

MICHIGAN OPERATIONS MANUAL

Bureau of Health Systems

CHAPTER 4: LONG TERM CARE COMPLAINT AND FACILITY REPORTED INCIDENT SURVEYS (ABBREVIATED)

This chapter contains the general investigative process used by the Bureau of Health Systems (BHS) for the investigation of complaints and facility reported incidents. It also contains processes for specific issues that are frequently the subject of complaints and facility reported incidents.

BHS utilizes the "abbreviated standard survey" protocol mandated by the federal Centers for Medicare and Medicaid Services (CMS) for all complaint and facility reported incident investigations in Medicare or Medicaid certified facilities found in [Chapter 5 – Complaint Procedures](#) of the State Operations Manual. By policy, BHS utilizes the same protocol for investigations of facilities that are not Medicare or Medicaid certified.

4.1. RESPONSIBILITIES

Investigation responsibility is assigned to the Division of Operations, Complaint Investigation Unit (CIU), or the Division of Nursing Home Monitoring (NHM).

These two respective organizational units are responsible for:

- Conducting complaint or facility reported incident investigations.
- Forwarding complaint investigation reports to the facility and the complainant when an investigation is completed.
- Forwarding the results of facility reported incident investigations to nursing homes.
- Referring findings involving licensed or certified health care professionals, including certified nurse aides, to the Michigan Department of Community Health, Bureau of Health Professions (BHP) for possible licensure or certification action.
- Recommending appropriate enforcement activity to the Enforcement Unit of the Division of Operations, and for initiating civil penalty requests for resident rights' violations.

A. Complaint Investigation Unit

The Complaint Investigation Unit, Division of Operations, Bureau of Health Systems, Michigan Department of Community Health, is responsible for the investigation of the complaints about nursing homes and facility reported incidents reported by nursing homes except the Upper Peninsula and Lower Peninsula for counties: Manistee, Wexford, Missaukee, Roscommon, Ogemaw and Iosco.

Workload shall be scheduled according to the following priority:

1. **Immediate Jeopardy (IJ)**
Complaint and facility reported incident investigation alleging Immediate Jeopardy (IJ) requires the State Agency to initiate an on-site survey within 2 working days of receipt.
2. **Non-Immediate Jeopardy High and Medium**
Complaint and facility reported incident investigation alleging actual harm requires the State Agency to initiate an on-site survey within 10 working days of prioritization of Non-Immediate Jeopardy High and an on-site survey for Non-Immediate Jeopardy Medium to be scheduled.
3. **Administrative Hearings**
Attendance at administrative hearings.
4. **Revisits**
Revisits to verify compliance.
5. **Allegations Other Than IJ or Harm Non-Immediate Jeopardy Low**
Complaint and facility reported incident investigation of all allegations other than Immediate Jeopardy or Harm requires the State Agency to investigate during the next on-site survey.

B. Division of Nursing Home Monitoring

1. **Metro East Team, Metro West Team, Southwest Team, Mid-Mich Team**
These licensing teams in the Division of Nursing Home Monitoring, Bureau of Health Systems, Michigan Department of Community Health, are responsible for investigation/review of Non-Immediate Jeopardy Low facility reported incidents.
2. **UpNorth Team**
The UpNorth Team within the Division of Nursing Home Monitoring, Bureau of Health Systems, Michigan Department of Community Health, investigates all complaints against nursing homes and facility reported incidents within the Upper Peninsula and all Lower Peninsula counties north of and including Manistee, Wexford, Missaukee, Roscommon, Ogemaw and Iosco.

C. Other Agencies

The Complaint Investigation Unit (CIU) within the Division of Operations refers the complaint (or part thereof) to the appropriate agency/division

and informs the complainant of the referral if a complaint, in part or whole, appears to be within the jurisdiction of another agency of government.

1. Department of Attorney General

The Department of Attorney General (AG), Health Care Fraud Division, Complaint and Allegation Division, is informed of all alleged resident abuse, neglect, or misappropriation violations in addition to the Bureau's investigation per September 13, 2005 Memorandum of Understanding.

2. Bureau of Health Professions

The Complaints and Allegation Division, Bureau of Health Professions, Michigan Department of Community Health, receives notice of any complaint alleging misconduct by a health care professional @ 517-373-9196 per August 16, 2004 Memorandum of Understanding.

