

CHAPTER 9: NURSING HOME RESPONSIBILITIES REGARDING COMPLAINTS OF ABUSE, NEGLECT, MISTREATMENT AND MISAPPROPRIATION

9.1. PURPOSE

Effective protection of residents in long term care facilities from abuse, neglect, or misappropriation requires a joint effort by the Bureau, long term care providers and concerned citizens. We encourage reasonable and appropriate facility responses to actual or potential cases of resident abuse, neglect, or misappropriation. We also encourage facility efforts to prevent resident abuse, neglect, or misappropriation from occurring.

This chapter identifies the specific internal steps that long-term care facilities must take in response to resident and family complaints of actual and potential resident abuse, neglect, or misappropriation situations. It also provides facilities with specific recommendations on steps that can be undertaken to minimize the occurrence of resident abuse, neglect, or misappropriation in the first place. Finally, it presents the requirements placed on the nursing home for reporting, investigation, and protective and corrective actions.

9.2. LEGISLATION RELATED TO COMPLAINTS

A. Section 21723, Michigan Public Health Code (Public Act 368 of 1978, as amended)

- (1) A nursing home shall post in an area accessible to residents, employees, and visitors the name, title, location, and telephone number of the individual in the nursing home who is responsible for receiving complaints and conducting complaint investigations and a procedure for communicating with that individual.
- (2) An individual responsible for receiving complaints and conducting complaint investigations in a nursing home shall be on duty and on site not less than 24 hours per day, 7 days a week.
- (3) The individual described in subsection (2) who receives a complaint, inquiry, or request from a nursing home resident or the resident's surrogate decision maker shall respond using the nursing home's established procedures pursuant to R 325.20113 of the Michigan Administrative Code.
- (4) To assist the individual described in subsection (2) in performing his or her duties, the Michigan Department of Community Health (MDCH) shall post on its internet website all of the following information:
 - (a) Links to federal and state regulations and rules governing the nursing home industry.

- (b) The scheduling of any training or joint training sessions concerning nursing home or elderly care issues being put on by MDCH.
 - (c) A list of long-term care contact phone numbers including, but not limited to, the MDCH complaint hotline, the BHS Division of Nursing Home Monitoring, any commonly known nursing home provider groups, the state long-term care ombudsman, and any commonly known nursing home resident care advocacy groups.
 - (d) When it becomes available, information on the availability of electronic mail access to file a complaint concerning nursing home violations directly with MDCH.
 - (e) Any other information that MDCH believes is helpful in responding to complaints, requests, and inquiries of a nursing home resident or his or her surrogate decision maker.
- (5) A nursing home receiving reimbursement pursuant to the medicaid program shall designate 1 or more current employees to fulfill the duties and responsibilities outlined in this section. This section does not constitute a basis for increasing nursing home staffing levels. As used in this subsection, "medicaid" means the program for medical assistance created under title XIX of the social security act, chapter 53, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to 1396r-6, and 1396r-8 to 1396v.

B. Michigan Nursing Home Rules

R 325.20113. Adoption of written procedures to implement patient rights and responsibilities policy.

Rule 113.

- (1) A home shall adopt written policies and procedures to implement patient rights and responsibilities as provided by section 21765 of the Code. Before and following the patient's admission, such policy and procedures shall be available, upon request, to all the following:
 - (a) The patient.
 - (b) Attending physician.
 - (c) Next of kin.
 - (d) Member of the family.
 - (e) Guardian.
 - (f) Designated representative.
 - (g) Person or agency responsible for placing and maintaining the patient in the home.
 - (h) Employees of the facility.
 - (i) Public.

