

ABUSE DEFINITION

F-540 NOVEMBER 28, 2017

Abuse is 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. Willful, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

FREEDOM FROM ABUSE, NEGLECT AND EXPLOITATION 483.12 NOVEMBER 28, 2017

- **F-600 Free from Abuse and Neglect (F-223)**
- **F-602 Free from Misappropriation/Exploitation (F-223/F-224)**
- **F-603 Free from Involuntary Seclusion (F-223)**
- **F-604 Right to be Free from Physical Restraints (F-221/F-222)**
- **F-605 Right to be Free from Chemical Restraints (F-222)**
- **F-606 Not employ/Engage Staff with Adverse Actions (F-225)**
- **F-607 Develop/Implement Abuse/Neglect, etc. Policies (F-226)**
- **F-608 Reporting of Reasonable Suspicion of a Crime (No Old Tag)**
- **F-609 Reporting of Alleged Violations (F-225)**
- **F-610 Investigate/Prevent/Correct Alleged Violation (F-225)**

REPORTING OF ALLEGED VIOLATIONS

F-609 NOVEMBER 28, 2017

§483.12(c) In response to allegations of abuse, neglect, exploitation, or mistreatment, the facility must:

§483.12(c)(1) Ensure that all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property, are reported immediately, but not later than 2 hours after the allegation is made, if the events that cause the allegation involve abuse or result in serious bodily injury, or not later than 24 hours if the events that cause the allegation do not involve abuse and do not result in serious bodily injury, to the administrator of the facility and to other officials (including to the State Survey Agency and adult protective services where state law provides for jurisdiction in long-term care facilities) in accordance with State law through established procedures.

SERIOUS BODILY INJURY

- **CMS DEFINITION:** *“Serious bodily injury” means an injury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; requiring medical intervention such as surgery, hospitalization, or physical rehabilitation; or an injury resulting from criminal sexual abuse (See section 2011(19)(A) of the Act).*

MUST BE REPORTED IN 2 HOURS (CMS)

➤ Is there an allegation of abuse?

If yes, then the facility must report immediately to the administrator, State Survey Agency, adult protective services and other officials in accordance with State law, but not later than 2 hours.

MUST BE REPORTED IN 2 HOURS (CMS)

- Is there an allegation that a resident has suffered serious bodily injury due to neglect, exploitation, mistreatment, or an injury of unknown source?
- If yes, then the facility must report immediately to the administrator, State Survey Agency, adult protective services and other officials in accordance with State law, but not later than 2 hours.

MUST BE REPORTED IN 2 HOURS (CMS)

- Is there a reasonable suspicion of a crime involving a resident suffering serious bodily injury?
- If yes, then covered individuals must report immediately to the State Survey Agency and local law enforcement, but not later than two hours.

MUST BE REPORTED WITHIN 24 HOURS(CMS)

- Is there a reasonable suspicion of a crime Not involving serious bodily injury?
- If yes, then covered individuals must report to the State Survey Agency and local law enforcement, not later than 24 hours.

WHAT HAS CHANGED IN REPORTING??

- **Report any allegation of abuse or serious bodily injury to the Office of Long Term Care (OLTC) within two (2) hours!**
- **Report any allegation that is not abuse or serious bodily injury to (OLTC) within twenty-four (24) hours on weekends and holidays.**

WHAT HAS NOT CHANGED IN REPORTING??

- Any allegation of maltreatment (abuse, exploitation, neglect or sexual abuse) must be reported to the person in charge of the facility or that person's designated agent immediately and...
- Immediately to the local law enforcement agency for the jurisdiction in which the facility is located.
- This is pursuant to the provision of the Arkansas "Adult and Long-Term Care Facility Resident Maltreatment Act" which is supported by (F-609, "in accordance with state law.")

WHAT HAS NOT CHANGED IN REPORTING??

