Elder Abuse and Behavioral Health

Presence Health
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Elder Abuse and Behavioral Health

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What is abuse?

- **Federal regulations (facilities certified for Medicare and/or Medicaid:**
  - Abuse means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. 42 C.F.R. 488.301
  - Misappropriation of resident property means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

What is abuse?

- **Federal guidance (State Operations Manual; F223, Interpretive Guidelines §483.13(b) and (c)):**
  - "Abuse" definition . . .
  - This 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. This presumes that instances of abuse of all residents, even those in a coma, cause physical harm, or pain or mental anguish.

What is abuse?

- "Verbal abuse" is defined as the use of oral, written or gestured language that willfully includes disparaging and derogatory terms to residents or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse include, but are not limited to: threats of harm; saying things to frighten a resident, such as telling a resident that he/she will never be able to see his/her family again.
- "Sexual abuse" includes, but is not limited to, sexual harassment, sexual coercion, or sexual assault.

What is abuse?

– “Physical abuse” includes hitting, slapping, pinching and kicking. It also includes controlling behavior through corporal punishment.
– “Mental abuse” includes, but is not limited to, humiliation, harassment, threats of punishment or deprivation.
– “Involuntary seclusion”

What is abuse?

- **State law (Nursing Home Care Act):**
  - Abuse − any physical or mental injury or sexual assault inflicted on a resident other than by accidental means in a facility. 210 ILCS 45/1-103

What is abuse?

- **State regulations (IDPH Code):**
- Abuse means:
  - Physical abuse refers to the infliction of injury on a resident that occurs other than by accidental means and that requires (whether or not actually given) medical attention.

What is abuse?

- Mental injury arises from the following types of conduct:
  - Verbal abuse refers to the use by a licensee, employee or agent of oral, written or gestured language that includes disparaging and derogatory terms
  - Mental abuse includes, but is not limited to, humiliation, harassment, threats of punishment or deprivation, or offensive physical contact by a licensee, employee or agent.
  - Sexual harassment or sexual coercion perpetrated by a licensee, employee or agent.
- Sexual assault. 77 Ill. Admin Code 300.330

What to do with abuse?

- **Federal regulations (facilities certified for Medicare and/or Medicaid:**
- 483.13(c)(2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency).

What to do with abuse?

- 483.13(c)(3) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.
- 483.13(c)(4) The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

What to do with abuse?

- **Federal guidance (State Operations Manual; F226, Interpretive Guidelines §483.13(c)):**
- The facility must develop and implement policies and procedures that include the ***seven components***: screening, training, prevention, identification, investigation, protection and reporting/response.
- **I. Screening.** Screen potential employees for a history of abuse, neglect or mistreating residents as defined by the applicable requirements at 483.13(c)(1)(ii)(A) and (B). This includes attempting to obtain information from previous employers and/or current employers, and checking with the appropriate licensing boards and registries.

What to do with abuse?

- **II. Training.** Train employees, through orientation and on-going sessions on issues related to abuse prohibition practices such as:
  - Appropriate interventions to deal with aggressive and/or catastrophic reactions of residents;
  - How staff should report their knowledge related to allegations without fear of reprisal;
  - How to recognize signs of burnout, frustration and stress that may lead to abuse; and
  - What constitutes abuse, neglect and misappropriation of resident property.

What to do with abuse?

- **III. Prevention.** Provide residents, families and staff information on how and to whom they may report concerns, incidents and grievances without the fear of retribution; and provide feedback regarding the concerns that have been expressed.

- Identify, correct and intervene in situations in which abuse, neglect and/or misappropriation of resident property is more likely to occur. This includes an analysis of:

What to do with abuse?

- Features of the physical environment that may make abuse and/or neglect more likely to occur, such as secluded areas of the facility;
- The deployment of staff on each shift in sufficient numbers to meet the needs of the residents, and assure that the staff assigned have knowledge of the individual residents' care needs;
- The supervision of staff to identify inappropriate behaviors, such as using derogatory language, rough handling, ignoring residents while giving care, directing residents who need toileting assistance to urinate or defecate in their beds; and
- The assessment, care planning, and monitoring of residents with needs and behaviors which might lead to conflict or neglect, such as residents with a history of aggressive behaviors, residents who have behaviors such as entering other residents' rooms, residents with self-injurious behaviors, residents with communication disorders, those that require heavy nursing care and/or are totally dependent on staff.