- (2) The procedures shall include a procedure for the initiation, investigation, and resolution of complaints, subject to department approval, and, at a minimum, all of the following:
 - (a) A statement that a patient may have the alternative to complain either to the home or the department about any condition, event, or procedure in the home without citing a specific violation of the code or these rules.
 - (b) A procedure for submitting written complaints to the home identifying potential violations of law or rule, including a procedure to assist a complainant in reducing an oral complaint to writing when such oral complaint is not resolved to the satisfaction of the complainant. If a standard form is used for complaints, a copy of the form shall be provided to each patient at the time of admission and additional forms shall be available on request.
 - (c) The name, title, location, and telephone number of the individual in the home who is responsible for receiving complaints and conducting complaint investigations and a procedure for communicating with that individual.
 - (d) A requirement that all complaints be investigated within 15 days following receipt of the complaint by the home, and a requirement that, within 30 days following receipt of the complaint, the home shall deliver to the complainant a written report of the results of the investigation or a written status report indicating when the report may be expected.
 - (e) A mechanism for appealing the matter to the administrator of the home if the complainant is not satisfied with the investigation or resolution of the complaint.
- (3) A home shall maintain for 3 years written complaints filed under its complaint procedure and all complaint investigation reports delivered to each complainant, and such records shall be available to the department upon request.

B. Criminal Background Checks

Michigan Public Health Code, Section 20173.

- (1) Except as otherwise provided in subsection (2), a health facility or agency that is a nursing home, county medical care facility, or home for the aged shall not employ, independently contract with, or grant clinical privileges to an individual who regularly provides direct services to patients or residents in the health facility or agency after the effective date of the amendatory act that added this section if the individual has been convicted of 1 or more of the following:

- (a) A felony or an attempt or conspiracy to commit a felony within the 15 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract.
 - (b) A misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult as that term is defined in section 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m, or a state or federal crime that is substantially similar to a misdemeanor described in this subdivision, within the 10 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract.
- (2) Except as otherwise provided in this subsection and subsection (5), a health facility or agency that is a nursing home, county medical care facility, or home for the aged shall not employ, independently contract with, or grant privileges to an individual who regularly provides direct services to patients or residents in the health facility or agency after the effective date of the amendatory act that added this section until the health facility or agency complies with subsection (4) or (5), or both. This subsection and subsection (1) do not apply to an individual who is employed by, under independent contract to, or granted clinical privileges in a health facility or agency before the effective date of the amendatory act that added this section.
- (3) An individual who applies for employment either as an employee or as an independent contractor or for clinical privileges with a health facility or agency that is a nursing home, county medical care facility, or home for the aged and has received a good faith offer of employment, an independent contract, or clinical privileges from the health facility or agency shall give written consent at the time of application for the department of state police to conduct a criminal history check under subsection (4) or (5), or both, along with identification acceptable to the department of state police. If the department of state police has conducted a criminal history check on the applicant within the 24 months immediately preceding the date of application and the applicant provides written consent for the release of information for the purposes of this section, the health facility or agency may use a copy of the results of that criminal history check instead of obtaining written consent and requesting a new criminal history check under this subsection, and under subsections (4) and (5), or both. If the applicant is using a prior criminal history check as described in this subsection, the health facility or agency shall accept the copy of the results of the criminal history check only from the health facility or agency or adult foster care facility that previously employed or granted clinical

privileges to the applicant or from the firm or agency that independently contracts with the applicant.

- (4) Upon receipt of the written consent and identification required under subsection (3), if an applicant has resided in this state for three or more years preceding the good faith offer of employment, an independent contract, or clinical privileges, a health facility or agency that is a nursing home, county medical care facility, or home for the aged that has made a good faith offer of employment or an independent contract or clinical privileges to the applicant shall make a request to the department of state police to conduct a criminal history check on the applicant. The request shall be made in a manner prescribed by the department of state police. The health facility or agency shall make the written consent and identification available to the department of state police. If there is a charge for conducting the criminal history check, the health facility or agency requesting the criminal history check shall pay the cost of the charge. The health facility or agency shall not seek reimbursement for the charge from the individual who is the subject of the criminal history check. The department of state police shall conduct a criminal history check on the applicant named in the request. The department of state police shall provide the health facility or agency with a written report of the criminal history check conducted under this subsection. The report shall contain any criminal history record information on the applicant maintained by the department of state police. As a condition of employment, an applicant shall sign a written statement that he or she has been a resident of this state for three or more years preceding the good faith offer of employment, independent contract, or clinical privileges.
- (5) Upon receipt of the written consent and identification required under subsection (3), if an applicant has resided in this state for less than three years preceding the good faith offer of employment, an independent contract, or clinical privileges, a health facility or agency that is a nursing home, county medical care facility, or home for the aged that has made a good faith offer described in this subsection to the applicant shall comply with subsection (4) and shall make a request to the department of state police to forward the applicant's fingerprints to the federal bureau of investigation. The department of state police shall request the federal bureau of investigation to make a determination of the existence of any national criminal history pertaining to the applicant. An applicant described in this subsection shall provide the department of state police with 2 sets of fingerprints. The department of state police shall complete the criminal history check under subsection (4) and, except as otherwise provided in this subsection, provide the results of its determination under subsection