- **The DMS-7734 must be used to report any allegation, reason to suspect or witnessed event of abuse, neglect, exploitation, and sexual abuse to the Office of Long Term Care (OLTC) in accordance with F-609 (CMS regulation) and the provision of the Arkansas “Adult and long-Term Care Facility Resident Maltreatment Act” (Arkansas Law).**
- **The DMS-7734 must be faxed to OLTC in accordance with F-609 and Arkansas Law. The regulatory fax number is (501) 682-8551. The alternate number is (501) 682-6171.**

WHAT HAS NOT CHANGED IN REPORTING??

- The DMS-7734 is a promulgated form (regulation) supported by state law and is the only form that can be used by nursing homes in Arkansas for reporting!
- The individual reporting MUST make sure that all dates and times are in the designated blanks and the squares to be marked for neglect, misappropriation of property and abuse MUST be marked.
- NOTE: If your fax does not go through make sure you save your fax verification page to show when you attempted to send the report. Make sure the dates and times printed by the facility fax machine are accurate and up to date.

DMS-7734 AND CRITICAL ELEMENT PATHWAYS USED DURING THE SURVEY

- At the end of the **CRITICAL ELEMENT PATHWAYS**, there is a section called ***CRITICAL ELEMENT DECISIONS***:
- These *critical element decisions* will be used in reviewing how timely you reported and how well you filled out the DMS-7734 used in Arkansas for reporting.
- The next two slides deal with the critical element decisions for reporting alleged violations of abuse. If the answer is **NO** to any of these, **F-609 and/or F-610 must be cited.**

ABUSE CRITICAL ELEMENT DECISIONS

NOVEMBER 28, 2017

- **FOR ALLEGED VIOLATIONS OF ABUSE, DID THE FACILITY:**
- ○ Identify the situation as an alleged violation involving abuse, including injuries of unknown source?
- ○ Immediately report the allegation to the administrator and to other officials, including to the State survey and certification agency, and APS in accordance with State law?
- ○ Report the results of all investigations within five working days to the administrator or his/her designated representative and to other officials in accordance with State law (including to the State survey and certification agency)?
- **“IF NO TO ANY OF THE ABOVE”, CITE F609! (F-225)**

ABUSE CRITICAL ELEMENT DECISIONS

NOVEMBER 28, 2017

- FOR ALLEGED VIOLATIONS OF ABUSE, DID THE FACILITY:
- ○ Prevent further potential abuse while the investigation is in progress?
- ○ Initiate and complete a thorough investigation of the alleged violation?
- ○ Maintain documentation that the alleged violation was thoroughly investigated?
- Take corrective action following the investigation, if the allegation is verified?
- “IF NO TO ANY OF THE ABOVE”, CITE F610! (F-225)

F-610: IN RESPONSE TO ALLEGATIONS OF ABUSE, NEGLECT, EXPLOITATION, OR MISTREATMENT, THE FACILITY MUST:

- **483.12(c) Have evidence that all alleged violations are thoroughly investigated.**
- **483.12(c)(2) Prevent further potential abuse, neglect, exploitation, or mistreatment while the investigation is in progress.**

F-610: IN RESPONSE TO ALLEGATIONS OF ABUSE, NEGLECT, EXPLOITATION, OR MISTREATMENT, THE FACILITY MUST:

§483.12(c)(4) Report the results of all investigations to the administrator or his or her designated representative and to other officials in accordance with State law, including to the State Survey Agency, within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

DEFINITIONS 483.5 F-540 NEGLECT NOVEMBER 28, 2017

➤ **Neglect is 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.**

NEGLECT CRITICAL ELEMENT DECISIONS

NOVEMBER 28, 2017

- **FOR ALLEGED VIOLATIONS OF NEGLECT, DID THE FACILITY:**
- ○ Identify the situation as an alleged violation involving neglect, including injuries of unknown source;
- ○ Report immediately to the administrator of the facility and to other officials, including to the State survey and certification agency, and Adult Protective Services in accordance with State law;
- ○ Report the results of all investigations within five working days to the administrator or his/her designated representative and to other officials in accordance with State law (including to the State survey and certification agency)?
- **“IF NO TO ANY OF THE ABOVE”, CITE F609! (F-225)**

