

Finger Lakes Health

exploitation or misappropriation shall immediately report the abuse or neglect to the Nursing Home Administrator.

All staff are prohibited from using any type of equipment (e.g. cameras, smart phones, or other electronic devices) to take, keep, and distribute photographs or recordings of residents that are demeaning or humiliating.

Any staff who witnesses, hears, or suspects that “abuse” has taken place should report the information to their supervisor *immediately* so that prompt interventions can occur to protect the residents(s). Staff who have reported abuse but feel that the situation is continuing, or that it has not been addressed, should contact the next person up the chain of command. The supervisor is responsible to notify the Administrator or designee immediately upon allegations of abuse. The Nursing Home Administrator or designee will report “abuse” to the NYSDOH, or other entity, per NYS and Federal requirements.

All staff persons who are found to be the cause of, or knowingly fail to report, an event that is determined to be abuse, are to be promptly disciplined, up to and including termination.

DEFINITIONS

Abuse and neglect exist in many forms and to varying degrees. The following definitions are used in the development of this policy:

- a. 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. Abuse 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:
- i. **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.
 - ii. **Sexual abuse** is non-consensual sexual contact of any type with a resident.
 - iii. **Physical abuse** includes hitting, slapping, pinching, and kicking. It also includes controlling behavior through corporal punishment.
 - iv. **Mental abuse** includes but is not limited to, humiliation, harassment, threats of punishment or deprivation.

NYS Commentary: New York has amended the definition of abuse to make the following clarifications in the New York NYS Department of Health (NYSDOH) Incident Reporting Manual:

- **Federal Abuse Definition:** The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.
- **NYS Abuse Definition:** Inappropriate physical contact with a resident of a residential health care facility, while the resident is under the supervision of the facility, which harms or is likely to harm the resident. Inappropriate physical contact includes, but is not limited to, striking, pinching, kicking, shoving, bumping and sexual molestation.

Finger Lakes Health

- b. *Involuntary seclusion*** is defined as the separation of a resident from other residents or his/her room or confinement to his/her 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 ***will not*** be considered involuntary seclusion and may be permitted if used for a limited period as a therapeutic intervention to reduce agitation until professional staff can develop a plan of care to meet the residents' needs.
- c. *Exploitation*** is defined as unfair treatment or use of a resident or the taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats, or coercion.
- d. *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.
- e. *Mistreatment*** means inappropriate treatment or exploitation of a resident.
- f. *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.
- g. *Injuries of Unknown Origin:*** An injury should be classified as an *injury of unknown origin* when both of the following conditions are met:
 - i. The source of the injury was not observed by any person or the source of the injury could not be explained by the resident;
 - ii. 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 vulnerable to trauma) or the number of injuries observed at one particular point in time or the incidence of injuries over time.
- h. *Immediately*** means as soon as possible, but ought not to exceed 24 hours after discovery of the incident. ***Immediately for the purposes of reporting a crime resulting in serious bodily injury means covered individual shall report immediately, but not more than two hours after forming the suspicion.*** (See Reporting Section)

OBJECTIVE

The objective of this policy is to comply with the *seven-step approach to abuse and neglect detection and prevention*. The abuse policy will be integrated into the facility Quality Assurance and Performance Improvement (QAPI) program. The seven components are screening, training, prevention, identification, investigation, protection, and reporting/response.

1. SCREENING COMPONENTS

It is the policy of LTC to screen employees and volunteers prior to working with residents. Screening components include verification of references, certification and verification of license, and criminal background check.

- A. *Employee Screening and Training:*** Before new employees are permitted to work with residents, references provided by the prospective employee will be verified as well as appropriate board registrations and certifications regarding the prospective employee's background. The facility will not employ or otherwise engage individuals who have been found guilty of abuse, neglect, mistreatment, exploitation, or misappropriation of property by a court of law.

(1) Nurse Aides: LTC will not employ or otherwise engage any individual who has a finding entered into the NYS nurse aide registry concerning abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property. In addition, the facility will report to the NYS

Finger Lakes Health

nurse aide registry any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide.

