

ADULT AND LONG-TERM CARE FACILITY RESIDENT MALTREATMENT REPORTING ACTS & REGULATIONS

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

**Presented by the Office of Long Term
Care**

FOR ICF/MR FACILITIES

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 ,483.420(d)(1-4)(LTC-ICF/MR) reporting requirements**

W153

- **482.420(d)(2)** The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, are **reported immediately to the administrator or to other officials in accordance with State law through established procedures.**

W 154 & W 155

- 483.420(d)(3) (W-154) The facility must have evidence that all alleged violations are thoroughly investigated, and ...
- (W-155) must prevent further potential abuse while the investigation is in progress.

REPORTING 11:00 A.M. NEXT BUSINESS DAY

Arkansas Code Annotated

12-12-1708(b)(1)(B) A report for a long-term care facility resident shall be made: (B) To the Office of Long Term Care under the regulations of that office.

DMS-7734-ICF/MR'S.

REPORTING CONT'D

ICF/MR'S

DMS-7734: Summary of Incident:

Clear, Concise Narrative

Description*(include known essentials of who, what, when, where, why and how regarding the incident)*

REPORTING CONT'D ICF/MR'S

W-155: must prevent further potential abuse while the investigation is in progress.

**DMS-7734: Describe steps taken to “PREVENT CONTINUED ABUSE OR NEGLECT” during the Investigation).
Must have steps to protect!**

Required by Regulation & Law.

W 156 & W 157

- 483.420(d)(4) (W-156) The results of all investigations must be reported to the administrator or his designated representative or to other officials in accordance with State law within five working days of the incident, and...
- (W-157) if the alleged violation is verified appropriate corrective action must be taken.

SYNOPSIS OF ACT 525 OF 2009

- This is a synopsis of the Adult and Long-Term Care Facility Resident Maltreatment Act 525 of 2009.
- “ALL” ICF/MR’S are classified as Long Term Care Facilities, per Act 525.

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 (OLTC) 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.

ABUSE-PUNISHMENT EXAMPLE

W-151: “Staff must not punish a client by withholding food or hydration that contributes to a nutritionally adequate diet.

NEGLECT: This can also come under “Neglect” “...Failing to provide necessary food...”

Also, Failing to carry out a prescribed treatment plan...”

ABUSE EXAMPLES

Making fun of a client, demeaning acts to a client, threatening a client, ridicule, or saying something to a client that would cause psychological injury or provoke fear and/or alarm.

Also, excessive force involved in takedowns above what is called for in BTP/IPP. IT'S AGAINST THE LAW

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.

THEFT QUESTIONS DOCUMENTATION

- **Do you have evidence the employee was stealing drugs? Confession? Body of proof in the MARS? Drug test of employee? Drug test of clients?**
- **Was employee giving one client's drugs to another client on purpose?**
- **Was employee taking drugs from the discontinued drugs waiting shipment to the Health Department?**

THEFT QUESTIONS DOCUMENTATION W-140, W-141 & W-142

Was employee taking money from the client or clients' funds?

Was employee asking clients for money?

Was the employee using the client's cell phone and are there cell phone records and a check on the numbers called?

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;

INDIVIDUAL PROGRAM PLAN (IPP) VIOLATIONS

Failure to Supervise: Did the client elope? Did the client get burned with hot coffee?

Did the client fall off of the bed or toilet because they were unsupervised?

Medical Services. Did the staff fail to take, or falsify TPR and BP readings? Did the staff fail or falsify BS readings?

IPP VIOLATIONS

Failure to Supervise: Did the IPP or BTP call for visual (or arm's length) supervision of client at all times?

Direct Care Staff (DCS): Do they have access to IPP/BTP, understand what is in it, and do you have documentation that they have been trained on the use of the IPP/BTP?

Transfer Supervision: Was it done according to policy/procedure?

IPP VIOLATIONS

Was there a Failure to use a lift according to IPP and manufacturers recommendations?

Was there a Failure to secure a client in a Van properly and did the client have a seat belt?

Was there a Failure to do a proper head account on an outing or trip?

Was the wrong diet served?

NEGLIGENTLY FAILING...

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

CHANGE OF CONDITION

Did the client report a health problem to the Direct Care Staff (DCS) and did the DCS report it to the LPN/RN?

Did the DCS notice a change in the Client's condition within his/her scope of training, and did he/she report the change to the LPN/RN?

When the DCS reported a change of condition to the LPN/RN, did that person check on the client?

CHANGE OF CONDITION

When the LPN/RN had a report of change of condition or noticed a change of condition in a client, did the LPN/RN take appropriate action and report to the appropriate medical personnel within his/ her scope of practice?

Was the IPP and/or Physician's Orders followed?

NEGLIGENTLY FAILING...

- ...To carry out a prescribed treatment plan.
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- Also means...

**Negligently failing to carry out the
Individual Program Plan or Behavioral
Treatment Plan, Physician's Orders.**

NEGLIGENTLY FAILING...

“To provide goods or services to a long-term care facility resident necessary to avoid physical harm, mental anguish, or mental illness...”

DOCUMENTATION NEEDED POTENTIAL NEGLECT CASES

Copies of: IPP and/or BTP. Written documentation of orientation/in-service showing Direct Care Staff (DCS) trained on use of IPP/BPT and has access to the information.

Copies of: Client assignment sheets. Documentation showing transfer of supervision from one DCS to another.

DOCUMENTATION CONT'D

NEGLECT

Assignment Sheets for client rounds checks, TPR's and BP's.

Copies of MARS when drugs are involved.

Copies of diet orders when neglect involved diets. Choking incidents.

Copies of DVD's if used and referenced.

DOCUMENTATION CONT'D

NEGLECT

Copies of In-service with signatures and individual training records showing training on equipment, new procedures involving a client, procedures dealing with particular clients.

Client outings: Head count procedures and documentation showing training.

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 PENALTIES

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 PENALTIES

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 PENALTIES

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 PENALTIES

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 **administrators** 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 client and a copy will be sent to the administrator for forwarding to the client'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!