

POLICY

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

It is the facility's policy to investigate all alleged violations involving Abuse, Neglect, Misappropriation of Resident Property, Exploitation or Mistreatment, including Injuries of Unknown Source, in accordance with this policy and to ensure that all individuals who report such incidents and allegations are free from retaliation or reprisal for reporting the incident.¹

Facility staff should immediately report all such allegations to the Administrator and to the Ohio Department of Health ("ODH") in accordance with the procedures in this policy. In cases where a crime is suspected, the Administrator will report the same to local law enforcement in accordance with Facility's Crime Reporting policy.

Residents, interested family members, or other persons may contact any member of the administration or the facility's nursing staff at any time with concerns relating to the Abuse, Neglect, Misappropriation of Resident Property or Exploitation of a resident or concerns about a resident's injury. In addition, such persons may file a grievance with the Grievance Official or with the Ohio Department of Health concerning any instance or suspicion of resident Abuse, Neglect, Misappropriation or Exploitation.

DEFINITIONS

- A. **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, such as through the use of photographs and recording devices to demean or humiliate a resident.
- B. **Exploitation.** Taking advantage of a resident for personal gain through manipulation, intimidation, threats or coercion.
- C. **Injury of Unknown Source.** An injury is classified as an "Injury of Unknown Source" when **both** 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; **AND**
 - 2. The injury is suspicious because of the extent of the injury, the location of the injury, the number of injuries observed at one particular point in time, or the incidence of injuries over time.
- D. **Misappropriation of Resident Property.** The deliberate misplacement, exploitation, or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent.
- E. **Mistreatment.** Inappropriate treatment or exploitation of a resident.

¹ Note, that if a staff member is disciplined for failing to report an incident/allegation timely (i.e., not immediately) in accordance with this policy, any disciplinary action taken as a result of that failure shall not constitute "retaliation" or "reprisal".

- F. **Neglect.** The failure of the facility, its employees, or facility service providers to provide goods and services to a resident necessary to avoid physical harm, pain, mental anguish, or emotional distress.
- G. **Sexual Abuse.** Non-consensual sexual contact of any type with a resident.
- H. **Willful.** Means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.
- I. **Involuntary Seclusion.** The separation of a resident from other residents or from her/his room or confinement to her/his room (with or without roommates) against the resident's will, or the will of the resident's legal representative. Emergency or short term monitored separation from other residents is not considered involuntary seclusion, and may be needed for a limited period of time as a therapeutic intervention to reduce agitation until a plan of care that can meet the resident's needs is developed.
- J. **Chemical Restraint.** Any drug that is used for discipline or convenience and not required to treat a medical symptom.
- K. **Convenience.** Any action taken by the facility to control a resident's behavior or manage a resident's behavior with a lesser amount of effort by the facility and not in the resident's best interest.
- L. **Discipline.** Any action taken by the facility for the purpose of penalizing or punishing the resident.
- M. **Medical Symptom.** As an indication or characteristic of a physical or psychological condition.
- N. **Physical Restraint.** Any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body (e.g., leg restraints, arm restraints, hand mitts, soft ties or vests, lap cushions, and lap trays that the resident cannot remove easily.)
- O. **Freedom of Movement.** Any change in place or position for the body or any part of the body that the resident is physically able to control.

PROCEDURE

A. Screening

It is the policy of Facility to undertake background checks of all employees and to retain on file applicable records of current employees regarding such checks.