What to do with abuse?

- **IV. Identification.** Identify events, such as suspicious bruising of residents, occurrences, patterns, and trends that may constitute abuse; and to determine the direction of the investigation.
- **V. Investigation.** Investigate different types of incidents; and Identify the staff member responsible for the initial reporting, investigation of alleged violations and reporting of results to the proper authorities.

What to do with abuse?

- **VI. Protection.** Protect residents from harm during an investigation.
- **VII. Reporting/Response.** Report all alleged violations and all substantiated incidents to the state agency and to all other agencies as required, and take all necessary corrective actions depending on the results of the investigation;
- Report to the State nurse aide registry or licensing authorities any knowledge it has of any actions by a court of law which would indicate an employee is unfit for service; and
- Analyze the occurrences to determine what changes are needed, if any, to policies and procedures to prevent further occurrences.

What to do with abuse?

- **Federal guidance (State Operations Manual; F225, Interpretive Guidelines §483.13(c)(2) and (4)):**
- The facility's reporting requirements under 483.13(c)(2) and (4) include reporting both alleged violations and the results of investigations to the State survey agency.
- **"Injuries of unknown source" –** An injury should be classified as an "injury of unknown source" when both of the following conditions are met:
  - 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**
  - The injury is suspicious because of the extent of the injury **or** the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma) **or** the number of injuries observed at one particular point in time **or** the incidence of injuries over time.

What to do with abuse?

- **"Immediately"** means as soon as possible, but ought not exceed 24 hours after discovery of the incident, in the absence of a shorter State time frame requirement. Conformance with this definition requires that each State has a means to collect reports, even on off-duty hours (e.g., answering machine, voice mail, fax).
- The phrase **"in accordance with State law"** modifies the word "officials" only. As such, State law may stipulate that alleged violations and the results of the investigations be reported to additional State officials beyond those specified in Federal regulations. This phrase does not modify what **types** of alleged violations must be reported or the time frames in which the reports are to be made. As such, States may not eliminate the obligation for any of the alleged violations (i.e., mistreatment, neglect, abuse, injuries of unknown source, and misappropriation of resident property) to be reported, not can the State establish longer time frames for reporting than mandated in the regulations at §§483.13(c)(2) and (4). No State can override the obligation of the nursing home to fulfill the requirements under §483.13(c), so long as the Medicare/Medicaid certification is in place.

What to do with abuse?

- **State law and regulations (Nursing Home Care Act and IDPH Code):**
- **A facility employee or agent who becomes aware of abuse or neglect of a resident shall immediately report the matter to the facility administrator.**
- **A facility administrator who becomes aware of abuse or neglect of a resident shall immediately report the matter by telephone and in writing to the resident's representative.**
- **A facility administrator, employee, or agent who becomes aware of abuse or neglect of a resident shall also report the matter to the Department.**

What to do with abuse?

- Employee as perpetrator of abuse. When an investigation of a report of suspected abuse of a resident indicates, based upon credible evidence, that an employee of a long-term care facility is the perpetrator of the abuse, that employee shall immediately be barred from any further contact with residents of the facility, pending the outcome of any further investigation, prosecution or disciplinary action against the employee.

What to do with abuse?

- Resident as perpetrator of abuse. When an investigation of a report of suspected abuse of a resident indicates, based upon credible evidence, that another resident of the long-term care facility is the perpetrator of the abuse, that resident's condition shall be immediately evaluated to determine the most suitable therapy and placement for the resident, considering the safety of that resident as well as the safety of other residents and employees of the facility.

Other types of reporting

- Compare IDPH regulations on "Incidents and Accidents" reporting (77 Ill. Admin. Code 300.690)
- IDPH regulations for "Contacting local law enforcement" (77 Ill. Admin. Code 300.695)
- Reports to the Illinois Department on Aging
- Reports required under new federal law PPACA

“Incidents and Accidents” reporting

- a) The facility shall maintain a file of all written reports of each incident and accident affecting a resident that is not the expected outcome of a resident's condition or disease process. A descriptive summary of each incident or accident affecting a resident shall also be recorded in the progress notes or nurse's notes of that resident.
- b) The facility shall notify the Department of any serious incident or accident. For purposes of this Section, "serious" means any incident or accident that causes physical harm or injury to a resident.

