ADULT AND LONG-TERM CARE FACILITY RESIDENT MALTREATMENT REPORTING ACTS

ACT 283 OF 2007
(EFFECTIVE DATE-JULY 31, 2007)

ACT 525 OF 2009
(EFFECTIVE DATE-JULY 31, 2009)

Presented by the Office of Long Term Care

PURPOSE (12-12-1702)

- Provide a system for the reporting of known or suspected adult and long-term care facility resident maltreatment;

- Ensure the screening safety assessment, and prompt investigation of reports of known or suspected adult and long-term care facility resident maltreatment;

PURPOSE (12-12-1702)

- Provide for civil action, if appropriate, to protect maltreated adults and long-term care facility residents; and

- Encourage the cooperation of state law enforcement officials, courts, and state agencies in the investigation and assessment, of maltreated adults and long-term care facility residents, and prosecution of offenders.

PURPOSE (12-12-1702)

- The Arkansas Adult and Long-Term Care Facility Resident Maltreatment Act outlines the reporting requirements imposed by the State of Arkansas.

- While related to the federal requirements, the Adult and Long Term Care Facility Resident Maltreatment Act stands alone-facilities must follow both the State (LTC 300-306.6.5) and Federal (42 C.F.R. 48313(c)(1)(ii)(iii) reporting requirements

F225

- 482.13(c)(1)(2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedure (including to the State survey and certification agency).

F 225

- 483.13(c)(1)(3) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

F 225

- 483.13(c)(1)(4) The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

Abuse Prohibition

Found in the (SOM)

State Operations Manual

Abuse Prohibition

- **Objective**
  - To determine if the facility has ***developed and operationalized*** policies and procedures that ***prohibit*** abuse, neglect, involuntary seclusion and misappropriation of property for all residents.

Use this Protocol

- For every standard survey and…..

- All abbreviated surveys with concerns related to abuse, neglect, involuntary seclusion and/or misappropriation of property.

Procedure……

Obtain and review the facility's Policy and Procedures to determine that they include the **key components:**

1. Screening
2. Training
3. Prevention
4. Identification
5. Investigation
6. Protection
7. Reporting/Response

See Guidance to Surveyors at F226 for more details

Procedure

- Interview:
  - Responsible facility staff on how each of seven components are operationalized ***if*** it is not obvious from the facility Abuse Policy
    - How do you monitor the staff providing and/or supervising the delivery of resident care& services?
    - ***How do you determine which injuries of unknown origin should be investigated as alleged occurrences of abuse?***
    - How are you ensuring that residents, families and staff feel free to communicate concerns without fear of reprisal?

Procedure

- Interview:
  - Several residents and families regarding their awareness of to whom and how to report allegations, incidents and/or complaints.
  - At least 5 direct care staff, representing all 3 shifts, including activity staff and CNA's to determine the following:
    - Trained & knowledgeable about how to intervene in situations involving ***aggressive residents or catastrophic reactions***
    - Knowledgeable regarding ***what, when and to who to report***

Procedure continued

- Interview:
  - At least 3 front line supervisors of staff to determine how they monitor….
    - The provision of care/services
    - Staff/resident interactions
    - Deployment of staff to meet resident needs
    - Potential staff burnout which could lead to abuse

Procedure

- **Record Review**
  - **Select 2-3 alleged violations reported to State**
    - **Determine if the facility implemented adequate procedures for:**
      - ***Reporting, investigating, protection & corrective action***
      - ***NOTE: You MUST follow State Law and State Regulations as noted in F225!***
  - Determine if the facility reevaluated and revised applicable procedures as necessary.
  - **Review a list of all new hires within previous 4 months & select 5 from list & review for written evidence that facility conducted all necessary pre-screening**

SYNOPSIS OF ACT 283 OF 2007

- This is a synopsis of the Adult and Long-Term Care Facility Resident Maltreatment Act 283 of 2007.

  - Effective Date-July 31, 2007

WHO MUST REPORT

- All facility personnel are required to report adult maltreatment, including the owner and the administrator.

- In addition; any physician; surgeon; coroner; dentist; dental hygienist; osteopath; resident intern; nurse; member of a hospital's personnel who is engaged in the administration, examination, care or treatment of persons; social worker; case manager; home health worker; mental health profession; peace officer; law enforcement officer; employee of the Department of Human Services; firefighter; emergency medical technical; or an employee of a bank or other financial institution.

WHAT MUST BE REPORTED?

- **ALL…**
- **ALLEGED**
- WITNESSED
- SUSPECTED MALTREATMENT

TO WHOM MUST REPORTS BE MADE?

- **IMMEDIATELY** to the **administrator** or that person's designated agent.

- **IMMEDIATELY** to the **local law enforcement agency** for the jurisdiction in which the long-term care facility is located.

- **BY 11:00 A.M. THE NEXT BUSINESS DAY** to the Office of Long-Term Care of the Division of Medical Services of the Department of Human Services, **under the regulations of that office.**

WHAT IS MALTREATMENT?