(4) to the health facility or agency and the results of the federal bureau of investigation determination to MDCH within 30 days after the request is made. If the requesting health facility or agency is not a state department or agency and if a crime is disclosed on the federal bureau of investigation determination, the department shall notify the health facility or agency in writing of the type of crime disclosed on the federal bureau of investigation determination without disclosing the details of the crime. Any charges for fingerprinting or a federal bureau of investigation determination under this subsection shall be paid in the manner required under subsection (4).

- (6) If a health facility or agency that is a nursing home, county medical care facility, or home for the aged determines it necessary to employ or grant clinical privileges to an applicant before receiving the results of the applicant's criminal history check under subsection (4) or (5), or both, the health facility or agency may conditionally employ or grant conditional clinical privileges to the individual if all of the following apply:
- (a) The health facility or agency requests the criminal history check under subsection (4) or (5), or both, upon conditionally employing or conditionally granting clinical privileges to the individual.
 - (b) The individual signs a statement in writing that indicates all of the following:
 - (i) That he or she has not been convicted of 1 or more of the crimes that are described in subsection (1)(a) and (b) within the applicable time period prescribed by subsection (1)(a) and (b),
 - (ii) The individual agrees that, if the information in the criminal history check conducted under subsection (4) or (5), or both, does not confirm the individual's statement under subparagraph (i), his or her employment or clinical privileges will be terminated by the health facility or agency as required under subsection (1) unless and until the individual can prove that the information is incorrect. The health facility or agency shall provide a copy of the results of the criminal history check conducted under subsection (4) or (5), or both, to the applicant upon request.
 - (iii) That he or she understands the conditions described in subparagraphs (i) and (ii) that result in the termination of his or her employment or clinical privileges and that those conditions are good cause for termination.
- (7) On the effective date of the amendatory act that added this section, the department shall develop and distribute a model form for the statement

required under subsection (6)(b). The department shall make the model form available to health facilities or agencies subject to this section upon request at no charge.

- (8) If an individual is employed as a conditional employee or is granted conditional clinical privileges under subsection (6), and the report described in subsection (4) or (5), or both, does not confirm the individual's statement under subsection (6)(b)(i), the health facility or agency shall terminate the individual's employment or clinical privileges as required by subsection (1).
- (9) An individual who knowingly provides false information regarding criminal convictions on a statement described in subsection (6)(b)(i) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.
- (10) A health facility or agency that is a nursing home, county medical care facility, or home for the aged shall use criminal history record information obtained under subsection (4), (5), or (6) only for the purpose of evaluating an applicant's qualifications for employment, an independent contract, or clinical privileges in the position for which he or she has applied and for the purposes of subsections (6) and (8). A health facility or agency or an employee of the health facility or agency shall not disclose criminal history record information obtained under subsection (4) or (5) to a person who is not directly involved in evaluating the applicant's qualifications for employment, an independent contract, or clinical privileges. Upon written request from another health facility or agency or adult foster care facility that is considering employing, independently contracting with, or granting clinical privileges to an individual, a health facility or agency that has obtained criminal history record information under this section on that individual shall share the information with the requesting health facility or agency or adult foster care facility. Except for a knowing or intentional release of false information, a health facility or agency has no liability in connection with a criminal background check conducted under this section or the release of criminal history record information under this subsection.
- (11) As a condition of continued employment, each employee, independent contractor, or individual granted clinical privileges shall agree in writing to report to the health facility or agency immediately upon being arrested for or convicted of one or more of the criminal offenses listed in subsection (1)(a) and (b).