- (2) Licensed Staff: LTC will not employ or otherwise engage a licensed professional who has a disciplinary action in effect against his or her professional license by a NYS licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property; in addition, the facility will report to the NYS licensing authorities any knowledge it has of actions by a court of law against an employee which would indicate unfitness for service as a licensed professional.
- (3) A criminal background check will be conducted on all prospective employees as provided by the facility's policy on criminal background checks. A significant finding on the background check will result in denied employment consistent with the criminal background check policy in accordance with NYS and Federal Regulation.
- (4) All new employees/volunteers will be oriented to the Abuse, Neglect, Mistreatment and Misappropriation of Resident Property policy prior to direct or indirect resident contact and will be made aware of their responsibility to report any suspected maltreatment as defined and described in this policy.
- (5) All employees /volunteers are required to complete an annual in-service on the Abuse, Neglect, Mistreatment and Misappropriation of Resident Property policy.
- (6) LTC will provide information regarding the procedure for reporting suspected mistreatment upon request.

B. Volunteer Screening and Orientation:

- (1) Before new volunteers are permitted to work with residents, all references provided by the prospective volunteer must be checked. A volunteer's services will be declined if it is determined that his/her presence in the facility represents a risk to residents.
- (2) A NYS background check will be performed if required by NYS regulations.
- (3) Volunteers are provided education on the *Abuse, Neglect, Mistreatment and Misappropriation of Resident Property* policy and are required to complete in-service education yearly.

C. Screening Prospective Residents:

- (1) The facility will screen prospective residents to determine if necessary care and services can be provided. This will include an assessment of the individuals functional and mood/behavior status; medical acuity; and special needs.
- (2) The facility will consider current staffing patterns, staff qualifications, competency and knowledge, clinical resources, physical environment, and equipment in determining if it can safely and competently provide necessary care.

2. TRAINING COMPONENTS

- A. LTC will train employees, through orientation and on-going sessions, on issues related to abuse and prohibited practices.
- B. Staff and volunteers will receive education about resident mistreatment, neglect and abuse, including injuries of unknown source, exploitation and misappropriation of property upon first employment and annually after that, incorporating the following elements:
 - Prohibiting and preventing all forms of abuse
 - Identifying what constitutes abuse
 - Recognizing signs of abuse
 - Reporting abuse, neglect, mistreatment, exploitation and misappropriation of resident property

Finger Lakes Health

Understanding behavioral symptoms of residents that may increase the risk of abuse and neglect and how to respond

- C. LTC will provide ongoing oversight and supervision and will monitor staff for burnout, which could lead to the potential mistreatment of residents:

3. PREVENTION

LTC will prevent abuse by providing residents, families and staff information and education on how and to whom to report concerns, incidents, and grievances without the fear of reprisal or retribution. LTC will provide feedback regarding complaints and concerns. LTC Leadership will assess the needs of the residents in the facility to be able to identify concerns in order to prevent potential abuse.

- A. **Resident Assessment:** The population of the facility includes individuals who meet the criteria for skilled care under the Medicaid and Medicare guidelines including specialty programs provided by LTC. Every resident is unique and may be subject to an “abuse” based on a variety of circumstances, including the physical plant, environment, the resident’s health, behavior or cognitive level.
- (1) Before admission, prospective residents will be screened to help determine suitable placement within the facility;
 - (2) Upon admission, and periodically after that, each resident will have a safety or vulnerability assessment completed which identifies potential vulnerabilities such as cognitive, physical, psychosocial, environment and communication concerns;
 - (3) The interdisciplinary team will identify the vulnerabilities and interventions on the resident care plan.
- B. **Orientation (Residents, Representatives and Staff):** Individuals will be provided orientation to the *Abuse, Neglect, Mistreatment and Misappropriation of Resident Property* policy. Current residents/families/guardians will receive information with regards to the *Abuse, Neglect, Mistreatment and Misappropriation of Resident Property* policy upon admission, via meetings, newsletters, and other forms of communication.
- C. **Physical Plant / Environment:** The LTC Safety Committee will review the physical plant and identified areas of concern and implement responses and corrections to the facility’s physical plant/environment to assist in the prevention of resident mistreatment. LTC will conduct a review of the physical plant and surrounding environment for areas of potential vulnerability. This review will include areas of concern that can potentially affect resident safety. A plan will be developed to address these areas and will be reported in the QAPI process.
- D. **Population:** LTC population presents the following factors which could result in mistreatment of residents (may include, but not limited to):
- (1) The assessment, planning of care and services, and monitoring of residents with needs and behaviors which might lead to conflict or neglect, such as residents with a history of cognitive deficits, sensory deficits, aggressive behaviors, residents who have behaviors such as entering other residents’ rooms, wandering behaviors, residents with self-injurious behaviors, socially inappropriate behaviors, verbal outbursts, residents with communication disorders, those who are nonverbal and those that require heavy care and/or are totally dependent on staff.
 - (2) LTC will ensure a comprehensive dementia management program to prevent resident abuse.
- E. **Predatory Offender Provisions:** When addressing a person’s risk of abusing other vulnerable adults, or if a predatory offender is seeking admission or has been admitted to the facility:
- (1) A law enforcement agency, with knowledge of the predatory offender, must notify the facility.

