



CHARLIE CRIST
GOVERNOR

HOLLY BENSON
SECRETARY

March 4, 2008

Dear Administrator:

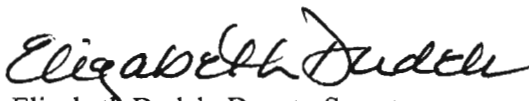
In an attempt to resolve some of the questions that have arisen about abuse and neglect and the understanding and reporting of resident to resident altercations, the Centers for Medicare and Medicaid Services (CMS) has clarified this issue in a release about accidents and supervision. Please refer to CMS Ref: S&C-07-25. As this clarification impacts the Federal Immediate/5-Day Reporting System, we are taking this opportunity to redistribute definitions, guidance for a thorough investigation, and the suggested reporting form with instructions for its completion.

We have added some identifying information on the 5-Day Report to enable us to connect the Immediate with the 5-Day Report. We have added a box to "check" to specify whether the allegations were substantiated or unsubstantiated. We have separated the "notification" information to reflect the report where the information is pertinent.

Attached you will also find "Frequently Asked Questions" to help you with completing and submitting the reports. We hope you will find this a useful tool. It is recommended that you share this document with all of your staff and incorporate it into your staff orientation and in-service on abuse and neglect prevention training programs.

Upon receipt of this letter, we suggest that you implement the use of the new form. Please call Ms. Jeanine Morthier, RNS, at (850) 487-8999 or Ms. Patricia Hall, Manager, at (850) 488-5514, if you have any questions.

Sincerely,


Elizabeth Dudek, Deputy Secretary
Division Health Quality Assurance

ED/jm
Attachments

2727 Mahan Drive, MS# 9
Tallahassee, Florida 32308



Visit AHCA online at
<http://ahca.myflorida.com>

What Must Be Reported:

- A.** The facility must ensure that **ALL** allegations of abuse, neglect, injuries of unknown origin, and exploitation/misappropriation of resident property are reported immediately to the administrator of the facility, the Agency for Health Care Administration, the Department of Children and Families, the Florida Abuse Hotline, and to other officials in accordance with state law.
- B.** The **results of facility investigations** must be reported to the administrator or his/her designated representative, the Agency for Health Care Administration, and to other officials in accordance with state law.

How to Report:

We request that the report be submitted via e-mail or fax.

Please forward reports to:

Agency for Health Care Administration
2727 Mahan Drive, MS #49
Tallahassee, FL 32308

or

fedrep@ahca.myflorida.com

or

FAX: 850-488-6094

Facilities may use the attached form to submit required reports. Although the form is not required, the facility **must** provide the necessary information identified on the enclosed form. The correct facility name and the resident's name must appear on each page submitted.

Facility Investigation:

Federal regulation requires a facility to have evidence that all allegations of abuse, neglect, injuries of unknown origin, and exploitation/misappropriation are thoroughly investigated. In addition, the facility must take action to prevent further potential abuse while the investigation is in process.

Conducting a “Thorough” Investigation:

The federal regulations clearly require the facility to have evidence that all the alleged violations are “thoroughly” investigated. The following represents guidance on those components of an investigation that would constitute a “thorough” investigation.

A. The Investigation:

- 1. Specify the type of allegation** that is being reported (i.e. physical, sexual, or verbal abuse, neglect, injury of unknown origin, or exploitation/misappropriation).
- 2. Document the details of the incident.** What allegedly occurred? Where and when did the alleged incident occur? Who is the alleged victim? Who is the alleged perpetrator? If the alleged perpetrator’s name is not known then have the victim give a physical description of the perpetrator.
- 3. Document the description of the injury.** Describe the size, color, appearance, and location of any injuries, and treatment rendered, if any.
- 4. Develop a list of known and possible witnesses to the alleged incident.** Interview and obtain signed statements from each staff or resident separately. Interview staff that cared for the resident(s) at the time of the alleged incident. Interview staff on other shifts that may have seen or heard anything, such as, 24 hours prior to the alleged incident, to try and narrow down the time frame of the alleged occurrence and to document when the first sign of any injury appeared. Interview residents in the same room, or residents in the immediate vicinity of where the alleged incident occurred, who might have seen or heard something. Observe and document any unusual demeanor of the person being interviewed. Statements obtained from witnesses need to be very specific, (i.e. what does “rough” mean to that individual?)
- 5. Identify the cognitive status of the victim(s) and resident(s) who are witnesses.** (Are they alert and oriented, and able to answer questions appropriately? This would help in determining if he/she would be a credible witness.) Review a copy of the current Minimum Data Set (MDS) and the resident’s current care plan. If this witness is not alert and oriented, but the facility is utilizing this witness’s statement in the investigation, explain why the witness is considered credible/believable, (i.e. he/she consistently repeats the same story and/or has a history of consistently providing accurate information.)
- 6. Interview and obtain a written statement from the perpetrator(s), if possible.**

