

SUMMARY OF COMPLAINT HANDLING REQUIREMENTS FOR STATE SURVEY AGENCIES

[Note: The following is excerpted from Chapter 5 of the State Operations Manual (SOM). Italics indicates language taken directly from the SOM, red type indicates new language. All emphases are in the original unless otherwise indicated.]

5075.1 -Immediate Jeopardy

Intakes to state agency assigned IJ priority; additional language:

- *All intakes alleging abuse of a resident/patient/client and it is uncertain that they are adequately protected.*
- *For nursing homes, all intakes alleging eviction of a resident to an unsafe location.*

5075.2 -Non-Immediate Jeopardy -High Priority

*When the SA makes the determination that **the alleged noncompliance may have caused actual physical and/or psychosocial harm to the resident(s), the SA must initiate an onsite survey within an annual average of 15 business days of receipt of the initial report, not to exceed 18 business days.*** [Emphases in original.]

5075.3 Non-Immediate Jeopardy -Medium Priority

*Complaints are assigned a “medium” priority if the alleged noncompliance with one or more requirements caused no actual physical and/or psychosocial harm but there is the potential for more than minimal harm to the resident(s) (Severity Level 2). Facility-reported incidents are assigned a “medium” priority if the alleged noncompliance with one or more requirements caused no actual physical and/or psychosocial harm but there is the potential for more than minimal harm to the resident(s) (Severity Level 2) **and** the facility has not provided an adequate response to the allegation or it is not known whether the facility provided an adequate response. For complaints and facility-reported incidents that are assigned a “medium” priority, the SA must initiate an onsite survey within **45 calendar days of receipt of the initial report.*** [Emphases in original.]

5075.4 Non-Immediate Jeopardy – Low Priority

Most significant change:

The SA reviews these intakes for tracking of possible trends in order to determine if there are common themes that suggest areas for focused attention when the next on-site survey occurs. If the SA identifies a trend that suggests similar concerns, the SA either investigates the concerns during the next standard or complaint survey or initiates a complaint survey.

5075.6 -Referral – Immediate [NOTE: Includes procedures for suspicion of a crime]

*Intakes are assigned a “Referral – Immediate” priority if the nature and seriousness of a complaint/incident or State procedures requires the referral or reporting of this information for investigation to another agency, board, or ESRD network **without delay.***

*For example, if a complaint has criminal implications and the complainant has not reported the incident to law enforcement, the SA must report the suspected crime to law enforcement immediately (NOTE: In such cases, the referral is recorded in the Contact/Refer tab under the ACTS intake). This priority may be assigned **in addition to** one of the priorities in sections 5075.1*

through 5075.5. When the SA refers the complaint/incident to another agency or entity (e.g., law enforcement, Ombudsman, licensure agency, etc.) for action, the SA must request a written report on the results of the investigation by the outside entity. Referral to an outside entity does not relieve the SA of the responsibility to assess compliance with Federal conditions or requirements, when applicable. The timeframes for investigation are not altered by the referral. (Expressed requests by law enforcement that the SA defer an onsite investigation should be discussed with the CMS RO, as appropriate.)

[Emphases in original.]

5080.1 -Report to the Complainant

The SA/*CMS location* provides the complainant a written report of the investigation findings as a summary record of the investigation.

The following principles guide preparation of the report to the complainant:

- Acknowledge the complainant's concern(s);
- Identify the SA's regulatory authority to investigate the complaint/incident and any statutory or regulatory limits that may bear on the authority to conduct an investigation;
- Provide a summary of investigation methods (e.g., on-site visit, written correspondence, telephone inquiries, etc.);
- Provide date(s) of investigation;
- Provide an explanation of your SA's decision-making process (*NOTE: CMS and the SA should avoid using terms such as "substantiated" and "unsubstantiated"*);
- Provide *the complainant with information regarding whether or not noncompliance was identified during the complaint investigation.* (*NOTE: To the extent possible, the summary should not compromise the anonymity of individuals, or include specific situations that may be used to identify individuals, when anonymity has been requested or is appropriate in the judgment of the SA*);
- *Identify where the complainant may find the Statement of Deficiencies and Plan of Correction (e.g., posted at the nursing home, Nursing Home Care Compare, request the CMS-2567 from the SA)*;
- *Describe how the complainant may request a copy of the investigation report, subject to Federal and State disclosure requirements (e.g., see 42 CFR §488.325 and FOIA requirements at 45 CFR Part 5); and*
- Identify appropriate referral information (i.e., other agencies that may be involved).

5310 -Action on *Allegations* of Resident Neglect and Abuse, and Misappropriation of Resident Property *for Nursing Homes*

5310.1 -Written Procedures

The State must *develop and implement* written procedures for the timely review and investigation of allegations of resident abuse and neglect, and misappropriation of resident property, *including both complaints and facility-reported incidents. The State's policies and*

procedures must be consistent with Federal requirements as well as with procedures in the State Operations Manual.

Nursing homes send the following types of incidents to the State Survey Agency:

- All alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property;*
- The results of all facility investigations involving alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property; and*
- Reasonable suspicions of crimes against nursing home residents.*

NOTE: If the SA receives information that a suspected crime may have occurred in a facility and there is indication that it has not been reported or the SA cannot verify that a report was made to law enforcement, then the SA forwards the information from the initial report immediately to law enforcement. The SA must follow applicable laws and regulations related to information disclosures, privacy and confidentiality, as it makes referrals.

