

Nurse Aide Investigation

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Statutory Authority-C.N.A. Investigations

- 42 USC 1395i-3(g)(1)(C)
- 42 CFR 488.335(a)(1)(2)(3)
- MCL 333.21923(1)



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3 Violations

- 42 USC 1395i-3(g)(1)(c) - Abuse, neglect, and misappropriation of resident property
- Definitions at 42 CFR 488.301 (note 483.5)
- SOM-Not related to individual investigations.
- CMS-Interpretive guidelines serve to interpret and clarify. They merely define or explain the relevant statute and regulations and do not impose any requirements not already in law.



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Abuse

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.

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Continued....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.



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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.



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Misappropriation of Resident Property

- The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.



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Investigations

- Bureau receives MI-FRI or individual allegation.
- Assess if allegation meets abuse, neglect, or misappropriation.
- Assign for investigation based on geographic region.
- Interview Facility, staff/witnesses, and C.N.A.
- Generate investigation report. If unable to prove allegation by a preponderance of the evidence, case is closed.
- If able to establish violation, forward to Enforcement for a possible NOIF.



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Enforcement Step 1

Review report to determine if investigate findings meet elements of abuse, neglect, or misappropriation.

- Desk review. I do not contact witnesses.
- I may ask for follow-up interviews or request additional documents.



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Elements of Abuse 1/3

(1) Willful. Not accidental. Reflexive?

(2) Infliction of:

- (a) Injury
- (b) Unreasonable confinement
- (c) Intimidation
- (d) Punishment

(3) Results in harm, pain, or mental anguish.

**Deprivation of good/services must fit in (3)



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Elements of Abuse 2/3

(4) Includes:

- Verbal abuse
- Sexual abuse
- Physical abuse
- Mental abuse

Including abuse via the use of technology. So far just social media, but need harm/pain/anguish.

- Sexual abuse: Non-consensual sexual contact.



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Elements of Abuse 3/3

(5) “Instances of abuse of all residents, irrespective of any mental or physical condition”

- Irrespective = regardless.
- Reasonable person standard.



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Elements of Neglect

- (1) Failure to provide goods and services.
 - CNA knew what to provide.
- (2) Necessary to avoid.
 - Most often because in care plan.
- (3) Physical harm, pain, mental anguish, or emotional distress.



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Elements of Misappropriation

- (1) Deliberate = nonaccidental.
 - (2) Misplacement; exploitation; wrongful temporary or permanent use.
 - (3) Resident's belongings or money.
 - (4) Without the resident's consent.
- Exploitation: Taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats, or coercion.



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Notes about Misappropriation

- (A) There is no dollar amount. Sentimental?
- (B) Misplacement implies that the item need not be taken from facility or even used.
- (C) The item must belong to a resident. Is a family member's item the resident's?
- (D) Can the resident give consent?



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Enforcement Step 2

- (1) Issue NOIF (Notice of Intent to Flag)
 - CNA has 30 days to appeal.
- (2) CNA appeals NOIF
 - Does CNA disclose new facts?
- (3) Request hearing
 - Do we have necessary witnesses?
- (4) Conduct hearing
 - ALJ, PFD, and FDO.



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Result of Flagging

- 483.335-Negative findings placed on Registry (Revocation) Permanent for Abuse and Misappropriation
- Neglect-Petition in 1 year. Factors for removing flagging.
- Consequences-483.12 and 333.20173a (1) (h) (i) Can't work in covered facility.
- Facilities-483.12 (3) Our section determines abuse, neglect and misappropriation.



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Neglect Petition Process

- In the case of a finding of neglect; whereby, a nurse aide has been flagged on the registry after 1 year from the date of the finding on the registry the nurse aide may petition the Bureau to have the negative finding removed from the registry. The nurse aide must send a written request to the Manager of the Health facility Professional & Nurse Aide Section. The request will be reviewed within 30 days.
- The request must include a personal attestation detailing why the nurse aide feels the neglect finding should be removed, whether the original finding was a singular occurrence or a pattern and how the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect.



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Continued....

- Mail to:
- LARA/BCHS
- Health facility Professional & Nurse Aide Section
- Ottawa Building, 1st floor
- 611 W. Ottawa Street
- P.O. Box 30664
- Lansing, MI 48909
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Discussion

- Questions



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