7. **Review past performance of the perpetrator(s).** Check work history or any previous incident. Interview co-workers and/or residents to gain knowledge of their experiences with the accused person.
8. **Describe any action taken by the facility to protect the resident(s) and to prevent a possible reoccurrence during the investigation.**
9. **If nursing agency personnel were involved, obtain a statement from the person.** Identify the name of the agency and the contact person.
10. **If the allegation involves sexual abuse,** document if the alleged victim was examined (i.e. was a rape kit used). If available, obtain a copy of the examination or statement from the examiner.
11. **If the allegation involves neglect,** identify the staff member(s), the length of time involved, and any outcome of the victim. **Be specific.**
12. **If the allegation involves exploitation/misappropriation,** clearly identify the items and their approximate value. Obtain copies of bills, charge slips, vendor receipts, etc., if applicable.
13. **Identify any medication(s)** that may cause the resident to bruise easily or in any way be related to the nature of the injury.
14. **Review facility procedures** if the incident may be **related to unsafe technique used by staff.**
15. **Review and identify any nursing notes or other facility records that may contain information about the incident.** These do not need to be included with the report you submit, but you should keep them with your copy of the report.

B. Summary Report of Facility's Findings and Conclusion:

1. **Upon conclusion of the investigation,** you should prepare a summary report of the findings and conclusions. The summary should include sufficient detail of the investigation to document the facility conducted a thorough investigation. The outcome of the investigation should state what effect the incident had on the resident. The facility should provide corrective actions (i.e. disciplinary action, in-services for staff, care plans updated, etc.)
2. The Agency for Health Care Administration may require the facility to provide additional information when it has reason to question the thoroughness of the facility's investigation.

Federal Immediate/5-Day Reporting Requirements

Definitions:

Definitions used in this document are based on federal regulations and guidelines as well as state law.

- A. **Abuse** is the **willful** infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, and/or mental anguish.
- B. **Neglect** means **failure to provide** goods and services necessary to avoid physical harm, mental anguish, or mental illness.

An incident involving a resident who willfully inflicts injury upon another resident should be reviewed as abuse. Even though a resident may have a cognitive impairment, he/she could still commit a willful act. However, there are incidents when a resident's willful intent cannot be determined. In those cases, a resident to resident altercation should be reviewed as lack of supervision. In extreme situations, this would be reportable under neglect.

- C. **Injury of unknown origin** is an injury which both of the following conditions are met:
 - 1. The source of the injury was not observed by any person or the source of the injury could not be explained by the resident.
 - 2. The injury is suspicious because of the extent of the injury, or the location of the injury (e.g. its location in an area not generally vulnerable to trauma), or the number of injuries observed at one particular point in time, or the number of incidences of injuries over time.
- D. **Exploitation and Misappropriation of Resident Property** means a deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.
- E. **Intent** - The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents. Each resident has the right to be free from mistreatment, neglect, and misappropriation of property. This includes the facility's identification of residents, whose personal histories render them at risk for abusing other residents, and development of intervention strategies to prevent occurrences, monitoring for changes that would trigger abusive behavior, and reassessment of the interventions on a regular basis.