1. Facility will do the following prior to hiring a new employee:
 - a) Check with the Ohio nurse assistant registry and any other registries for unlicensed persons that Facility has reason to believe contain information on an individual, prior to the use of that individual;
 - b) Check with all applicable licensing and certification authorities to ensure that employees hold the requisite license and/or certification status to perform their job functions and do not have a disciplinary action in effect against his or her professional license by a state licensure agency as a result of a finding of abuse, neglect, exploitation or misappropriation of resident property;
 - c) Conduct a criminal background check in accordance with Ohio law and Facility's policy; and
 - d) Verify that the applicant is not excluded from any Federally-funded health care programs.
 - e) Attempt to obtain information from previous employers or current employers.
2. Facility will generally require that all potential employees certify as part of the employment application process that they have not been convicted of an offense or otherwise have been found guilty of an offense that would preclude employment in a nursing facility.
3. It is the ongoing obligation of all employees to alert Facility of any conviction or finding (such as exclusion) that would disqualify them from continued employment with Facility under Ohio or Federal law, or the facility's policies.
4. If Facility enters into a contract for the use of temporary ("agency") employees, then it will generally require the organization providing such employees to conduct the background checks noted in section A.1. above. The temporary agency will also be required to certify that it will not provide any temporary employees that do not have the requisite licensure or certification or who have a disciplinary action in effect against his or her professional license by a state licensure agency as a result of a finding of abuse, neglect, exploitation or misappropriation of resident property, who are prohibited from working in a nursing facility under Ohio's criminal background law, or who are excluded from any Federally-funded healthcare program.

B. B. Training

Facility will educate its staff upon hire and annually thereafter regarding the facility's policy concerning Abuse, Neglect, Exploitation, Misappropriation of resident's property, and how to handle resident-to-resident Abuse and Injuries of Unknown Source. These training sessions will include, but not necessarily be limited to, the following topics: how to identify Abuse, Neglect, Exploitation or Misappropriation of resident property; how staff should report their knowledge related to allegations without fear of reprisal; how to recognize signs of burnout, frustration and stress; appropriate interventions to deal with aggressive and/or catastrophic reactions of resident; and dementia management and abuse prevention. ("Catastrophic reactions" mean extraordinary reactions of residents to ordinary stimuli, such as the attempt to provide care.)

Facility will provide information to its residents and families upon admission and as necessary thereafter, regarding this policy, and on how the resident and family may report any suspected Abuse, Neglect, Exploitation, Mistreatment, Misappropriation of resident property, and Injuries of Unknown Source. Staff will also be educated upon hire and periodically thereafter on Facility's Crime Reporting and Social Media policies.

C. Prevention & Identification

Facility's procedures include:

1. Establishing a safe environment that supports, to the extent possible, a resident's consensual sexual relationship, including a process for determining the resident's capacity to consent;
2. Identifying, correcting and intervening in situations in which abuse, neglect, exploitation and/or misappropriation of resident property is more likely to occur in accordance with the facility's QAPI Plan;

3. Ensuring all staff are deployed, trained and qualified to meet the needs of the residents and that resources are available to meet the needs of the residents in accordance with the Facility Assessment;
4. Completing ongoing assessments and care planning for appropriate interventions and monitoring of residents with behaviors, including, but not limited to: verbally aggressive behaviors (e.g., screaming, cursing, demanding, insulting, etc.), physically aggressive (e.g., hitting, kicking, throwing objects, etc.), sexually aggressive behaviors (e.g., inappropriate touching or grabbing, saying sexual things, etc.); taking or touching another person's property, wandering into other resident's rooms, history of self-injurious behaviors, communication disorders and those residents that are totally dependent upon staff for care;
5. Ensuring residents are safe from family members or representatives who visit in accordance with the facility's Visitation Policy;
6. Ensuring that all staff, contractors and volunteers are aware that they need to report all incidents and allegations of Abuse, Neglect, Mistreatment, Exploitation and Misappropriation of resident property, as well as the identification of all new injuries to the Administrator, DON or charge nurse immediately.