- ABUSE
- SEXUAL ABUSE
- NEGLECT
- MISAPPROPRIATION OF RESIDENT PROPERTY
- EXPLOITATION OF RESIDENTS.

“ABUSE” MEANS…

- With regard to any long-term care facility resident or any patient at the Arkansas State Hospital by a caregiver:

ABUSE MEANS…

- Any intentional unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person, excluding court-ordered medical care or medical care requested by the patient or long-term care facility resident or a person legally authorized to make medical decisions on behalf of the patient or long-term care facility resident;

ABUSE MEANS…

- Any intentional or demeaning act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm, excluding necessary care and treatment provided in accordance with generally recognized professional standards of care.

ABUSE MEANS…

- Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause; or

ABUSE MEANS…

- Any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

IMPORTANT NOTE

- **“Physical injury”** means the impairment of a physical condition or the infliction of substantial pain on a person.

- If the person is an **ENDANGERED** person or an **IMPAIRED** person, there **shall be a presumption that any physical injury resulted in the infliction of substantial pain**.

IMPORTANT NOTE, CONT.

- **Long-term care facility resident means a person, regardless of age, living in a long-term care facility.**

- **A long-term care facility resident is presumed to be an impaired person.**

EXPLOITATION MEANS THE…

- Illegal or unauthorized use or management of an endangered person's or an impaired person's funds, assets, or property;

EXPLOITATION MEANS THE…

- Use of an endangered person's or an adult impaired person's power of attorney or guardianship for the profit or advantage of one's own self or another, or

EXPLOITATION MEANS THE…

- Misappropriation of property of a long-term care facility resident, that is, the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a long-term care facility resident's belongings or money without the long-term care facility resident's consent.

NEGLECT MEANS…

- An act or omission by an endangered person or an impaired person, for the example, self-neglect: or an act or omission by a caregiver responsible for the care and supervision of an endangered person or an impaired person constituting:

NEGLIGENTLY FAILING…

- To provide necessary treatment, rehabilitation, care food, clothing, shelter, supervision, or medical services to an endangered person or an impaired person;

NEGLIGENTLY FAILING…

- To report health problems, or changes in health problems or changed in health condition of an endangered person or an impaired person to the appropriate medical personnel;

NEGLIGENTLY FAILING…

- …To carry out a prescribed treatment plan.

NEGLIGENTLY FAILING…

- To provide goods or services to a long-term care facility resident necessary to avoid physical harm, mental anguish, or mental illness as defined in regulations promulgated by the Office of Long-Term Care of the Division of Medical Services of the Department of Health and Human Services.

SEXUAL ABUSE MEANS…

- Deviate sexual activity, sexual contact, or sexual intercourse, as those terms are defined in 5-14-101, with another person who is not the actor's spouse and who is incapable of consent because he or she is mentally defective, mentally incapacitated, or physically helpless, as those terms are defined in 5-14-101.

REPORTING PENALITIES 12-12-1720

- Any person or caregiver required by this subchapter to report a case of suspected adult maltreatment of a long-term care facility resident maltreatment who purposely fails to do so shall be guilty of a **Class B misdemeanor**.

REPORTING PENALITIES 12-12-1720

- Any person or caregiver required by this subchapter to report a case of suspected adult maltreatment of long-term care facility resident maltreatment who purposely fails to do so **shall be civilly liable for damages proximately caused by the failure.**

REPORTING PENALITIES 12-12-1720

- Any person required to report suspected adult maltreatment of long-term care facility resident maltreatment who knowingly fails to make the report in the manner and time provided in this subchapter shall be guilty of a **Class C Misdemeanor.**

REPORTING PENALITIES 12-12-1720

- Any person, official, or institution willfully making false notification under this subchapter knowing the allegations to be false shall be guilty of a **Class A misdemeanor.**

IMMUNITY FOR INVESTIGATION PARTICIPANTS (12-12-1713)

- Any person, official, or institution acting in good faith in the making of a report, the taking of a photograph, or the removal of a maltreated person under this subchapter **shall have immunity from liability and suit for damages, civil or criminal**, that otherwise might result by reason of those actions.

GOOD FAITH PRESUMED

- The **good faith** of any person required to report a case of adult maltreatment or long-term care facility resident maltreatment **SHALL BE PRESUMED**.

NOTICE OF FOUNDED REPORTS

- **FOUNDED REPORT: Is where an allegation is supported by a preponderance of evidence.**

- **Notice** will be sent to the **administrator**s of the facility at which the incident occurred, and the administrator of the facility in which the perpetrator is employed;

- **Notice** will be sent by OLTC to the resident and a copy will be sent to the administrator for forwarding to the resident's legal guardian, if any.

NOTICE OF UNFOUNDED REPORTS

- Notice of unfounded reports will be sent to administrators of facilities at which the incident occurred. A copy which the administrator send to the legal guardian of the residents will be included.

- **ALL FOUNDED REPORTS** will be transmitted to, and entered in, the Adult Abuse Registry.

- **ALL UNFOUNDED REPORTS** shall be expunged one (1) year after the completion of the investigation.

REMEMBER

PROTECT!

REPORT!

INVESTIGATE!