Frequently Asked Questions

- **How long do we have to report an incident?** The Immediate Report should be submitted “as soon as possible”, but no later than 24 hours of your learning of the allegation. Failure to do so will mean that you are not in compliance with the Federal Regulations. The 5-Day Report is to be submitted within 5 working days from the date of the incident (or knowledge of the incident). Any reports received after that time will be considered out of compliance with the regulation.
- **Is it okay to submit the 5-Day Report before it is due?** Yes, as long as your investigation is completed. It is unacceptable to submit it before the 5 working days if your investigation is still ongoing.
- **Do I need to report the Power Of Attorney (POA) not paying the resident's bills?** No, it is not necessary to report when the facility is not getting paid by the resident's POA; however it is recommended that you call Abuse Registry and Law Enforcement, if needed.
- **Do I need to call the Abuse Registry for injuries of unknown origin?** The Abuse Hotline is to be notified within 24 hours whenever an allegation of abuse, neglect, injury of unknown origin, or exploitation/misappropriation of property is made. Even if the report is not accepted, the date and time of notification should still appear under notifications.
- **How should we report our investigative findings?** Evidence of investigation should provide a brief description of interviews stating who was interviewed (if residents, please include mental status), observations, record reviews, etc. It is not necessary to include the interviews – just a summary of the findings. State if the information gathered substantiated the allegations or not. It is not acceptable to wait for the Adult Protective Services findings; this is a federal report and the facility must conduct their own investigation.
- **How should I report the corrective actions?** All corrective measures implemented by the facility should be reported. Immediate protective measures should be what you did to protect the resident(s) immediately after the incident occurred. Corrective measures after the investigation are protective measures, such as, if in-services were required for the staff (please include dates) or if the care plan was updated. It may also be the determination of ability to continue to meet the needs of the residents vs. placement in a more appropriate facility.
- **Must we submit a separate report for each resident involved?** No, you should submit only one report, which would include all residents and staff involved.
- **Must the reports be typed?** The reports must be neat and legible. The preferred report would be typed; however, we will accept handwritten reports if the handwriting is easily readable. If it is not, you will be asked to redo it.
- **Can I submit my 1 and 15 Day State Reports to the same number I submit my Federal Immediate/5-Day Reports?** 1 and 15 Day State Reports are to be sent to the Facility Data Analysis Unit (FDAU), MS # 47. The Federal Immediate/5-Day Reports should be sent to the Complaint Administration Unit (CAU), MS # 49. Please refer to the phone numbers on the top of your report. Make a note of the correct location to send your reports, so they are not considered late.

Instructions for completing the Federal Immediate / 5-Day Report

Please be sure to fill in all the information accurately and completely

IMMEDIATE PORTION ON REPORT

1. Facility Information:

- A-F. This information is important in identifying the correct facility is chosen when entering the report into the Federal Database or if we need to contact someone concerning the report. Submit the report with the name the facility is licensed under and **do not abbreviate**.
- G. Please provide the first and last name, and title of the person submitting the report.

2. Incident Information:

- A. Identify the allegation(s) that are being reported.
- B. If known, enter date and time the incident occurred or when first identified.
- C. Identify all residents who are directly involved in this incident. If incident involved a resident-resident altercation, then identify both.
- D. Identify any alleged perpetrator here; do not list witnesses or those having knowledge of the incident. Provide first and last names as well as any specific identifying information such as the staff's license and/or social security numbers.
- E. A clear, brief and legible description is important here. **Include the cognitive level of resident(s)**. The report must be **neat and legible**. If more space is needed, attach a second page with the facility name, resident(s) name, allegation and date of incident at the top.

3. Immediate Corrective/Protective Actions Taken:

Identify what was done to immediately assure the safety/well-being of the resident(s). These actions must continue throughout the investigative process.

4. Notifications: Mark box if notified and include the date/time. Dates **MUST** be filled in.

- A. **The Abuse Hotline is to be notified within 24 hours when an allegation of abuse, neglect, injury of unknown origin or misappropriation of property is made. 1-800-96-ABUSE**
- B. **The Immediate Federal Report is to be submitted to the Complaint Administration Unit (CAU). You may use this form and complete sections 1 – 4C, in order to meet the requirements. You can e-mail or fax this to CAU (addresses and phone numbers in upper right hand corner of the form). If the report is not legible, you will be asked to redo it.**
- C. Law Enforcement needs to be notified if there has been a crime or allegation of crime.

5-DAY PORTION OF REPORT

Facility name, resident(s) name, allegation and date of incident must be written on the top of the 5-Day portion of the report.

4. Notifications (CONT): Dates **MUST** be filled in.

- D. **5-Day Federal Report is to be sent in it's entirety within 5 working days of the incident. This should include responses to sections 4D-5B.**
- E. The appropriate licensure board(s) should be notified if a certified or licensed staff member is found to have abused, neglected, mistreated a resident or misappropriated a resident's property. You can download the form from the following web site at; http://www.doh.state.fl.us/mqa/enforcement/enforce_home.htm

5. Findings:

- A. Provide a clear, brief description of the findings from your facility internal investigation. It is not acceptable to simply state "waiting on the Department of Children and Families (DCF) investigation." Summarize your interviews and observations. Do not submit face sheets, medication records, doctors or nurses notes, or witness statements. Keep these for your records only. Check if the allegation is substantiated or unsubstantiated.
- B. Note the action/measures or systematic changes which will be taken/implemented to protect the residents found to be affected by this incident or who have potential of being affected if this type of incident were to recur. Include information about the care plan, if it was updated or if in-services were done, or are planned. Clearly identify the final status of any employees who were involved in the incident.

To Find the Report Form On-line:

Go to the following site and scroll down to Resources under Nursing Home and look for this report:

http://ahca.myflorida.com/MCHQ/Long_Term_Care/LTC

