Against 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 crime against a nursing home resident.

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

- Duty:** Must report all illegal violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property.
- For Whom?** The nursing home.
- When?** All illegal violations - immediately but not later than (1) 24 hours of the illegal violation involves abuse or results in serious bodily injury (2) 24 hours of the illegal violation does not involve abuse and does not result in serious bodily injury.
- To Whom?** The facility administrator and other officials in accordance with state law, including to the state 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 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 the nursing home's employees, owners, operators, managers, agents and contract workers.
- When?** Immediately! Must be within 24-hours of the act or incident suspected to be a crime resulted in physical injury to the 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 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](http://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.