- (12) As used in this section:
- (a) "Adult foster care facility" means an adult foster care facility licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.
 - (b) "Independent contract" means a contract entered into by a health facility or agency with an individual who provides the contracted services independently or a contract entered into by a health facility or agency with an organization or agency that employs or contracts with an individual after complying with the requirements of this section to provide the contracted services to the health facility or agency on behalf of the organization or agency.

C. Michigan Adult Protective Services Act

In addition to the state licensure and federal requirements shown above, the Adult Protective Services Act, 1982 PA 519, requires health professionals and employees of health care facilities to report any incident of suspected abuse, neglect, or misappropriation of a patient or resident.

Any facility or facility employee who suspects or has reasonable cause to believe that an adult has been subjected to abuse, neglect, or misappropriation as defined by the Adult Protective Services Act, must make a report to the Department of Human Services (formerly the Family Independence Agency) or County Department of Social Services.

9.3. COMPLAINT PROCESS REQUIREMENTS

Michigan Compiled Law MCL 333.21723 and Nursing Home and Nursing Care Facilities' Rule 325.20113 require a nursing home to adopt a written patient rights and responsibilities policy that includes the creation of a procedure for filing complaints by nursing home residents and other interested parties. Nursing home procedures must include a procedure for the initiation, investigation and resolution of complaints subject to Departmental approval. The information below has been developed to assist nursing homes and is based on the statutory requirements and departmental recommendations. Nursing homes may adopt this procedure or initiate their own procedure that includes the minimum statutory requirements.

Caution: The procedures described below are in addition to abuse, neglect and misappropriation investigation and reporting required by Public Act 368 of 1978, Section 21771 and the Code of Federal Regulations, 42 CFR 483.13(c)(12). Facilities are responsible for meeting the MDCH reporting requirements for abuse, neglect and misappropriation as set forth in statute.

A. Complaint Staff

Designate a facility staff person on each shift to be responsible for receiving complaints and conducting complaint investigations. The facility must ensure that an individual **is on duty and on site not less than 24 hours per day**,

seven (7) days a week for this purpose. The designated staff person must be clearly identified for residents and family members. It is recommended that the facility establish a monthly schedule showing the designated individual for each shift on each day of the month.

B. Facility Complaint Procedure

Establish a procedure for submission and resolution of in-house written or oral complaints to include the following:

1. Facility Process

A facility process for the receipt of complaints in person, by telephone, or in writing by residents, employees and visitors. The facility should assist residents in reducing their oral complaint to writing when such oral complaint is not resolved to the satisfaction of the complainant. The *Resident Assistance Form* (Appendix E) with instructions may be used for this purpose. A facility may create its own form provided it meets the requirements of MCL 333.21723 and R 325.20113.

2. Timeframe

A timeframe that is responsive to the complainant as well as the 15-day investigation requirement set forth in R 325.20113(2)(d). MDCH recommends the following timeframes from receipt of complaint to initiation of investigation:

- a. **Immediately (no later than 8 hours)** – for abuse, neglect or misappropriation.
- b. **As Soon As Possible but Within five (5) Days** – for anything that has caused actual harm.
- c. **As Soon As Possible but Within 15 Days** – for any other concern.

3. Written Report Procedure

A process for delivering to the complainant a written report of the results of the investigation as soon as possible after investigation or within 30 days following receipt of the complaint, or a written status report indicating when the report may be expected.

4. Procedure

A mechanism for appealing the matter to the administrator of the home if the complainant is not satisfied with the investigation or resolution of the complaint.

5. MDCH Complaint Procedure

A process for informing a resident or other interested party that they may contact the Michigan Department of Community Health to file a complaint as an alternative, if not satisfied with the results of the appeal to the nursing home administrator.