“Incidents and Accidents” reporting

- c) The facility shall, by fax or phone, notify the Regional Office within 24 hours after each reportable incident or accident. If a reportable incident or accident results in the death of a resident, the facility shall, after contacting local law enforcement pursuant to Section 300.695, notify the Regional Office by phone only. For the purposes of this Section, "notify the Regional Office by phone only" means talk with a Department representative who confirms over the phone that the requirement to notify the Regional Office by phone has been met. If the facility is unable to contact the Regional Office, it shall notify the Department's toll-free complaint registry hotline. The facility shall send a narrative summary of each reportable accident or incident to the Department within seven days after the occurrence.

“Contacting local law enforcement”

- The facility shall immediately contact local law enforcement authorities (e.g., telephoning 911 where available) in the following situations:
  1) Physical abuse involving physical injury inflicted on a resident by a staff member or visitor;
  2) Physical abuse involving physical injury inflicted on a resident by another resident, except in situations where the behavior is associated with dementia or developmental disability;
  3) Sexual abuse of a resident by a staff member, another resident, or a visitor;
  4) When a crime has been committed in a facility by a person other than a resident; or
  5) When a resident death has occurred other than by disease processes.

“Contacting local law enforcement”

- For the purpose of this Section, the following definitions shall apply:
  - "911" − an emergency answer and response system in which the caller need only dial 9-1-1 on a telephone to obtain emergency services, including police, fire, medical ambulance and rescue.
  - Physical abuse − same as IDPH regulations
  - Sexual abuse − sexual penetration, intentional sexual touching or fondling, or sexual exploitation (i.e., use of an individual for another person's sexual gratification, arousal, advantage, or profit).

“Contacting local law enforcement”

- The facility shall develop and implement a policy concerning local law enforcement notification, including:
  1) Ensuring the safety of residents in situations requiring local law enforcement notification;
  2) Contacting local law enforcement in situations involving physical abuse of a resident by another resident;
  3) Contacting police, fire, ambulance and rescue services in accordance with recommended procedure;
  4) Seeking advice concerning preservation of a potential crime scene;
  5) Facility investigation of the situation.

Elder Abuse and Neglect Act
320 ILCS 20/1

"**Mandated reporter**" means any of the following persons while engaged in carrying out their professional duties:

(i) **social services**, (ii) law enforcement, (iii) education, (iv) **the care of an eligible adult or eligible adults**, or (v) **any of the occupations required to be licensed**, *i.e.*, Clinical Psychologist, Social Work, Dental, Dietitian Nutritionist, Marriage and Family Therapy Licensing, Medical, Naprapathy, Nurse, Nursing Home Administrators, Occupational Therapy, Optometry, Pharmacy, Physical Therapy, Physician Assistant, Podiatry, Respiratory Care, Professional Counselor, Speech-Language Pathology and Audiology, Veterinary, and Public Accounting.

Elder Abuse and Neglect Act
320 ILCS 20/1

If any mandated reporter has reason to believe that an eligible adult, who because of dysfunction is unable to seek assistance for himself or herself, has, within the previous 12 months, been subjected to abuse, neglect, or financial exploitation, the mandated reporter shall, within 24 hours after developing such belief, report this suspicion to an agency designated to receive such reports under this Act or to the Department on Aging.

Elder Justice Act
§6703(3) of PPACA

Requires reporting any <u>reasonable suspicion of a crime</u> within either 2 hours or 24 hour

- If the reasonable suspicion relates to an incident *causing serious injury*, it must be reported **within 2 hours**.
- If the reasonable suspicion relates to an incident that did NOT cause serious injury, it must be reported within 24 hours.