Finger Lakes Health

- (2) The offender is required to self-identify. Failure to do so is a felony. If a predatory offender is admitted and does not self-identify, the facility can discharge the offender, and the offender has no right to appeal the discharge.
 - (3) The facility may notify other residents that a predatory offender has been admitted. If it is determined that notice to a particular resident not be appropriate because of the resident's medical, emotional, or mental status, the resident's next of kin or emergency contact (resident representative) may be notified.
- F. **Posting:** A posting in an area accessible to residents, employees and visitors is the name, title, location and telephone number of the individual in the nursing home that is responsible for receiving complaints and ensuring a complaint investigation is completed.
- G. **Supervision of Staff:** Staff will be supervised to identify inappropriate behaviors while caring for or in attendance with residents.

4. IDENTIFICATION

It is the policy of LTC that all staff monitors residents and will know how to identify potential signs and symptoms of "abuse". Occurrences, patterns and trends that may constitute "abuse" will be investigated. Possible indicators of abuse include:

- Suspicious or unexplained bruising
- Unnecessary fear
- Abnormal discharge from body orifices
- Inconsistent details by staff regarding how incidents occurred
- Unusual behavior toward other staff, residents, family members, or visitors

5. INVESTIGATION

All reports of "abuse" in LTC (mistreatment, neglect, or abuse, including injuries of unknown source, exploitation and misappropriation of property) are promptly and thoroughly investigated. The investigation is the process used to try to determine what happened. The designated facility personnel will begin the investigation immediately. A root cause investigation and analysis will be completed. The information gathered is given to administration.

- A. When an *incident or suspected incident of "abuse"* is reported, the Administrator or designee will investigate the incident with the assistance of appropriate personnel. The investigation will include all components identified in the NYS DOH Reporting Manual, such as:
- Who was involved
 - Residents' Statements (For a non-verbal resident, cognitively impaired residents or residents who refuse to be interviewed, attempt to interview resident first. If unable, observe resident, complete an evaluation of resident behavior, effect and response to interaction, and document findings.)
 - Resident's roommate statements (if applicable)
 - Involved staff and witness statements of events
 - A description of the resident's behavior and environment at the time of the incident
 - Injuries present including a resident assessment
 - Observation of resident and staff behaviors during the investigation
 - Environmental considerations

Note: * All staff must cooperate during the investigation to assure the resident is fully protected.

Finger Lakes Health

- B.** Investigation of *injuries of unknown origin or suspicious injuries* must be immediately investigated to rule out abuse. Injuries include, but are not limited to, bruising of the inner thigh, chest, face, and breast, bruises of an unusual size, multiple unexplained bruises, and/or bruising in an area not typically vulnerable to trauma.
- C.** An *investigation regarding misappropriation* must include a complete active search for missing item(s) including documentation of investigation.
- D.** Additional Investigation Protocols:
 - While the investigation is being conducted, accused individuals not employed by LTC will be denied unsupervised access to the resident. Visits may only be made in designated areas, supervised by staff, family members, or significant other after approval by the Administrator.
 - Nursing or Social Work staff will notify the resident or his/her resident representative of the incident.
 - The results of the investigation will be recorded and attached to the report.
 - The Administrator or designee will complete a copy of the investigation materials.
 - The Administrator or designee will inform the resident and/or his/her representative of the findings of the investigation and corrective action taken when appropriate.
 - Inquiries made concerning “abuse” reporting and investigation must be referred to the Administrator or designees.
 - All reports of suspected crime and/or alleged sexual abuse must be immediately reported to the Administrator or designee, who will contact local law enforcement to be investigated. Facility staff will fully cooperate with the local law enforcement designee.