- 6. Complaint Records**
Maintaining written complaints filed under its complaint procedure and all complaint investigation reports given to each complainant for three years, and making records available to the Michigan Department of Community Health upon request. Investigation reports should include the resolution of the complaint.
- 7. Follow Up Procedure**
A process for following up with the resident to determine if the complaint was resolved to resident's satisfaction.
- 8. Utilization of Complaint Findings**
A process for utilizing the findings of the complaint investigation as part of a facility Quality Improvement Program.
- 9. Post Complaint Information**
Post the following information in an area accessible to residents, employees, and visitors:
 - The name, title, location, and telephone number of the individuals in the nursing home who are responsible for receiving complaints and conducting complaint investigations. It is recommended that the monthly schedule developed in Step 1 be posted to meet this requirement.
 - A procedure for communicating with that individual. This should be a summary of the process described in 2.A of this procedure and should include the *Resident Assistance Form* (Appendix E) or its equivalent.
- 10. Facility Complaint Policy and Procedure**
Make available to all of the parties listed below, upon admission and upon request, the facility's complaint policy and procedure.
 - The resident.
 - Attending physician.
 - Next of kin.
 - Member of the family.
 - Guardian.
 - Designated representative.
 - Person or agency responsible for placing and maintaining the resident in the home.
 - Employees of the facility.
 - Public.

9.4. ABUSE, NEGLECT, MISTREATMENT AND MISAPPROPRIATION REQUIREMENTS

This section contains facility requirements for the prevention of abuse, neglect, mistreatment, misappropriation and for the reporting of incidents that may occur.

A. Written Policies and Procedures

Appendix P of the CMS State Operations Manual contains the protocol for nursing home surveys. Task 5G Abuse Prevention Review requires surveyors to review facility policies and procedures for:

- *Screening* of potential employees.
- *Training* of employees (both for new employees, and ongoing training for all employees).
- *Prevention* policies and procedures.
- *Identification* of possible incidents or allegations that need investigation.
- *Investigation* of incidents and allegations.
- *Protection* of residents during investigations.
- *Reporting* of incidents, investigations, and facility response to the results of their investigations.

B. Screening of Potential Employees

Michigan Public Act 303 of 2002 added Section 20173 to the Public Health Code effective May 10, 2002. Section 20173 requires pre-employment criminal history checks for individuals regularly providing direct services to residents in nursing homes and county medical care facilities. A facility is not required by F225 or 42 CFR 483.13(c)(1)(ii) and (iii) to perform a criminal background check prior to employment; however, the state law prevails.

The federal requirements state that a certified long term care facility must not employ an individual who has been found guilty of abusing, neglecting or mistreating residents by a court of law; or who has had a finding entered into the State Nurse Aide Registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property. The facility must report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State Nurse Aide Registry or licensing authorities. These reports may be made to the Bureau of Health Professions, Complaint and Allegation Division, P.O. Box 30670, Lansing, MI 48909, or by calling (517) 373-9196.

In addition, a facility must maintain documentation that it has inquired from the State Nurse Aide Registry or licensing authorities about the individual they wish to hire. If a facility receives information that an applicant for employment or an employee has been found guilty of abuse, neglect or mistreating residents by a court of law it must report the individual to the State Nurse Aide Registry or licensing authorities.

C. Reporting Allegations and Findings

Each long-term care facility should adopt and implement written policies and procedures for reporting and responding to incidents of suspected resident mistreatment, abuse, neglect, misappropriation, or injuries of unknown source. At a minimum, these policies and procedures should ensure that:

1. Immediate Reporting of Alleged Incidents

All alleged/possible incidents are reported immediately to the facility administrator along with immediate telephone notification to the Complaint Hotline (1-800-882-6006). Immediate completion and submission of the *Facility Incident Report–24 Hours* (BHS-OPS-362, Appendix C) to the State Agency is also required. "Immediate" means as soon as possible, but not more than 24 hours after the discovery of the incident.

2. Investigation Findings

Investigation findings are reported to the administrator and to the State Survey Agency (BHS) by completing and submitting the *Facility Investigation Report – 5 Working Days* (BHS-OPS-363, Appendix C1) form within 5 (state) working days of the incident.

3. Available Information

Any and all available information that may be relevant to an investigation of any case of suspected resident abuse, neglect, or misappropriation is made available to the Bureau upon request.

4. Potential Witnesses

Reasonable efforts are made to facilitate Bureau attempts to interview any and all potential witnesses who may have information that is relevant to the issues involved in the investigation.