3. Department of Human Services

The Department of Human Services (DHS) local office staff is responsible for the investigation of abuse involving adult residents of MDCH licensed facilities if the alleged violation took place outside the facility in the community; e.g., misappropriation of a nursing home resident's fiscal/property resource by a guardian or relative, abuse of a nursing home resident by family or other persons while the resident is on a home visit, etc. BHS makes referrals for services to the local office of the Department of Human Services in the county where the licensed health care facility is located, whenever their services are needed. DHS handles complaints for Homes for the Aged @ 1-866-856-0126 and Adult Foster Care homes @ 517-373-8580.

4. Law Enforcement Agencies

BHS also complies with requests from the Department of Attorney General or other law enforcement agencies to coordinate Public Health Code investigations with criminal law enforcement activities.

4.2. REVIEW OF COMPLAINTS AND FACILITY REPORTED INCIDENTS

Following receipt of a complaint or facility reported incident, the Complaint Investigation Unit determines, based on the allegations presented, whether a state licensing law or rule, or a federal certification regulation may have been violated.

A. Prioritization of Long Term Care Facilities

The Complaint Investigation Unit assigns priorities to complaints and facility reported incidents according to the following guidelines:

1. Immediate Jeopardy (IJ)

Complaints or facility reported incidents that include allegations that non-compliance has caused or is likely to cause serious injury, serious harm impairment or death to a resident; complaints or facility reported incidents where a determination has been made that Immediate Jeopardy may be present and on-going. Examples include, but are not limited to:

- An injury or incident involving a death or potential criminal activity under investigation by a state or local law enforcement agency.
- An unexplained or unexpected death with circumstances indicating that there was abuse or neglect.
- Abuse with injuries.
- Elopement of a resident from the facility.
- Injuries of unknown origin that result in interference with physiologic functions that are an immediate threat to life or have a strong potential to become an immediate threat to life.
- Resident-to-resident physical altercations by a resident.
- Serious injury that is life-threatening to the resident.
- Resident-to-resident sexual assault, harassment or coercion.
- Sexual assault.
- Neglect that results or could result in death, serious injury or serious harm.
- Environmental hazards i.e., leaking roof, no heat, excessive temperatures causing serious harm/ or potential of serious harm to residents.

Immediate Jeopardy complaint and facility reported incident investigations begin within two (state) working days of receipt of a complaint through an on-site investigation. Every reasonable effort will be made to initiate an on-site investigation within 24 hours of receipt of a complaint or notice of an incident that involves elopement where the resident's whereabouts is currently unknown, sexual abuse or other situation where Immediate Jeopardy is presumed current and ongoing.

Immediate Jeopardy incorporates CMS Transmittal 18, March 17, 2006 and Appendix Q – Guidelines for Determining Immediate Jeopardy (Rev 1, 05-21-04).

2. Non Immediate-Jeopardy High

Complaints or facility reported incidents that allege or indicate actual harm occurred, or may occur; alleged non-compliance that may have caused harm that negatively impacts the individual's

mental, physical and/or psychosocial status and is of such consequence that a rapid response is indicated. Examples include, but are not limited to:

- A resident is intimidated or threatened.
- A resident is physically abused by spitting, slapping, sticking with a sharp object, pushing, pinching or kicking.
- Falls resulting in a fracture.
- Inappropriate use of restraints resulting in injury.
- Inadequate staffing that negatively impacts on resident health and safety.
- Failure to provide appropriate care or medical services, e.g., failure to respond to a significant change in a resident's condition.
- Refusal to readmit a resident.
- Elopement of a resident (subsequently found) resulting in harm, but not serious injury.
- Neglect that results in harm.

Non-Immediate Jeopardy High complaint and facility reported incident investigations begin within 10 (state) working days of receipt.

Non-Immediate Jeopardy High incorporates CMS Transmittal 18, March 17, 2006.

3. Non-Immediate Jeopardy Medium

Complaints or facility reported incidents include alleged non-compliance that caused or may cause harm that is of limited consequence and does not significantly impair the individual's mental, physical and/or psychosocial status to function.

The reviewer may consider the credibility of the allegations, and the timeliness of the alleged incident to the date of filing and whether an intervening survey addressed the allegation.

Non-Immediate Jeopardy Medium complaint investigations begin within 15 days of receipt of a written complaint. The initial investigation activity may be an on-site visit, telephone contact, electronic transfer of information or written request for complaint information.