D. Initial Response

1. Protect the Resident
 - a) Resident is injured. If the resident is injured as a result of the alleged or suspected incident, immediate action should be taken to treat the resident.
 - (1) Staff should not leave a resident unattended, unless it is necessary to summon assistance.
 - (2) Staff should report all incidents/allegations immediately to the Administrator or designee.
 - (3) Staff should not move the resident until he/she has been assessed by a nurse supervisor for possible injuries.
 - (4) A nurse should perform an initial assessment of the resident. The assessment should generally include the following: range of motion (ROM); full body assessment for signs of injury; and vital signs.
 - (5) The resident's attending physician should be notified if an incident has occurred requiring physician involvement.
 - (6) If appropriate, the facility should send the resident to the hospital for an examination.
 - b) If a staff member is accused or suspected. If a staff member is accused or suspected of Abuse, Neglect, Exploitation, Mistreatment or Misappropriation of resident property, Facility should immediately remove that staff member from the facility and the schedule pending the outcome of the investigation. Note: For purposes of this policy, nursing home staff includes employees, consultants, contractors, volunteers and any other caregivers who provide care and services to residents on behalf of the facility.
 - c) If a third party is accused or suspected. If a person not on staff is accused of Abuse, Neglect, Exploitation, Mistreatment or Misappropriation of resident property, Facility will take action to protect the resident in including, but not limited to, contacting the third party and addressing the issue directly with him/her, preventing access to resident during the investigation, and/or referring the matter to the appropriate authorities.
 - d) If a resident is accused or suspected. If a resident is accused or suspected of Abuse, Mistreatment, Exploitation or Misappropriation of resident property, the facility will ensure other residents are protected as determined by the circumstances, which may include but are not limited to, increased supervision of the alleged victim, perpetrator and/or other residents, room or staffing changes and immediate transfer or discharge, if indicated.
 - e) Notify Social Services. If appropriate, the social services department should be notified of the incident so that it may take appropriate interventions to care for the psychosocial needs of any involved resident.
 - f) Notify Resident Representative and Physician. The Resident Representative, and the resident's attending physician, if appropriate, should be notified of the incident.
2. Document

Documentation in the nurses' notes should include the results of the resident's assessment, notification of the physician and the Resident Representative, and any treatment provided. Appropriate quality assurance documentation should be completed as well.

E. Initial Report

1. Timing. All incident and allegations of Abuse, Neglect, Exploitation, Mistreatment and Misappropriation of resident property and all Injuries of Unknown Source must be reported immediately to the Administrator or designee.
2. The Administrator or his/her designee will notify the Ohio Department of Health ("ODH") of all alleged violations involving mistreatment, neglect, abuse, exploitation, misappropriation of resident property and injuries of unknown source as soon as possible, but in no event later than 24 hours from the time the incident/allegation was made known to the staff member. If the event that caused the allegation involves an allegation of abuse or serious bodily injury, it should be reported to ODH immediately, but not later than 2 hours after the allegation is made.
3. Administrator. The Administrator should be notified by informing him/her in person, calling via telephone, or sending an email or text message.
4. Ohio Department of Health. When possible, ODH will be notified by using the online Enhanced Information Dissemination & Collection ("EIDC") system. Facility will submit an online Self-Reported Incident form in accordance with ODH's then-current instructions. In the event of an internet outage or similar failure, Facility will temporarily notify the ODH District Office of the allegation via alternative method (e.g., phone), and will then submit the Self-Reported Incident online once service is restored. Only the Administrator or someone specifically designated by the Administrator is authorized to submit a Self-Reported Incident form to ODH.
5. Suspected Crimes. If Facility suspects that a crime has been committed, it will report that suspicion in accordance with the crime reporting policy.
6. Notify Resident or Resident Representative of Report. The Administrator will orally notify the resident or the Resident Representative, as appropriate, when a report has been made to ODH.

F. Investigate

Once the Administrator and ODH are notified, an investigation of the allegation violation will be conducted.

