

## Long-Term Care Regulatory Provider Letter

<b>Number:</b> PL 19-17 (Replaces PL 17-18)
<b>Title:</b> Abuse, Neglect, Exploitation, Misappropriation of Resident Property and Other Incidents that a Nursing Facility (NF) Must Report to the Health and Human Services Commission (HHSC)
<b>Provider Types:</b> Nursing Facility (NF)
<b>Date Issued:</b> July 10, 2019

### 1.0 Subject and Purpose

This letter provides guidance for reporting incidents to HHSC and:

- updates F-tag numbers and incorporates new federal requirements, definitions and guidance related to reportable incidents.
- adds Attachment 1, describing reporting requirements and providing examples to help determine what constitutes a reportable incident.
- adds Attachment 2, a flow chart to assist in decisions about making reports.
- deletes guidance on resident-to-resident sexual activity and incorporates that guidance into the flow chart in Attachment 2.

### 2.0 Policy Details & Provider Responsibilities

#### 2.1 Incidents that a NF Must Report to HHSC and the Time Frames for Reporting

A NF must report to HHSC the following types of incidents, in accordance with applicable state and federal requirements:

- Abuse<sup>1</sup>
- Neglect<sup>2</sup>

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<sup>1</sup> Defined in 40 TAC §[19.101](#) and 42 Code of Federal Regulations (CFR) §483.5 ([F540](#)). Also see 42 CFR §483.12(c)(1) ([F609](#)).

<sup>2</sup> Defined in 40 TAC §19.101 and 42 CFR §483.5 (F540). Also see §483.12(c)(1) (F609).

- Exploitation<sup>3</sup>
- Death due to unusual circumstances
- A missing resident
- Misappropriation<sup>4</sup>
- Drug theft
- Suspicious injuries of unknown source<sup>5</sup>
- Fire<sup>6</sup>
- Emergency situations that pose a threat to resident health and safety<sup>7</sup>

The following table describes required reporting timeframes for each incident type:

Type of Incident	When to Report
<ul style="list-style-type: none"><li>• abuse (with or without serious bodily injury<sup>8</sup>); or</li><li>• neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property, <b>that result in serious bodily injury</b></li></ul>	Immediately, but not later than two hours after the incident occurs or is suspected

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<sup>3</sup> Defined in 40 TAC §19.101 and 42 CFR §483.5 (F540). Also see §483.12(c)(1) (F609).

<sup>4</sup> Defined in 40 TAC §19.101(86) and 42 CFR §483.5 (F540). Also see §483.12(c)(1) (F609).

<sup>5</sup> Defined in 42 CFR §483.12(c)(1) (F609) Definitions, found in the State Operations Manual, [Appendix PP](#).

<sup>6</sup> See 40 TAC §[19.1914](#)(f)(1)

<sup>7</sup> See 40 TAC §[19.1923](#)(b)(1)-(2)

<sup>8</sup> *Serious Bodily Injury* is defined in ([F608](#)) State Operations Manual Appendix PP

<p>An incident that does not result in serious bodily injury and involves:</p> <ul style="list-style-type: none"> <li>• neglect</li> <li>• exploitation</li> <li>• a missing resident</li> <li>• misappropriation</li> <li>• drug theft</li> <li>• fire</li> <li>• emergency situations that pose a threat to resident health and safety</li> <li>• a death under unusual circumstances</li> </ul>	<p>Immediately, but not later than 24 hours after the incident occurs or is suspected</p>
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## **2.2 Events That a NF Does Not Need to Report to HHSC Complaint and Incident Intake (CII)**

A NF is not required to report burglary of NF property, other than a burglary involving the theft of resident drugs, to CII.

## **3.0 Background/History**

State and federal law requires an owner or employee of a NF who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect or exploitation caused by another person to report the abuse, neglect or exploitation.<sup>9</sup> NFs must report all suspected or alleged incidents involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property.<sup>10</sup> A NF must report these incidents to the HHSC CII section.

## **4.0 Resources**

Attachment 1: Definitions and Examples of ANE and Other Reportable Incidents

Attachment 2: Flow Chart for Reporting ANE and Other Reportable Incidents

<sup>9</sup> See Texas Health and Safety Code §[260A.002](#); 40 TAC §[19.602\(a\)](#).

<sup>10</sup> See 42 CFR §483.12(c)(1) (F609).

For additional guidance, "[Provider incident self-reporting for all program/agency types](#)," is an HHSC-provided, web-based training for providers.

See [Provider Letter 18-20](#) for Incident Reporting Requirements.