3. Non-Immediate Jeopardy Low

Facility reported intakes that allege noncompliance with one or more requirements which may have caused physical, mental or psychosocial discomfort that does not constitute injury or damage.

An anonymous complaint or facility reported incident will be reviewed at the next on-site survey.

Non-Immediate Jeopardy Low incorporates CMS Transmittal 18, March 17, 2006 Public Health Code MCL333.21779a (5).

4. Non-Immediate Jeopardy High and Medium Facility Reported incidents and anonymous intakes that have not been investigated are referred to the Licensing Teams the week prior to a scheduled standard survey. These intakes are included as issues addressed during a standard survey.

B. Prioritization of Non Long Term Care Facility Investigations

The non-long term care priorities are:

- Investigation within two working days where a determination is made that Immediate Jeopardy may be present and on-going.
- Investigation within five working days after the receipt of authorization to investigate an EMTALA complaint.
- Investigation within five working days of the receipt of authorization to investigate a restraint/seclusion death.
- Investigation within 10 working days of the receipt of authorization to investigate a complaint alleging harm that impairs mental, physical and/or psychosocial status.
- Investigation within 45 working days of the receipt of authorization to investigate non-EMTALA and non-Immediate Jeopardy complaints.

The urgency of action and priority assigned to complaints is made in light of the following for the Division of Licensing & Certification (L&C):

- A progressively worsening situation.
- A possible life-threatening situation.
- An increasing number of individuals involved or at risk.
- An administrative need to expedite the investigation; e.g., a pending administrative hearing or the reoccurrence of a known problem in a facility or agency.
- An alleged failure to admit a patient.
- A death related to restraints or seclusion.

Complaints received against accredited acute care hospitals, including all Medicare hospital dumping allegations, are referred by the CIU to the Center for Medicare and Medicaid Services (CMS) Regional Office for its evaluation and direction relative to the specific areas of the hospital's operation to be investigated. This process is in accordance with the CMS State Operations Manual.

Reference: S&C 04-09, November 13, 2003

4.3. SCHEDULING

All investigations are unannounced and conducted on a date chosen by the Bureau without advance notice to the facility or the complainant as required by State Operations Manual (SOM) 5300.2 and Public Health Code – MCL 333.20155 (1). Investigations may be conducted at other than day shift hours on weekdays or at any time on weekends in keeping with the types of allegations and their severity.

The substance of a state-law complaint shall be provided to the licensee no earlier than at the commencement of the on-site inspection of the nursing home that takes place pursuant to the complaint, MCL333.21799a(3).

4.4. GENERAL INVESTIGATIVE PROCESS

Investigations should be conducted at a time relevant to the complaint. If complaint issues occurred during a specific day or time. The surveyor must consider the following when collecting and analyzing the evidence:

A. Initial Evidence

Initial evidence supplied by the complainant or the facility.

B. Additional Information

The facility and complainant should be given an opportunity to provide additional information for the purpose of clarification, if needed.

C. Credibility

Bureau surveyors judge as to the credibility of the resident, witnesses and other individuals who are interviewed in making determinations. The report must contain the basis for the conclusion reached by the surveyor.

D. Resident-To-Resident Abuse Incidents

Resident-to-resident abuse incidents must be investigated to determine whether or not resident-to-resident abuse did occur.

E. Written Statements

Surveyors may obtain written statements signed by individual eyewitnesses and/or a complainant/resident as to the events that occurred.

4.5 ABBREVIATED STANDARD SURVEY PROTOCOL

(CMS TRANSMITTAL 18 – MARCH 17, 2006)

The Bureau utilizes the following "abbreviated standard survey" protocol mandated by the federal Centers for Medicare and Medicaid Services for all complaint and facility reported incident investigations in Medicare or Medicaid certified facilities. By policy, the Bureau utilizes the same protocol for investigations of facilities that are not Medicare or Medicaid certified based on Public Health Code MCL 333.21779(1) and Nursing Home and Nursing Care Facilities State Rules.

This survey focuses on particular tasks that relate to complaints/facility reported incidents received by the State Agency. It does not cover all the aspects covered in the standard survey, but concentrates on a particular area of concern(s). The surveyor (or survey team) may investigate any area of concern and make a compliance decision regarding any regulatory requirement, whether or not it is related to the original purpose of the survey complaint (SOM7203E)

A. Complaint Investigations

The survey Agency must review all complaint allegations and conduct a standard or an abbreviated standard survey to investigate complaints of violations of requirements if its review of the allegation concludes that:

1. A deficiency in one or more of the requirements may have occurred;
2. Only a survey can determine whether a deficiency or deficiencies exist; and
3. The complaint is general or specific and may involve staff, residents, volunteers, the physical environment or administration.

