



Iowa Health Care Association
Iowa Center for Assisted Living
Iowa Center for Home Care

Abuse Prevention, Identification, Investigation and Reporting Policy

Policy Statement:

All Residents have the right to be free from abuse, neglect, misappropriation of resident property, exploitation, corporal punishment, involuntary seclusion, and any physical or chemical restraint not required to treat the resident's medical symptoms. This includes prohibiting nursing facility staff from taking or using photographs or recordings in any manner that would demean or humiliate a resident, and prohibits using any type of equipment (e.g., cameras, smart phones, and other electronic devices) to take, keep, or distribute photographs and/or recordings on social media or through multimedia messages. Residents must not be subjected to abuse by anyone, including, but not limited to, facility staff, other residents, consultants or volunteers, staff of other agencies serving the resident, family members or legal guardians, friends, or other individuals.

It shall be the policy of this facility to implement written procedures that prohibit abuse, neglect, exploitation and misappropriation of resident property.

These procedures shall include the screening and training of employees, protection of Residents and the prevention, identification, investigation, and timely reporting of abuse, neglect, mistreatment, and misappropriation of property, without fear of recrimination or intimidation.

Employee Screening:

The facility shall screen all potential employees for a history of abuse, neglect, exploitation, misappropriation of property, or mistreatment of Residents. The facility will not employ or otherwise engage individuals who: (i) Have been found guilty of resident abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law; (ii) Have had a finding entered into the State nurse aide registry concerning resident abuse, neglect, exploitation, mistreatment of residents or misappropriation of their property; or (iii) Have a disciplinary action in effect against his or her professional license by a state licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property.

This will be accomplished through the following (including maintaining documentation of such results):

1. The facility will conduct an Iowa criminal record check and dependent adult/child abuse registry check on all prospective employees and other individuals engaged to

provide services to residents, prior to hire, in the manner prescribed under 481 Iowa Administrative Code § 58.11(3). The facility will conduct a criminal record check and dependent adult/child abuse registry check on all current employees and other individuals engaged to provide services to residents who have criminal convictions or founded abuse determinations after hire, or where the facility received credible information that an employee has had a criminal conviction or a founded abuse determination subsequent to hire. See Iowa Code § 135C.33(7).

2. The facility will make reasonable attempts to request and obtain information from previous employers and/or current employers that may be indicative of a history of abuse, neglect or mistreating Residents.
3. For those prospective employees and other individuals engaged to provide services who hold licenses (e.g. - administrators, nurses, dietitians, therapists, etc.) the facility will conduct a check with the appropriate licensing boards to assure that there are no disciplinary actions in effect against the applicant's professional license by any state licensure body as a result of a finding of abuse, neglect, exploitation, or mistreatment of residents or misappropriation of resident property.
4. For those prospective employees and other individuals engaged to provide services who hold certificates (e.g. - certified nurses' aides), the facility will conduct a check with the appropriate registry to assure that there is no finding of abuse, neglect, exploitation, or mistreatment of residents or misappropriation of resident property.

Training of Employees:

Upon initial employment, each employee shall be provided with a copy of the facility's policies and procedures relating to abuse identification and reporting requirements. Within six months of hire each employee shall be required to complete an initial 2-hour training course provided by the Iowa Department of Human Services relating to the identification and reporting of dependent adult abuse. . Each employee will take a 1-hour recertification training within 3 years of the initial training and every three years thereafter. See Iowa Code § 235B.16(5)(b); Iowa Code § 235E.4. In addition, all nurses' aides shall receive initial and annual resident abuse prevention training.

The training will educate staff on: (a) activities that constitute abuse, neglect, exploitation, and misappropriation of resident property; (b) procedures for reporting incidents of abuse, neglect, exploitation, or the misappropriation of resident property; and (c) dementia management and resident abuse prevention.

All employees shall receive annual training relating to the reporting requirements of the Elder Justice Act, and each employee's obligation to comply with the reporting requirements of the Act.

Identification, Investigation and Reporting of Abuse:

Abuse is defined differently under both State and Federal law and regulation. The following are key definitions that should be considered when determining whether an event constitutes abuse.