6. PROTECTION

It is the policy of LTC that the resident(s) will be protected from the alleged offender(s). Immediately upon receiving a report of alleged “abuse”, the Administrator and/or designee will coordinate delivery of appropriate medical and/or psychological care and attention. Ensuring safety and well-being for the vulnerable individual are of utmost priority. Safety, security and support of the resident, their roommate if applicable, and other residents with the potential to be affected will be provided. This should include (as appropriate):

- A.** Procedures to provide the resident with a safe, protected environment during the investigation:
 - (1) The alleged perpetrator will immediately be removed and resident protected. Employees accused of alleged “abuse” will be immediately removed from the facility and will remain removed pending the results of a thorough investigation. (Decision of the extent of immediate disciplinary action will be made by the Administrator or designee).
 - (2) If a family member or resident representative is possibly contributing to the potential “abuse” and the resident could be at risk, evaluate the situation and identify options to put into place for resident protection.
 - (3) If the alleged perpetrator is a LTC resident, the staff member will immediately remove the perpetrator from the situation and another staff member will stay with the alleged perpetrator and wait for further instruction from administration, if possible. If the situation is an emergent danger to the other residents staff will notified the appropriate Clinical Lead or designee and dial 911 for immediate assistance
 - (4) Examine, assess and interview the resident and other residents potentially affected immediately to determine any injury and identify any immediate clinical interventions necessary. Notify resident physician.

Finger Lakes Health

- (5) Social Services or designee should keep in frequent contact with the resident and/or the resident representative.
- (6) If the resident could be at risk in the same environment, evaluate the situation and consider options including a room change or roommate change
- (7) Notification of law enforcement and/or NYS Agency, Crisis Response, Poison Control, etc. as indicated
- (8) A medical, evidentiary, or sexual assault exam should be completed as soon as possible, as appropriate.

B. Other measures as deemed appropriate and by existing safety policies and procedures:

- (1) If the injury is unexplainable, (i.e., fracture), and if the findings of abuse are substantiated (physical, verbal, sexual, financial exploitation), and if there is caregiver neglect (i.e., care plan not followed resulting in resident injury), or if a therapeutic error resulted in injury a report must be made to the NYS Department of Health within 24 hours of the initial findings. Incidents resulting in serious bodily injury must be reported within 2 hours. (NOTE: Call to the Administrator and designee is made immediately.)
- (2) Within five business days of the original report, Administrator, Director of Nursing, and Director of Social Services will meet to make the final decision regarding the outcome of the investigation.
- (3) If the investigation shows mistreatment did take place, the employee will be disciplined, up to and including termination.
- (4) If a licensed staff member is found at fault – must be reported to the applicable licensing board;
- (5) Complaints about a nursing assistant must be reported to the NYSDOH. An investigation must be completed before a finding can be substantiated and entered into the Registry.
- (6) If the Department of Health determines an aide mistreated a resident or misused a resident's property, the aide will also be notified by the Department of their intention to put this information on the Registry.
- (7) If the investigation shows mistreatment was unsubstantiated, the employee' individual situation will be reviewed to determine, reinstatement, potential for pay, and further training education needs in coordination with the Administrator, DON and Human Resources.
- (8) The resident and/or family will be notified of the completion of the investigation and whether the incident was substantiated. Information will be provided according to confidentiality guidelines.
- (9) Education will be provided as needed to all parties involved.
- (10) Information on advocacy group and other resources will be provided by Social Services or designee.
- (11) Community resources will be utilized if the psychosocial needs warrant counseling skills above that which is available in-house.

7. REPORTING AND RESPONSE

It is the policy of LTC that "abuse" allegations (abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property) are reported per Federal and NYS Law. LTC will ensure that all alleged violations involved abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property, are reported immediately, *but not later than two 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

Finger Lakes Health

officials (including to NYSDOH and adult protective services) in accordance with NYS law through established procedures. In addition, local law enforcement will be notified of any reasonable suspicion of a crime against a resident in the facility.

A. Definitions (in accordance to the Elder Justice Act):

- (1) A “**covered individual**” is defined as anyone who is an owner, operator, employee, manager, agent or contractor of the facility.
- (2) The term “**serious bodily injury**” is defined as 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; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation.
- (3) In the case of “**criminal sexual abuse**” which is defined in Section 2011(19)(B) of the Act (as added by section 6703(a)(1)(C) of the Affordable Care Act), serious bodily injury/harm shall be considered to have occurred if the conduct causing the injury is conduct described in Section 2231 (relating to aggravated sexual abuse) or Section 2242 (relating to sexual abuse) of Title 18, United NYSs Code, or any similar offense under NYS law.
- (4) **Serious Bodily Injury Reporting – Two Hour Limit:** If the events that cause the reasonable suspicion result in serious bodily injury to a resident, the covered individual shall *report the suspicion immediately, but not later than two hours after forming the suspicion*;
- (5) **All Other Reporting – Within 24 Hours:** If the events that cause the reasonable suspicion do not result in serious bodily injury to a resident, the covered individual shall report the suspicion not later than 24 hours after forming the suspicion.