D. Abuse Prevention Program

In order to prevent abuse, neglect, or misappropriation to the maximum extent possible, each long-term care facility should provide supervision of staff and residents, regular orientation, and in-service training programs for all facility personnel that emphasize the following:

- Techniques for management of difficult residents.
- Identification of factors that contribute to, or escalate, hostile behavior.
- Assessment of personnel responses to aggressive or hostile behavior.
- Identification of employee and resident coping behaviors, and reinforcement of positive and adaptive behaviors.
- Use of intervention techniques, including verbal responses and safe, non-injurious physical control techniques, as therapeutic tools for hostile residents.
- Close observation of new employees during orientation.
- Interdisciplinary program planning for residents.

E. Adoption and Implementation of Preventative Administrative Policies

In addition to the specific abuse prevention program requirements described in Section 5220, facilities should adopt and implement administrative, management, and personnel policies and practices that include:

- Careful interviewing of employee applicants and verification of employee competency and credentials.
- Close examination of applicant references prior to hiring.
- Cooperation with other facilities in providing information about an employee's ability to handle difficult residents to prospective employers.
- Staff support programs and education on their reporting responsibilities and the consequences of failure to report.
- Close scrutiny of incident reports.
- Careful admission assessment of the risk for resident abuse, neglect and misappropriation of property.
- Development of care plans which include approaches to dealing with residents who may provoke hostile behavior by staff members or fellow residents where applicable.
- Provision of relevant information regarding difficult or emotionally unstable residents, and approaches to be used in caring for them, on a systematic basis.
- Termination, pursuant to 42 CFR 483.13(c)(1)(ii), of an employee when there is a substantiated finding of abuse, neglect, or misappropriation recorded in the Nurse Aide Registry.
- Check sex offender registry.

F. Investigation

Each long term care facility must review any and all situations or incidents in which a resident may have suffered physical or other harm for reasons that are unknown, unclear or not adequately explained. The facility must investigate allegations of abuse, neglect, misappropriation, mistreatment or injuries of unknown source and report findings to the Bureau within 5 (state) working days of the incident.

A nursing home administrator or nursing director is expected to immediately conduct a thorough in-house investigation to determine what happened and do the following:

1. Incident Report

Complete a detailed incident report with the investigation findings and retain it at the facility.

2. State Notification

Notify the Bureau of the investigative findings within 5 (state) working days of the incident through completion and submission of *Facility Investigation Report – 5 Working Days* (BHS-OPS-363) form.

3. Protective and Corrective Actions

During and subsequent to its investigation the facility must take protective and corrective actions to protect residents from current abuse, neglect, or misappropriation and prevent further incidents. Such protective and/or remedial action must not be delayed solely because the Bureau may not have completed its own investigation.

Facilities that are cited for abuse, neglect, mistreatment or misappropriation subsequent to a Bureau investigation must submit plans of correction that include taking any and all protective and/or remedial actions reasonably necessary to prevent further harm to that resident and/or all other residents.

F. Incidents That Need To Be Reported to the Bureau

Facilities must report as soon as possible but not more than 24 hours after receipt of an allegation involving resident mistreatment, neglect, abuse, misappropriation of resident property or an injury of unknown source by telephone notification to the complaint hotline and by completing and submitting information on the *Facility Incident Report – 24 Hours* (BHS-OPS-362) form within 24 hours of all alleged/possible incidents.

G. Report of Findings to the Bureau

Findings from an investigation involving alleged resident mistreatment, neglect, abuse, misappropriation of resident property or an injury of unknown source must be reported to the Bureau within 5 (state) working days of the incident by completing and submitting the *Facility Investigation Report – 5 Working Days* (BHS-OPS-363) form.

H. Waiver of Civil Fines Against Facility Which Reports Timely

In the interest of timely self-reporting and to encourage the reporting of incidents which may in turn result in fines against the facility, the Bureau waives any civil fines due the department under Section 21799c that might otherwise be assessed against the facility for resident rights violations. Any amount payable to the resident will still be assessed.

I. How to Report

Facility reported incidents and investigation findings are required by law to be reported. The telephone numbers for these reports are 1-800-882-6006 or 517-241-4712, the fax number is 517/241-0093. The *Facility Incident Report-24 Hours* (BHS-OPS-362) form is available online at <http://www.michigan.gov/bhs>.