See [S&C: 11-30-NH](#) for guidance on reporting a suspected crime to local law enforcement with jurisdiction.

## **5.0 Contact Information**

If you have any questions about this letter, please contact the Policy, Rules and Training Section by email at [PolicyRulesTraining@hhsc.state.tx.us](mailto:PolicyRulesTraining@hhsc.state.tx.us) or call (512) 438-3161.

**Attachment 1: Definitions and Examples of ANE and other Reportable Incidents**

Please note this document is intended as guidance only. The examples in this attachment are not all inclusive. Many other possible scenarios are reportable.

**Abuse:**

HHSC rules define abuse as:

"The negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Penal Code §[21.08](#) (indecent exposure) or Penal Code [Chapter 22](#) (assaultive offenses), sexual harassment, sexual coercion, or sexual assault."<sup>11</sup>

CMS defines abuse as:

"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."<sup>12</sup>

Note: Allegations or incidents of resident-to-resident behavior may or may not meet the definition of abuse depending on whether a resident acted willfully. The CFR states, "Willful, as used in the definition of 'abuse,' means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm."

Example of abuse:

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<sup>11</sup> See 40 TAC §19.101.

<sup>12</sup> Defined in 42 CFR §483.5 (F540).

A resident is found in the living room of the facility, bleeding from a wound to his head and with shallow breathing. In speaking with the resident, the nursing facility administrator (NFA) learned that he had an argument with another resident who pushed him causing him to fall backwards. The injured resident was transported to the hospital where it was determined the resident's injury was serious.

**Neglect:**

HHSC rules define neglect as, "the failure to provide goods or services, including medical services that are necessary to avoid physical or emotional harm, pain, or mental illness."<sup>13</sup>

CMS defines neglect as, "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."<sup>14</sup>

To determine whether neglect may have occurred, a NF must decide if an injury, emotional harm, pain or death of a resident was due to the NF's failure to provide goods or services to a resident.

Example of neglect:

A resident, per his care plan, requires a two-person transfer from his bed to a chair. Only one staff member assists the resident in transferring him from his bed to a chair and the resident falls, resulting in extensive bruising to his thigh that was determined to be a serious injury.

**Exploitation:**

HHSC rules define exploitation as, "the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with a resident using the resources of the resident for monetary or personal benefit, profit, or gain without the informed consent of the resident."<sup>15</sup>

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<sup>13</sup> See 40 TAC §19.101.

<sup>14</sup> See 42 CFR §483.5 (F540).

<sup>15</sup> See 40 TAC §19.101.

CMS defines exploitation as, “taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats, or coercion.”<sup>16</sup>

Example of exploitation:

A staff member coerces a resident into signing a document to add the staff member to the resident’s checking account.

### **Misappropriation:**

HHSC rules define misappropriation as, “the taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real, or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.”<sup>17</sup>

CMS defines misappropriation of resident property as, “the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident’s belongings or money without the resident’s consent.”<sup>18</sup>

Example of misappropriation: A staff member forges a resident’s signature and cashes a resident’s personal check without authorization.

### **Injuries of unknown source:**

Note: 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, the location of the injury, the number of injuries observed at one point in time or the incidence of injuries over time.<sup>19</sup>

If a resident cannot explain his or her injury and another person did not observe the incident that resulted in the injury, but the injury does not meet

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<sup>16</sup> See 42 CFR §483.5 (F540).

<sup>17</sup> See 40 TAC §19.101.

<sup>18</sup> See 42 CFR §483.5 (F540).

<sup>19</sup> See State Operations Manual, Appendix PP, (F609).

the criteria listed above, the NF is not required to report it. For example, a resident has a minor skinned knee, but she can't remember if and when she fell.

Example of an injury of unknown source that must be reported:

A resident has bruising on their left cheek bone area that was determined to be non-serious. No one witnessed the source of the injury. Although the injury was determined to be non-serious, the injury is suspicious because of the location of the injury.

**Drug theft:**

Example of drug theft: A resident is only given a quarter of their prescribed pain medication and a facility staff member takes the rest.

**Death due to unusual circumstances:**

Example of a death due to unusual circumstances:

A resident dies from exposure to extreme weather.

**Missing resident:**

Example of a missing resident:

A resident is not in his or her room when staff wake residents up in the morning, and the bed appears not to have been slept in. Staff search the facility and cannot find the resident.

**Emergency situations that pose a threat to resident health and safety:**

Example of an emergency situation that poses a threat to resident health and safety:

Failure of the heat or air-conditioning systems.



## Attachment 2: How to Report Abuse, Neglect, Exploitation (ANE), other Incidents, and Sexual Activity