B. Internal Reporting:

- (1) Employees *must always report any “abuse” or suspicion of “abuse” immediately* to the Administrator or designee. NOTE: Failure to report can make employee just as responsible for the abuse in accordance with NYS law.
- (2) The Administrator will involve key leadership personnel as necessary to assist with reporting, investigating and follow-up.

C. External Reporting:

- (1) Each covered individual shall report to the NYSDOH and one or more law enforcement entities for the political subdivision in which the facility is located, any reasonable suspicion of a crime against any individual who is a resident of or is receiving care from, the facility, and each covered individual shall report immediately, but not more than two hours after forming the events that cause the suspicion do not result in serious bodily injury or not later than 24 hours if the events that cause the suspicion do not result in serious bodily injury.
- (2) Initial Reporting of Allegations: If an incident or allegation is considered reportable, the Administrator or designee will make an initial (immediate or within 24 hours) report to the NYSDOH via the Health Commerce System (HCS). *A follow up investigation will be submitted via the HCS within five working days.* When making a report, the following information should be included:
 - a. Name, age, diagnosis and mental status of the resident allegedly abused or neglected
 - b. Type of “abuse” reported (physical, sexual, theft, neglect, verbal or mental abuse)

Finger Lakes Health

- c. Date, time, location and circumstances of the alleged incident
- d. Any obvious injuries or complaints of injury
- e. Report/Notification to resident's attended physician
- f. Steps the facility has taken to protect the resident
- g. Names of alleged staff involved
- h. The facility must include the following investigative components:
 - o Have evidence that all alleged violations are thoroughly investigated
 - o Prevent further potential abuse, neglect, exploitation or mistreatment while the investigation is in progress

(3) Report the results of all investigations to the administrator or his or her designated representative and to other officials in accordance with NYS law, *including immediate or 24 hour reporting* to the NYS Survey Agency, law enforcement and the follow up report to the NYS Agency, *within five working days of the incident*, and if the alleged violation is verified appropriate corrective action must be taken.

- D. Law Enforcement: All reports of suspected crime and/or alleged sexual abuse must be immediately reported to local law enforcement to be investigated. Facility staff will fully cooperate with the local law enforcement designee.
- E. The Administrator or designee will inform the resident or resident's representative of the report of an incident and that an investigation is being conducted.
- F. Covered individuals are obligated to comply with reporting requirements. If uncertain whether or not to report an incident, contact your Supervisor (follow the chain of command). Employee rights will be posted in a conspicuous location.
- G. The facility will protect reporting individuals from potential retaliation.
- H. For the protection of all individuals involved, copies of any internal reports, interviews and witness statements during the course of the investigation shall be released only with the permission of the Administrator or the facility attorney.
- I. The Administrator or designee, will inform the resident and/or responsible party the results of the investigation.
- J. Inquiries concerning the "abuse" reporting and investigation should be referred to the Administrator.

REFERENCES

Medicare and Medicaid Programs; Reform of Requirements for Long Term Care Facilities (10/4/16)

<https://www.federalregister.gov/documents/2016/10/04/2016-23503/medicare-and-medicaid-programs-reform-of-requirements-for-long-term-care-facilities>

CMS Memo Ref: S&C 11-30-NH: Reporting Reasonable Suspicion of a Crime in a Long Term Care Facility (LTC): Section 1150B of the Social Security Act, Revised 2/20/12 (Elder Justice Act Provisions):

https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/downloads/scletter11_30.pdf

[NYS DOH Incident Reporting Manual](#)

Finger Lakes Health

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| Approved by: | (a) Vice, President, LTC | (d) Medical Director, GLCN/S, HLC, The Homestead |
| | (b) Administrator, Huntington Living Center | (e) |
| | (c) Administrator, The Homestead | (f) Director of Nursing, GLCN/S Director of Nursing, HLC Director of Nursing, The Homestead |
| Author: | LTC Leadership | Date: |
| Replaces Policy | Abuse Prohibition | |
| Prev. Date Reviewed | 5/98, 8/99, 4/00, 8/01, 12/01, 3/09, 2/12, 9/16,6/23 | |
| Prev. Date Revised | 3/09, 2/12, 9/16 | |
| Date Reviewed/Revised | June 1, 2023 | By: LTC QAPI |