Facilities should complete the *Facility Incident Report – 24 Hours* (BHS-OPS-362) form (Appendix D) or similar form with the same information, and submit it by fax or overnight mail within 24 hours of an incident to report the incident. The *Facility Investigation Report – 5 Working Days* (BHS-OPS-363) form should be received by BHS within 5 (state) working days of the alleged incident to report the investigation findings. Faxes may be received off hours, after 5:00 p.m. and on weekends and holidays.

J. Content of Reports

Facilities must report the information required by the *Facility Incident Report – 24 Hours* (BHS-OPS-362) form and the *Facility Investigation Report – 5 Working Days* (BHS-OPS-363) form. Use of these forms is optional, reporting of the requested information is mandatory. Facilities should be prepared to submit as much of the information as is available at the time of reporting.

K. Reporting Examples

1. Immediate Reporting

The facility should report these situations **immediately** (as soon as possible):

- a. **Elopement of a resident from the facility.**
- b. **An elopement that occurs outside the facility during an outing as soon as elopement is known.**

2. Within 24 Hours

The following are examples of situations that must be reported to the Bureau **within 24 hours** after the facility becomes aware of the incident, regardless of whether the facility investigation has been concluded:

- a. An injury or incident involving a death or potential criminal activity under investigation by a state or local law enforcement agency.
- b. Abuse with or without injuries.
- c. Injuries of unknown source 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.
- d. Resident-to-resident physical altercations by a resident.
- e. Serious injury that is life-threatening to the resident.
- f. Sexual assault.
- g. An allegation of failure to re-admit a resident.

Important: The Bureau also operates a 24-hour Emergency Hotline for nursing homes to report certain emergency events, including some of the incidents included above. Any such incidents reported to the 24-hour Emergency Hotline must also be reported to the Complaint Hotline.

L. Procedure for Reporting Under the Adult Protective Services Act

In addition to licensure requirements, the Adult Protective Services Act, 1982 PA 519, requires health professionals and employees of health care facilities to report any incident of suspected abuse, neglect, or misappropriation of a resident's property. This law provides that any facility or facility employee who suspects or has reasonable cause to believe that an adult has been subjected to abuse, neglect, or misappropriation as defined by the Adult Protective Services Act, shall make a report to the Department of Human Services (formerly the Family Independence Agency).

Incidents of resident abuse, neglect, or misappropriation that occur while a resident is on leave from the facility should be reported to the Adult Protective Services Unit in the county Department of Human Services (formerly the Family Independence Agency) office. Information reported should include:

- a. Any and all information the reporting individual may have about the location, nature and extent of the alleged abuse, neglect, or misappropriation.
- b. The circumstances under which the reporting individual became aware of the alleged abuse, neglect, or misappropriation.
- c. The age of the resident.
- d. Information about any treatment provided to the resident in question.
- e. Any other available information which may be helpful in establishing the cause of the alleged abuse, neglect, or misappropriation, or in identifying the person or persons responsible for that alleged abuse, neglect, or misappropriation.

NOTE: Facilities that report to the Bureau incidents that occur within the facility do not need to also report these same incidents to the Department of Human Services.

M. General Actions

The Bureau utilizes all available statutes, rules, and certification requirements to enforce legal reporting requirements including civil fines, ban on admissions, and other remedies against facilities who are found to have violated statutory reporting requirements and the right of each resident or resident to a safe and healthful environment.

N. Failure to Report

The failure of a facility to report pursuant to Section 21771 is considered in the assessment of any civil fines pursuant to the Michigan Public Health Code Section 21799c (4).

The Bureau cites facilities that fail to report immediately (as defined above) even if they voluntarily report later.

O. Failure to Report Under Adult Protective Services Act

The mandatory reporting of suspected abuse, neglect or misappropriation under the Adult Protective Services Act is actively monitored and enforced by the Bureau in facilities as part of licensure and certification programs.

P. Requirement for Protective Action While Allegations of Abuse, Neglect, Mistreatment or Misappropriation are Investigated

The facility must have evidence that all alleged violations of abuse, neglect, mistreatment, misappropriation of resident property or injury of unknown source are reported and investigated; and must prevent further potential abuse, neglect, mistreatment; misappropriation or injury while the investigation is in process.