Complaint investigations follow, as appropriate, the pertinent survey tasks, and information gathered is recorded on the appropriate survey worksheets. However, if the documentation required is minimal, use the *Surveyor Notes Worksheet* (CMS-807) to record information during the complaint investigation. Record deficiencies on the CMS-2567 or the *Notice of Isolated Deficiencies*, or both as applicable.

The timing, scope, duration and conduct of a complaint investigation are determined by the State survey agency, except when the complaint involves an allegation of Immediate Jeopardy to resident health and safety, which must be investigated within two (state) working days of receipt; allegations of harm within 10 (state) working days. (See § 7700.) The team should conduct the necessary investigation to resolve the complaint. If the complaint concerns conditions on a certain day (e.g., on weekends), or on a certain shift (e.g.; 11 p.m. - 7 a.m.), the survey agency should make an attempt to investigate it at the time relevant to the complaint. In most cases, the following tasks, or portion of tasks, should be performed in a complaint investigation.

B. Task 1 – Offsite Survey Preparation

Obtain as much information as you can about the complaint before you begin to plan your investigation, including:

1. Name of complainant;
2. Nature of the complaint – describe exactly the facts of the complaint situation;

3. Information about when the complaint situation occurred, whether it was an isolated event or an ongoing situation – date, time, time between different events;
4. Place where the incident happened – care unit, resident room;
5. How it happened – sequence of events;
6. Whether a resident or a family member of a resident was involved;
7. Witnesses to complaint situation – anyone who saw incident happen;
8. Staff or other residents involved; and
9. Other persons involved – volunteers or visitors.

Review any information about the facility that you think would be helpful to know in planning your investigation such as the 3 Quality Indicator Reports, Oscar Reports 3 and 4, and State Agency files. Contact the ombudsman to discuss the nature of the complaint and whether there have been any similar complaints reported to and substantiated by the ombudsman.

Review the related regulatory requirements or standards that pertain to the complaint. For example, if it is a complaint about abuse, review the requirements at 42 CFR 483.13.

Plan the investigation. Before you go to the facility, plan what information you need to obtain during the complaint investigation based on the information you have already acquired. Consider practical methods to obtain that information.

C. Task 2 – Entrance Conference/Onsite Preparatory Activities

On-site complaint investigations should always be unannounced. Upon entrance, advise the facility's administrator of the general purpose of the visit. It is important to let the facility know why you are there, but protect the confidentiality of those involved in the complaint. Do not release information that will cause you to lose opportunities for pertinent observations, interviews, and record reviews required for a thorough investigation. For example, if the complaint is that food that is intended to be served hot is always served cold, you would not tell the facility the exact complaint. Rather, you may say it is a situation related to dietary requirements.

D. Task 5 – Information Gathering

The order and manner in which you gather information will depend on the type of complaint you are investigating. Conduct comprehensive, focused, and/or closed record reviews as appropriate for the type of complaint. Start with an initial sample of 3-5 residents. The sample may be expanded as necessary. It is very important to remember that the determination of whether the complaint happened is not enough. The surveyor needs to determine noncompliant facility practices related to the complaint situation and which, if any, requirements are not met by the facility.

Do your information gathering in order of priorities; i.e., obtain the most critical information first. Based on this critical information about the incident, determine what other information to obtain in the investigation.

Observations, record review and interviews can be done in any order necessary. As you obtain information, use what you have learned to determine what needs to be clarified or verified as you continue the investigation.

Observe the physical environment, situations, procedures, patterns of care, delivery of services to residents, and interactions related to the complaint. Also, if necessary, observe other residents with the same care need. After determining what occurred, i.e., what happened to the resident and the outcome, investigate what facility practice(s) or procedures affected the occurrence of the incident.

EXAMPLE: It was verified through your investigation that a resident developed a pressure sore which progressed to a Stage IV, became infected and resulted in the resident requiring hospitalization for aggressive antibiotic therapy. Observe as appropriate: dressing changes, especially to any other residents with Stage III or IV pressure sores; infection control techniques such as hand washing, linen handling, and care of residents with infections; care given to prevent development of pressure sores (such as turning and repositioning, use of specialized bedding when appropriate, treatments done when ordered, keeping residents dry, and provision of adequate nutritional support for wound healing).