The SA may also contact the CMS Location office for more information.

A. Initial Reporting of Facility-Reported Incidents *The information collected during intake is critical in determining what may be occurring in a facility and the effect(s) that it may have on residents. While States have discretion in how they collect information from facilities (e.g., through electronic submission), at a minimum, the State Survey Agency must provide instructions to the facility and collect sufficient information to determine how the incident should be prioritized. See also Exhibit XX for sample instructions with examples of information and Appendix PP, Tag F609. If the facility has not provided sufficient information, the SA should take **Incidents** this into consideration as it triages the incident.*

1. Facility Reported Incidents – Initial Report

The facility must provide in its report sufficient information to describe the alleged violation and indicate how residents are being protected [See §483.12(c)(3)]. It is important that the facility provide as much information as possible, to the best of its knowledge at the time of submission of the report, so that state agencies can initiate action necessary to oversee the protection of nursing home residents. See Exhibit XX for a sample form for initial reporting with examples of information and see also Appendix PP, Tag F609.

B. Reporting of Investigation Findings for Facility-Reported

For alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property, the facility is required to submit a report of the results of the investigation within 5 working days to the State Survey Agency (See 42 C.F.R. §483.12(c)(4), Tag F609 of Appendix PP of the State Operations Manual). While States have discretion in how they collect information from facilities (e.g., through electronic submission), at a minimum, the State

Survey Agency must provide instructions to the facility and collect sufficient information to determine how the incident should be prioritized.

5-Day Final Report of Suspected Allegation

Within 5 working days of the incident, the facility must provide in its report sufficient information to describe the results of the investigation, and indicate any corrective actions taken, if the allegation was verified. It is important that the facility provide as much information as possible, to the best of its knowledge at the time of submission of the report, so that State agencies can initiate action necessary to oversee the protection of nursing home residents [see §483.12(c)(4)]. See Exhibit XX for a sample form for the investigation report with examples of information, and see also Appendix PP, Tag F609.

5310.2 -Review *and* Triage of Allegations

*The State **reviews** all allegations of resident neglect and abuse and misappropriation of resident property regardless of the source.*

5310.2A-Immediate Jeopardy Priority

In cases where the initial report indicates the following, the SA must initiate an onsite survey withinthree business days of receipt of the initial report:

- 1) The alleged noncompliance may have caused, or may likely cause, serious injury, harm, impairment, or death to a resident, and*
- 2) The facility has not implemented adequate protection for all residents or the SA has not received sufficient evidence to conclude that residents are adequately protected.*

For these cases, the SA will enter into ACTS: Intake Type=Incident; Priority = IJ; and Investigate Within X Days = 3 Working Days.

In cases where the initial report indicates the following, the SA must initiate an onsite survey within seven business days of receipt of the initial report:

- 1) The alleged noncompliance may have caused, or may likely cause, serious injury, harm, impairment, or death to a resident, and*
- 2) The facility has potentially implemented adequate protection for all residents.*

For these cases, the SA will enter into ACTS: Intake Type=Incident; Priority = IJ; and Investigate Within X Days = 7 Working Days. NOTE: See Appendix Q of the State Operations Manual for guidance related to immediate jeopardy situations.

Depending on the nature of the allegation, the facility would be expected to take immediate action(s) to ensure the protection of residents. Information provided by the facility may assist the SAs in determining whether there are potentially adequate

protections provided to the resident. Examples of such information include, but are not limited to:

- *Monitoring of the alleged victim and other identified residents who are at risk, such as conducting unannounced management visits at different times and shifts;*
- *Evaluation of whether the alleged victim feels safe and if he/she does not feel safe, taking immediate steps to alleviate the fear, such as a room relocation, increased supervision, etc.;*
- *•_Providing social services (e.g., emotional support and counseling) to the resident, as needed;*
- *Immediate assessment of the alleged victim and provision of medical treatment as necessary;*
- *Provision of goods and/or services that are necessary to avoid serious injury, harm, impairment, or death to a resident;*
- *Immediate notification of the alleged victim's physician and the resident representative, when there is injury or a change in condition or status;*
- *If the alleged perpetrator is staff-Removal of access by the alleged perpetrator to the alleged victim and other residents and assurance that ongoing safety and protection is provided for the alleged victim and other residents*
- *•_other residents; If the alleged perpetrator is a resident or visitor-Removal of access by the alleged perpetrator to the alleged victim and, as appropriate, other residents and assurance that ongoing safety and protection is provided for the alleged victim and other residents*
- *Notification of the alleged violation to other agencies or law enforcement authorities, within timeframes as specified under Federal or State law or regulations; and*
- *Whether administrative staff, including the administrator, were informed and involved as necessary in the investigation.*

Below are examples that indicate that a resident(s) may not be protected in the facility:

- *The alleged perpetrator continues to have access to the alleged victim and/or*
- *Retaliation occurs against a resident who reports an alleged violation;*
- *A resident who repeatedly fondles other residents is moved to another unit, where he/she continues to exhibit the same behaviors to other residents; and*
- *A resident with a history of striking a resident is left unsupervised with a resident who has been targeted in the past.*

The SA may contact the resident/representative to determine whether adequate protections are provided to the resident.