NEGLECT CRITICAL ELEMENT DECISIONS

NOVEMBER 28, 2017

- FOR ALLEGED VIOLATIONS OF NEGLECT, DID THE FACILITY:
- ○ Prevent further potential neglect;
- ○ Initiate and complete a thorough investigation of the alleged violation;
- ○ Maintain documentation that the alleged violation was thoroughly investigated; and
- Take corrective action following the investigation, if the allegation is verified?
- “IF NO TO ANY OF THE ABOVE”, CITE F610! (F-225)

DMS-7734 REPORTING FORM & DMS-762 INVESTIGATION FORMAT

- The Office of Long Term Care (OLTC) has provided written guidance for filling out both the DMS-7734 and the DMS-762. If this guidance is followed, it will aide facilities in meeting questions asked in the Critical Element Decisions required to be used by OLTC surveyors.
- If a facility does not have this information you can email Stormy Smith at OLTC for copies at stormy.smith@dhs.Arkansas.gov.

DMS-7734 REPORTING FORM CURRENT (NEW) PROBLEMS

- **TYPED/PRINT:** In the beginning of the new two (2) hour reporting time-frames, OLTC has agreed to temporarily accept “PRINTED” DMS-7734s during after hours. More than half of the non-typed forms are in cursive. Many times it is very difficult to read and the 7734 is not complete.
- **DATES & TIMES:** These are not being filled out and may prove critical to the facility meeting the “**Critical Element Decisions**” during a survey regarding abuse and neglect.
- **PROTECT RESIDENT DURING INVESTIGATION:** Regarding the after hour 7734 reports, this is left off on many occasions or is very skimpy. More training to after hours facility staff is needed on protecting resident(s).
- Protecting the resident(s) is a “**Critical Element Decision.**”

SYNOPSIS OF ACT 1214 OF 2015

- This is a synopsis of the “**Adult and Long-Term Care Facility Resident Maltreatment Act.**”
- Arkansas Code Annotated 12-12-1701.

WHO MUST REPORT

- All facility personnel are required to report adult maltreatment, including the owner and the administrator.
- In addition any physician; surgeon; coroner; dentist; dental hygienist; osteopath; resident intern; nurse; member of a hospital's personnel who is engaged in the administration, examination, care or treatment of persons; social worker; case manager; home health worker; mental health profession; peace officer; law enforcement officer; employee of the Department of Human Services; firefighter; emergency medical technical; or an employee of a bank or other financial institution.

WHAT MUST BE REPORTED?

➤ **ALL...**

➤ **ALLEGED**

➤ **WITNESSED**

➤ **SUSPECTED MALTREATMENT**

TO WHOM MUST REPORTS BE MADE?

- **IMMEDIATELY** to the administrator or that person's designated agent.
- **IMMEDIATELY** to the local law enforcement agency for the jurisdiction in which the long-term care facility is located.
- **BY 11:00 A.M. THE NEXT BUSINESS DAY** to the Office of Long-Term Care (OLTC) under the regulations of that office. This applies to long term care facilities that are not a SNF, NF, OR SNF/NF nursing home.

TO WHOM MUST REPORTS BE MADE & WHEN?

- **ALL SNF, NF & SNF/NF NURSING HOMES THAT RECEIVE FEDERAL FUNDING MUST REPORT TO THE OFFICE OF LONG TERM CARE (OLTC) WITHIN TWO (2) HOURS IF THE ALLEGATION INVOLVES ABUSE OR SERIOUS BODILY INJURY. IF THE ALLEGATION DOES NOT INVOLVE ABUSE OR SERIOUS BODILY INJURY, THE REPORT MUST BE MADE TO OLTC WITHIN 24 HOURS. (F-609).**
- **ALL OTHER LONG TERM CARE FACILITIES MUST REPORT TO OLTC BY 11:00 AM THE NEXT BUSINESS DAY.**

WHAT IS MALTREATMENT?

- ABUSE
- SEXUAL ABUSE
- NEGLECT
- MISAPPROPRIATION OF RESIDENT PROPERTY
- EXPLOITATION OF RESIDENTS.

“ABUSE” MEANS...

- **With regard to any long-term care facility resident or any patient at the Arkansas State Hospital by a caregiver:**

ABUSE MEANS...