Record review: If a specific resident is involved, focus on the condition of the resident before and after the incident. If there are care issues, determine whether the appropriate assessments, care planning, implementation of care, and evaluations of the outcome of care have been done as specified by the regulatory requirements.

EXAMPLE: For a complaint of verbal and physical abuse, review the record to determine the resident's mood and demeanor before and after the alleged abuse. Determine if there are any other reasons for the change in the resident's demeanor and behavior. Determine whether an assessment has been done to determine the reason for the change in mood and behavior. Does the record document any unexplained bruises and/or complaints of pain, and whether they occurred in relation to the alleged incident?

Interviews: Interview the person who made the complaint. If the complainant is not at the facility at the time of the survey, he or she should be interviewed by telephone, if possible. Also, interview the person the complaint is about. Then, interview any other witnesses or staff involved. In order to maintain the confidentiality of your witnesses, change the order of interviews if necessary. You may not want to interview the person who made the complaint first, as that may identify the person to the facility as the complainant. Interview residents with similar care needs at their convenience.

As interviews proceed, prepare outlines you need for other identified witnesses and revise outlines as new information is obtained.

E. Task 6 – Information Analysis

Review all information collected. If there are inconsistencies, do additional data collection as needed, to resolve the inconsistencies. Determine if there is any other information still needed.

Determine whether:

1. The complaint is substantiated;
2. The facility failed to meet any of the regulatory requirements; and
3. The facility practice or procedure that contributed to the complaint has been changed to achieve and/or maintain compliance.

F. Task 7 – Exit Conference

Advise the administrator of the complaint investigation findings and any present deficiencies. Do not inform him/her of confidential information unless the individual who provided you with the information specifically authorizes you to do so.

If a deficiency is not present now, but was present and has been corrected (past noncompliance), notify the facility orally and in writing that the complaint was substantiated because deficiencies existed at the time that the complaint situation occurred. Record past non-compliance on a CMS-2567 if non-compliance was Immediate Jeopardy. (See SOM 7510 for specific information when a Civil Money Penalty (CMP) is imposed for Immediate Jeopardy that is past non-compliance.)

If the complaint is unsubstantiated, that is the surveyor(s) cannot determine that it occurred and there is no indication of deficient practice, notify the facility of this decision.

Follow the usual procedure in notifying the resident and/or person who made the complaint of your findings.

G. The Extended And Partial/Extended Survey

1. Extended and/or Partial Extended Survey

Conduct an extended survey subsequent to a standard survey and conduct a partial extended survey subsequent to an abbreviated survey when you have determined that there is a substandard quality of care in:

- 42 CFR 483.13, Resident behavior and facility practices;
- 42 CFR 483.15, Quality of life; and/or
- 42 CFR 483.25, Quality of care.

When conducting the extended/partial extended survey, at a minimum, fully review and verify compliance with each tag number within 42 CFR 483.30, Nursing Services; 42 CFR 483.40, Physician Services and 42 CFR 483.75, Administration. Focus on the facility's policies and procedures that may have produced the substandard quality of care. For an extended survey and partial extended survey, as appropriate, include a review of staffing, in service training and the infection control program. An extended/partial extended survey explores the extent to which structure and process factors such as written policies and procedures, staff qualifications and functional responsibilities, and specific agreements and contracts of the facility may have contributed to the outcomes. If the extended/partial extended survey was triggered by a deficiency in quality of care, conduct a detailed review of the accuracy of resident assessment. During the partial extended survey, consider expanding the scope of the review to include a more comprehensive evaluation of the requirements at 42 CFR 483.13, 42 CFR 483.15 and/or 42 CFR 483.25 in which substandard quality of care was found.

Document your observations from the extended or partial extended survey on the CMS-805, or the CMS-807.

2. Review of the Accuracy of Resident Assessments During an Extended/Partial Extended Survey

The objective of this interview is to determine if resident assessments are accurate. If an extended/partial extended survey is conducted based on substandard quality of care in Quality of Care (42 CFR 483.25), review the accuracy of resident assessments by:

- Reviewing a sample of comprehensive resident assessments completed no more than 30 days prior to conducting the survey;
- Comparing your observations of the resident with the facility's assessment;
- Conducting the number of assessment reviews needed to make a decision concerning the accuracy of the facility's resident assessments; and
- Determining if your observations of the resident, and interviews with resident/staff/family, "match" the facility's assessment (or specific portions of the assessment) of the resident. If your observations and interviews do not "match," investigate further.