- "Clock time" – not "business hours"

Elder Justice Act
§6703(3) of PPACA

Reports must be made to:

- Local law enforcement; *and*
- State Survey Agency (*i.e.*, state department of public health)

Elder Justice Act
§6703(3) of PPACA

- A Covered Individual must report any reasonable suspicion of a crime committed against an individual who is a resident of, or is receiving care from, the facility.
- Who are the "Covered Individuals"?: Owner; Operator; Employee; Agent; and Contractor

Elder Justice Act
§6703(3) of PPACA

Considerations about reporting . . .

- Group reporting
  - Permitted, but best to identify all individuals within group
- Chain reporting
  - Permitted, if covered individual has clear assurance that supervisor is reporting it
- Covered Individual required to notify facility of report?
  - No, could discourage reporting for fear of retaliation

Elder Justice Act
§6703(3) of PPACA

Advisable actions:

- Coordinate with local law enforcement
- Develop policies and procedures for compliance with the Elder Justice Act
- Understand and coordinate reporting pursuant to Elder Justice Act and long-standing CMS/State regulations on reporting abuse, neglect, misappropriate, injuries of unknown origin

Top Five Errors with Abuse

- Staff fail to identify an incident or allegation of abuse.
- Staff fail to report an allegation of abuse.
- Once a report has been made, staff are not suspended pending investigation.
- Failure to conduct a thorough investigation.
- Failure to dig deeper.

Which means

- **Immediately report it to the administrator.**
- **Immediately <u>suspend</u> staff pending the investigation**.
- Initial report to SSA within 24 hours.
- Conduct a thorough investigation.
- Send 5-Day Follow-Up Report.
- Discipline any staff as necessary.

Reporting it to administrator

- Staff should be hypersensitive.
- Proactively asking about concerns on a regular basis (e.g., weekly).
- Make it clear that the report will be investigated.
- Make sure that staff don’t get the impression that any staff member is getting a pass.

Suspension

- **Immediate suspension means immediate.**
- Maintain suspension during investigation.
- If abuse is substantiated, terminate the staff and report the staff.
- If abuse is not substantiated, determine whether other discipline or actions are justified.

Behavioral Health

- Pre-Admission Screening: What prospective residents raise a “red flag”?
  - identified offenders,
  - insufficient finances; unknown payor source,
  - refusal to sign Residency Contract; family baggage,
  - ***diagnosis of mental illness; severe behaviors***

Behavioral Health

Requirements and parameters for screening:

- All persons seeking admission to a nursing facility must be screened to determine the need for nursing facility services prior to being admitted, regardless of income, assets, or funding source. 210 ILCS 45/2-201.5(a); Code 300.615(b)
- An individual who needs services that are not readily available in a particular facility, or through arrangement with a qualified outside resource, shall not be admitted to or kept in that facility. (A "qualified outside source" = recognized as meeting professional standards.) Code 300.620(b)

Behavioral Health

No person shall be admitted to or kept in the facility:

1) Who is at risk because the person is reasonably expected to self-inflict serious physical harm or to inflict serious physical harm on another person in the near future, as determined by professional evaluation;

2) Who is destructive of property, if the destruction jeopardizes the safety of him/herself or others; or

3) Who is an identified offender, unless the requirements of Section 300.615 for new admissions and the requirements of Section 300.625 are met.

Code 300.620(d)

SUBPART S: PROVIDING SERVICES TO PERSONS WITH SERIOUS MENTAL ILLNESS (Code 300.4000-300.4090)

- A licensed SNF or ICF providing services to persons with serious mental illness shall meet the requirements of this Subpart S.

Behavioral Health

- “Serious mental illness" is defined as the presence of a major disorder as classified in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), excluding alcohol and substance abuse, Alzheimer's disease, and other forms of dementia based upon organic or physical disorders.

Behavioral Health

- A serious mental illness is determined by all of the following three areas:
- 1) Diagnoses that constitute a serious mental illness are: A) Schizophrenia; B) Delusional disorder; C) Schizo-affective disorder; D) Psychotic disorder not otherwise specified; E) Bipolar disorder I - mixed, manic, and depressed; F) Bipolar disorder II; G) Cyclothymic disorder; H) Bipolar disorder not otherwise specified I; I) Major depression, recurrent;

Behavioral Health

- 2) In addition, the individual must be 18 years of age or older and be substantially functionally limited due to mental illness in at least two of the following areas: A) Self-maintenance; B) Social functioning; C) Community living activities; D) Work-related skills;
- 3) Finally, the disability must be of an extended duration expected to be present for at least a year, which results in a substantial limitation in major life activities. These individuals will typically also have one of the following characteristics: A) Have experienced two or more psychiatric hospitalizations; B) Receive SSI or SSDI because of mental illness, or deemed eligible.