- **Any intentional unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person.**

ABUSE MEANS...

- Any intentional act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm.

TAKING PICTURES OF NURSING HOME RESIDENTS

A NURSING HOME RESIDENT(S) CANNOT BE PHOTOGRAPHED WITHOUT THE WRITTEN CONSENT OF THE RESIDENT OR THE RESIDENT'S LEGAL REPRESENTATIVE ON FILE IN THE NURSING HOME.

IF THE TAKING OF A PHOTOGRPH OF A RESIDENT EVOKES FEAR, ALARM, OR IS A DEMEANING ACT RESULTING IN ABUSE (MENTAL ABUSE) THEN IT'S A REPORTABLE EVENT TO THE ADMINISTRATOR, LOCAL LAW ENFORCEMENT AUTHORITY AND THE OFFICE OF LONG TERM CARE.

TAKING PICTURES OF NURSING HOME RESIDENTS, CONT'D...

**TAKING RESIDENT PICTURE
AND/OR POSTING TO SOCIAL
MEDIA**

**POSSIBLE FINDING PLACING
EMPLOYEE ON REGISTRY!**

TAKING PICTURES OF NURSING HOME RESIDENTS

“IT’S AGAINST THE LAW!!”

ARKANSAS CODE ANNOTATED
20-10-104

TAKING PICTURES OF NURSING HOME RESIDENTS, CONT'D...

“IT’S AGAINST THE LAW!!”

20-10-104: Photographing Prohibited

(a) “...no resident of a long term-care facility in this state may be photographed without obtaining prior written consent from the resident or, in cases of incapacity, from the resident’s guardian or legal representative.”

TAKING PICTURES OF NURSING HOME RESIDENTS, CONT'D...

“IT’S AGAINST THE LAW!!”

20-10-104: Photographing Prohibited

Failure to obtain written consent prior to photographing a resident in a long-term care facility shall be a CLASS B MISDEMEANOR.

ABUSE MEANS...

- Any willful infliction of injury, **unreasonable confinement, intimidation, or punishment** with resulting **physical harm, pain, or mental anguish**.

IMPORTANT NOTE

- “**Physical injury**” means the impairment of a physical condition or the infliction of substantial pain on a person.
- If the person is an **ENDANGERED** person or an **IMPAIRED** person, there shall be a presumption that any physical injury resulted in the infliction of substantial pain.

IMPORTANT NOTE, CONT.

- Long-term care facility resident means a person, regardless of age, living in a long-term care facility.
- A long-term care facility resident is presumed to be an impaired person.

EXPLOITATION MEANS THE...

- **Illegal or unauthorized use or management of an endangered person's or an impaired person's funds, assets, or property;**

EXPLOITATION MEANS THE...

- **Use of an endangered person's or an adult impaired person's power of attorney or guardianship for the profit or advantage of one's own self or another, or**

EXPLOITATION MEANS THE...

- Misappropriation of property of a long-term care facility resident, that is, the **deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a long-term care facility resident's belongings or money** without the long-term care facility resident's consent.

NEGLECT MEANS...

- **An act or omission by an endangered person or an impaired person, for example, self-neglect: or an act or omission by a caregiver responsible for the care and supervision of an endangered person or an impaired person constituting:**

NEGLIGENTLY FAILING...

- To provide necessary treatment, rehabilitation, care food, clothing, shelter, supervision, or medical services to an endangered person or an impaired person;

NEGLIGENTLY FAILING...

- To report health problems, or changes in health problems or changes in health condition of an endangered person or an impaired person to the appropriate medical personnel;

NEGLIGENTLY FAILING...

- ...
- ***“...Negligently failing to carry out a treatment plan developed or implemented by the facility...”***

NEGLIGENTLY FAILING...

- “...To provide goods or services to a long-term care facility resident necessary to avoid physical harm, mental anguish, or mental illness...”

NEGLIGENTLY MEANS...

- **...A person's failure to exercise the degree of care that a person of ordinary prudence would have exercised in the same circumstances."**

REMEMBER

PROTECT!

REPORT!

INVESTIGATE!