Record the in-depth review of the accuracy of resident assessments on Page 3 of the CMS 805.

3. Timing for Conducting the Extended Survey and Partial Extended Survey

Conduct the extended or partial extended survey:

- Prior to the exit conference, in which case the facility will be provided with information from the standard, abbreviated standard, partial extended or extended surveys; or
- Not later than two weeks after the standard/abbreviated survey is completed, if the team is unable to conduct the extended survey or partial extended survey concurrent with the standard survey or the abbreviated survey. Advise the

facility's administrator that there will be an extended or partial extended survey conducted and that an exit conference will be held at the completion of the survey.

H. Post Survey Revisit (Follow-Up)

In accordance with SOM 7317A, the State agency conducts a revisit to confirm that the facility is in compliance and has the ability to remain in compliance. The purpose of the post-survey revisit (follow-up) is to re-evaluate the specific care and services that were cited as noncompliant during the original standard, abbreviated standard, extended or partial extended survey(s). Ascertain the status of corrective actions being taken on all requirements not in substantial compliance. Section 7304D contains the elements a facility must address in developing an acceptable plan of correction. One of these elements is what continuous quality improvement system(s) a facility has in place to monitor its performance in identifying the deficient practice/care and assuring that it does not recur.

In some cases, evidence of compliance may be submitted in place of an on-site review. (See SOM 7317B.)

Because the survey process focuses on the care of the resident, revisits are almost always necessary to ascertain whether deficient practices have indeed been corrected. The nature of the noncompliance dictates the scope of the revisit. For example, do not perform another drug pass if no drug distribution related deficiencies were cited on the initial survey. Do interviews and closed record reviews, as appropriate. Prior to the revisit, review appropriate documents, including the plan of correction to focus the revisit interview.

Conduct as many survey tasks as needed to determine compliance status. However, the team is not prohibited from gathering information related to any requirement during a post-survey revisit

When selecting the resident sample for the revisit survey, determine the sample size using 60% of the sample size for a standard survey as described in Table 1, Resident Sample Selection, Table 1. (Phase 1 sample size is 60%.) The follow-up survey does not require a 2 Phase sample selection.

Focus on selecting residents who are most likely to have those conditions/needs/problems cited in the original survey. If possible, include some residents identified as receiving substandard quality of care during the prior survey. If, after completing the revisit activities, you determine that the cited incidence(s) of noncompliance was not corrected, initiate enforcement action, as appropriate. (See SOM 7400 for specific guidance concerning initiation of enforcement action.)

Use appropriate CMS forms during this survey. However, if the need for documentation is minimal, use the Surveyor Notes Worksheet (CMS-807).

4.6. **ADDITIONAL ISSUES RELATED TO THE ABBREVIATED STANDARD SURVEY**

Surveyors must adhere to the following additional issues when conducting the abbreviated standard survey.

A. Task 1: Offsite Survey Preparation

1. Complaint Information

- Review the complaint and any supporting documentation.
- Review the Intake Sheet for any allegations that may not have been entered into ACTS.
- Try to contact and interview the complainant and other witnesses (if not likely to be on-site) to obtain specific information and clarification relative to each allegation.
- The complainant will be given an opportunity to withdraw the complaint prior to the on-site visit if the investigation requires interviews or record reviews which are likely to directly or indirectly identify the complainant.
- Complaint cancellations may be oral or written. Oral cancellations must be noted on the Complaint Investigation Form with the name of the requester and the cancellation date.
- Do not announce an on-site complaint investigation. Section 20155(9) of the Public Health Code provides that a department employee who directly or indirectly gives prior notice regarding an inspection of a nursing home or home for the aged (other than an inspection of facility financial records) shall be guilty of a misdemeanor. The employee may also be subject to other disciplinary action under the Civil Service system.

2. Facility Reported Incidents

Review investigation materials submitted by the facility.

3. Facility History

Review the facility history and other licensure or certification information to determine if similar problems have occurred previously, including but not limited to the three Quality Indicator Reports.