1. Time frame for investigation. The investigation must be completed within five (5) working days, unless there are special circumstances causing the investigation to continue beyond 5 working days (e.g., quantifying amounts misappropriated if accountant needs more time).
2. Investigation protocol. The person investigating the incident should generally take the following actions:
 - a) Interview the resident, the accused, and all witnesses. Witnesses generally include anyone who: witnessed or heard the incident; came in close contact with the resident the day of the incident (including other residents, family members); and employees who worked closely with the accused employee(s) and/or alleged victim the day of the incident.
 - b) If there are no direct witnesses, then the interviews may be expanded. For example, you may wish to interview all employees on the shift or the unit, as appropriate, as well as other residents on the unit. For Injuries of Unknown Source, the investigation may generally involve talking with staff working on both the shift on duty when the injury was discovered and prior shifts as well.
 - c) Obtain a statement from the resident, if possible, the accused, and each witness.
 - d) Obtain all medical reports and statements from physicians and/or hospitals, if applicable.
 - e) Review the resident's records.
 - f) If the accused is an employee, then review his/her employment records.
3. Documentation. Evidence of the investigation should be documented.

G. Reach a Conclusion

After completion of the investigation, the evidence should be analyzed, and the Administrator (or his/her designee) will make a determination regarding whether the allegation or suspicion is substantiated or unsubstantiated. The Administrator will determine if modifications to existing policies and procedures (or new policies and procedures) are needed to prevent similar incidents or injuries from occurring in the future in accordance with its QAPI Plan. The quality assurance investigative materials will be reviewed by the quality assurance committee in accordance with the facility QAPI Plan. The quality assurance committee will take all actions deemed necessary based upon their review.

H. Final Reports

1. **Timing.** The results of the investigation will be reported to the Administrator, and a final report will be submitted to ODH no later than five (5) working days after discovery of the incident.
2. **Ohio Department of Health.** As with the Initial Report, when possible, ODH will be notified by using the online **EIDC system**. Facility will submit an online Self-Reported Incident form in accordance with ODH's then-current instructions. In the event of an internet outage or similar failure, Facility will temporarily notify the ODH District Office of the allegation via alternative method (e.g., phone), and will then submit the Self-Reported Incident online once service is restored. Only the Administrator, or someone specifically designated by the Administrator, is authorized to submit a Self-Reported Incident form to ODH.
3. **State Nurse Aide Registry or Licensing Authorities.** The Facility will report any knowledge it has of actions by a court of law against an employee which would indicate unfitness for service as a nurse aide or other facility staff (e.g., felony conviction of child abuse, assault with a deadly weapon, etc.).

I. Follow-up to Investigation

1. **Response.** Whether the incident/allegation is substantiated or unsubstantiated the Administrator and/or DON or designee will:
 - a) Ensure involved resident's plan of care is reviewed and revised, as appropriate, consistent with the results of the investigation;
 - b) Determine if modifications to existing policies and procedures (or new policies and procedures) are needed to prevent similar events from occurring in the future, as applicable;
 - c) Complete staff training, if appropriate, as determined by the results of the investigation.
2. **Staff-to-Resident.** In the case of staff-to-resident Abuse, Neglect, Exploitation, Mistreatment or Misappropriation of resident property, the facility will follow Facility's procedure for disciplining or dismissing an employee, depending upon the circumstances and results of the investigation.
3. Facility will report the results of the investigation to the appropriate licensing agencies and registries (e.g., Board of Nursing, nurse aide registry, etc.), as appropriate, in accordance with the law.
4. **Resident-to-Resident.** In the case of resident-to-resident Abuse, Mistreatment, Exploitation or Misappropriation of property, the facility will refer the matter to Facility's interdisciplinary team to determine the appropriate intervention(s).
5. **Third Party-to-Resident.** If a third party (including family members, individuals providing services under contractual arrangements or other visitors) have Abused, Exploited, Mistreated Neglected, or Misappropriated property from a resident, the Administrator will determine an appropriate response, up to and including notifying the appropriate legal authorities and permanently banning the individual from the premises.
6. **ODH Online Report.** The facility's Administrator or authorized designee may update a submitted report and/or communicate new information about a case by using the addendum tab on the ODH EDIC online reporting system.