Behavioral Health

- This Subpart **does not apply** to the provision of services for residents having a diagnosis in the following mental disorder categories: senile and presenile organic psychotic conditions, alcoholic psychoses, drug psychoses, transient organic psychotic conditions, other organic psychotic conditions (chronic), non-psychotic disorders due to organic brain damage, and mental retardation.
- This Subpart **applies** to persons who are transferred to a facility for 120 or fewer days for a medical reason directly related to the person's diagnosis of serious mental illness, such as medication management.
- This Subpart **does not apply** to individuals who are transferred to a facility for 120 or fewer days for a medical reason, such as from fractures or cardiac or respiratory traumas. However, during this individual's stay, the individual's mental illness needs shall be met as much as possible, taking into account the individual's medical condition.

Behavioral Health

- **Comprehensive Assessment for resident with "serious mental illness"**
- By Interdisciplinary Team (IDT) including, at a minimum, the resident; the resident's guardian; a Psychiatric Rehabilitation Services Coordinator (PRSC); the resident's primary service providers, including an RN or an LPN with responsibility for the medical needs of the individual; a psychiatrist; a social worker; an activity professional; and other appropriate professionals and care givers as determined by the resident's needs.

Behavioral Health

- A comprehensive assessment must be completed by the IDT no later than 14 days after admission to the facility. The assessment shall include at least the following:

  (1) psychiatric evaluation completed by a board certified or board eligible psychiatrist; (2) psychosocial assessment performed by the Psychiatric Rehabilitation Services Director (PRSD); (3) level of functioning skills assessment; (4) oral screening by dentist or RN; (5) discharge plan; (6) other IDT recommended assessments, and (7) a structured assessment of resident's interests and expectations regarding psychiatric rehabilitation

Behavioral Health

- **Reassessments for Residents with Serious Mental Illness**
- All persons admitted to a nursing home facility with a diagnosis of serious mental illness who remain in the facility for a period of 90 days shall be re-screened by the Department of Human Services or its designee at the end of the 90-day period, at 6 months, and annually thereafter to assess their continued need for nursing facility care and shall be advised of all other available care options. (210 ILCS 45/2-104.3)

Behavioral Health

- At least every three months, the PRSC shall document review of the resident's progress, assessments and treatment plans. If needed, the PRSC shall inform the appropriate IDT members of the change in resident's condition.
- Complete comprehensive reassessments shall be conducted in the following areas: (1) Psychiatric evaluation; (2) Psychosocial assessment update; (3) Skills assessment update, including an assessment of resident levels of functioning and reassessment of rehabilitation potential; (4) Recreation and leisure activities updates; and (5) Physical examination

Behavioral Health

- **Psychiatric Rehabilitation Services for Residents with Serious Mental Illness**
- The psychiatric rehabilitation services program of the facility shall provide the following services as needed by facility residents under Subpart S: (1) 24 hours of continuous supervision, support and therapeutic interventions; (2) Psychotropic medication administration, monitoring, and self-administration; (3) Case management services and discharge preparation and training; (4) Psychiatric rehabilitation services addressing major domains of functioning and skills development: self-maintenance, social and community living, occupational preparedness, symptom management, and substance abuse avoidance; (5) Crisis services; and (6) Personal care assistance.

Behavioral Health

- Facilities with 20 or fewer residents with "serious mental illness" may request exemption for certain Subpart S requirements
  - Caveat for exemptions is that facility will not admit a resident with serious mental illness **under age 65**

When to Make the Decision on Residency for a Behavioral Health Patient?

Pre-admission, decide not to admit

- *Allowed*
- Easy
- Not contestable

After admission, terminate residency

- *HARD*
- Resource-intensive [time, money, spirit]
- Permitted? Alternative placement?

About Polsinelli

text

Text

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