B. Task 2: Entrance Conference/Onsite Preparatory Activities

For complaints only: Do not divulge the complainant's name without his/her permission if the facility is a nursing home. Care must be taken to not indirectly reveal the name of a confidential complainant in the written

complaint report by references to relatives, guardians, friends, advocacy groups, etc. which could be attributed to the complainant. Do not take information that identifies the complainant into the facility.

C. Task 6: Information Analysis

1. Police Investigations

Do not close complaints due to the existence of a police investigation. These investigations are different in that they are criminal cases. The complaint investigation must be conducted under the survey and certification procedures, which are civil proceedings. The complaint investigation may be delayed if the police agency requests that surveyors not enter the facility during its investigation. It must be documented in the complaint record why the complaint investigation is being delayed, the name of the police officer making the request and the length of the delay.

2. Allegations

Decide if the information collected is sufficient to reach a finding for **each** allegation. If not, the surveyor determines if additional information can reasonably be collected. The surveyor documents the reasons For those allegations for which sufficient data cannot be collected. The surveyor determines if appropriate data has been obtained to resolve any other issues previously identified by the Licensing Officer and/or Survey Monitor.

3. Other Violations

Document serious violations that are observed which fall outside the scope of the complaint for inclusion in a separate report. The surveyor must evaluate each allegation contained in the complaint in light of the applicable regulatory requirements, including federal interpretive guidelines, state rule clarifications and other explanatory material. Before reaching a final determination on each allegation, review pertinent records and other documents, interview witnesses, and seek out and collect any reasonably available additional information that may relate to the allegation. Determine if each allegation is substantiated or unsubstantiated.

Clearly indicate in the report if you were unable to re-create or otherwise develop sufficient data to reach a definitive compliance decision on any or all of the allegations.

D. Task 7: Exit Conference

Conduct an exit conference with the facility administrator or person in charge prior to departure to discuss and outline the preliminary findings. State the requirements not met for each substantiated allegation. Do not

specify scope and severity. Offer the facility the opportunity to supply additional information that it may not have provided prior to the exit conference.

Remind the facility in the exit conference that Sections 20201(4) and 21771(6) of the Code prohibit retaliation against a resident making a complaint if evidence was obtained from residents(s). This may include an explanation of possible enforcement actions (i.e., civil fines for resident rights violations in nursing homes).

4.7 COMPLIANCE DECISION AND NONCOMPLIANCE CITATIONS

The Bureau surveyor determines at the conclusion of the investigation, on the basis of the evidence available, whether or not allegations are substantiated. The surveyor must consider and give probative effect to all evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs in doing so. The surveyor determines the federal F tags and state M tags to be cited and writes the *Statement of Deficiencies* (CMS-2567) and/or the State form for all substantiated allegations.

Allegations are "not substantiated" if the information available indicates the facility was in compliance with requirements in regard to the allegations, or the evidence is insufficient to permit a reasonable decision and it is unreasonably difficult to obtain more information. No CMS-2567 State form is produced if allegations in a complaint or facility reported incident are not substantiated.

4.8. SCOPE AND SEVERITY

Scope and Severity levels are specific to federal certification surveys only. State licensure surveys do not include scope and severity designations.

The surveyor determines the scope and severity levels for federal citations using the guidance contained in Appendix P, Part IV Deficiency Categorization, SOM. The following must be considered in citations for abuse, neglect or misappropriation in addition to the guidance given in Part IV.

Substantiated abuse, neglect or misappropriation by facility staff member(s) is cited at Severity Level 2, 3, or 4 depending on the severity of the impact on the resident(s) as defined.

The facility may still be cited at Severity Level 1 or 2 if the required abuse prevention system is not in place even if abuse, neglect or misappropriation is not substantiated in regard to the residents involved in the reported incident or for other residents evaluated in the investigation.

A. Preliminary Action in Immediate Jeopardy or Serious Harm Cases

BHS immediately initiates any and all necessary actions that can legally be taken on its own to ensure resident safety if the Bureau finds, at any time, that a resident has suffered serious harm or that the health or safety of a resident in a facility is in jeopardy as a result of actual or suspected abuse, neglect, or misappropriation.

An immediate voluntary suspension of admissions (and/or re-admissions) is requested of the facility, pending completion of a full Bureau investigation if the preliminary investigation finds that the facility has failed to assure the safe performance of health care in the facility and that adequate corrective action to protect current and future residents has not been implemented or cannot be verified.

A Correction Notice Order requiring a Ban on Admissions is initiated under Section 21799(b)(1) or 20162 of the Public Health Code if a facility violation or deficiency seriously affects the health, safety and welfare of individuals receiving care or services.

B. Additional Actions in All Cases

The surveyor prepares a final complaint investigation report containing all of the findings and any resulting recommendations for further action at the conclusion of the investigation. The Bureau takes the additional actions based on those findings:

1. Immediate Jeopardy

The Bureau provides the Department of Attorney General, Health Care Fraud Division with all relevant information about the case if it finds that a resident has suffered serious harm, or that the health or safety of a resident in a facility is in jeopardy, as a result of abuse, neglect, or misappropriation. The Health Care Fraud Division may initiate a criminal investigation of the matter and/or refer the case to another appropriate division of the Department of Attorney General for possible protective civil court action. The Bureau sends a copy of its final investigation report, containing its findings and any recommendations for further action to the Health Care Fraud Division at the conclusion of its investigation.

2. Deficiency Statement Issued

The Bureau issues a deficiency statement to the facility that lists any and all deficiencies that may have been discovered during the investigation if the findings indicate that the facility has failed to fully comply with State or federal law or regulations. The facility must submit an acceptable Plan for Correction of these deficiencies within 10 calendar days after receiving this deficiency statement. A facility has the right to request an Informal Dispute Resolution (IDR)

for any federal deficiencies by either BHS or Michigan Peer Review Organization (MPRO). The review of M tags is conducted by BHS.

3. Failure To Report

The Bureau refers the matter to the Department of Attorney General or the appropriate professional licensing board for possible disciplinary action if the findings reveal that a person who is required by the state resident abuse statute to report suspected resident abuse, neglect, or misappropriation has failed to do so.

4. Findings Against a Health Professional

BHS refers the matter to the Bureau of Health Professions if the findings indicate that abuse, neglect, or misappropriation occurred and that a particular licensed or professional nurse or registered nurse aide may be responsible for that abuse, neglect, or misappropriation. The Bureau of Health Professions is responsible for placement of abuse conviction information on the Nurse Aide Registry. Aides with such convictions are prevented from employment in nursing homes.

5. Criminal Activity

BHS cooperates with state and local law enforcement agencies in the investigation of potential criminal activity, but reserves the right to take any enforcement action authorized by the Public Health Code to protect the health and safety of residents in long term care facilities.

4.8. REPORTING FINDINGS TO THE COMPLAINANT

The Bureau informs the complainant of findings or the status of its investigation, unless otherwise indicated by the complainant, within 30 days after receipt of the complaint. The Bureau provides the complainant with a copy of its written findings and any correction notice or a status report indicating when these documents may be expected.

Section 21743(1)(d) of the Code provides that a nursing home complaint investigation report shall not be disclosed to a person, other than the complainant, or the complainant's representative, before it is disclosed to the nursing facility pursuant to Section 21799a. Therefore, the final report is sent simultaneously to both the complainant and the health facility and the State Long Term Care Ombudsman.

4.9. REPORTING FINDINGS AND ENFORCEMENT ACTIONS TO THE FACILITY

Complaint and facility reported incident investigations with findings of compliance are documented on the ASPEN Complaints/Incidents Tracking System (ACTS) Public Summary and sent to the facility.

A complainant who is dissatisfied with the determination or investigation may file a request for a hearing in writing within 30 days of mailing of the Department's report.

Complaints and facility reported incident investigations with findings of noncompliance are documented on the *Statement of Deficiencies* (CMS-2567) form and transmitted with a copy of the investigation report and an enforcement notice to the facility. An acceptable *Plan of Correction* (PoC) is required. All Plans of Correction are reviewed for acceptability by the Manager/Licensing Officer/Survey Monitor responsible for the individual investigation.

Enforcement is initiated in accordance with the provisions of State and Federal law. The Licensing Officer/Survey Monitor is responsible for initiating an enforcement request. It will result in the issuance of a civil penalty or other enforcement action or recommendation against the facility if approved by CMS or Medicaid agency for "NF" only. The Bureau issues an order requiring the payment of \$100 to each affected resident and appropriate state fine under MCL333.21799c if the allegation is substantiated in such cases.

A facility that disagrees with an enforcement action arising out of a complaint or facility reported incident has the right to contest the Bureau's action as provided by law. Procedures for such appeals vary depending on the enforcement action taken by the Bureau. A written determination, correction notice, compliance order or other enforcement action resulting from a complaint is available for public inspection.