Key Definitions:

“Dependent adult abuse” is defined under Iowa law, pursuant to Iowa Code Ch. 235E as:

1. Any of the following as a result of the willful misconduct or gross negligence or reckless acts or omissions of a **caretaker**, taking into account the totality of the circumstances:
 - a. A physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult which involves a breach of skill, care, and learning ordinarily exercised by a caretaker in similar circumstances. “Assault of a dependent adult” means the commission of any act which is generally intended to cause pain or injury to a dependent adult, or which is generally intended to result in physical contact which would be considered by a reasonable person to be insulting or offensive or any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.
 - b. The commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2 with or against a dependent adult.
 - c. Exploitation of a dependent adult. “Exploitation” means a caretaker knowingly obtains, uses, endeavors to obtain to use or who misappropriates a dependent adult’s funds, assets, medications, or property with the intent to temporarily or permanently deprive a dependent adult of the use, benefit, or possession of the funds, assets, medication or property for the benefit of someone other than the dependent adult.
 - d. Neglect of a dependent adult. “Neglect of a dependent adult” means deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult’s life or physical or mental health.
 - e. Sexual exploitation of a dependent adult by a caretaker, defined as any consensual or nonconsensual sexual conduct with a dependent adult by a caretaker whether within a facility or program or at a location outside of a facility or program.

“Sexual exploitation” includes but is not limited to:

1. Kissing;
2. Touching of the clothed or unclothed breast, groin, buttock, anus, pubes, or genitals;
3. A sex act as defined in Iowa Code section 702.17 [any sexual contact between two or more persons by]: penetration of the penis into the vagina or anus; contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person; contact between the finger or hand of one person and the genitalia or anus of another person (except in the course of examination or treatment by a physician, physician assistant,

chiropractor, or nurse); ejaculation on to the person of another or by use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus;

4. The transmission, display or taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment, care, monitoring, assessment or diagnosis or as part of an ongoing investigation.

NOTE: By law, “*Sexual exploitation*” does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses or domestic partners in an intimate relationship.

5. Personal degradation of a dependent adult. “*Personal degradation*” means a willful act or statement by a caretaker intended to shame, degrade, humiliate, or otherwise harm the personal dignity of a dependent adult, or where the caretaker knew or reasonably should have known the act or statement would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person. “*Personal degradation*” includes the taking, transmission, or display of an electronic image of a dependent adult by a caretaker, where the caretaker’s actions constitute a willful act or statement intended to shame, degrade, humiliate, or otherwise harm the personal dignity of the dependent adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person.

NOTE: By law, “*Personal degradation*” does not include the taking, transmission, or display of an electronic image of a dependent adult for the purpose of reporting dependent adult abuse to law enforcement, the department, or other regulatory agency that oversees caretakers or enforces abuse or neglect provisions, or for the purpose of treatment or diagnosis or as part of an ongoing investigation. “*Personal degradation*” also does not include the taking, transmission, or display of an electronic image by a caretaker in accordance with the facility’s or program’s confidentiality policy and release of information or consent policies.

“Caretaker” means a person who is a staff member of a facility or program who provides care, protection or services to a dependent adult voluntarily, by contract, through employment or by order of the court.

“Resident Abuse” under the Federal Certification Guidelines [42 C.F.R. § 483.12 and 42 C.F.R. § 483.5] is defined as follows:

1. “Abuse” means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. This 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. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology.
2. “Verbal abuse” is defined as the use of oral, written or gestured language that willfully includes disparaging and derogatory terms to Residents or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse include but are not limited to: threats of harm, saying things to frighten a Resident such as telling a Resident that he/she will never be able to see his/her family again.
3. “Exploitation” means taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats, or coercion.
4. “Sexual abuse” is non-consensual sexual contact of any type with a resident [however, see Iowa Code definition of sexual exploitation above].
5. “Physical abuse” includes, but is not limited to, hitting, slapping, pinching, and kicking. It also includes controlling behavior through corporal punishment.
6. “Mental abuse” includes, but is not limited to, humiliation, harassment, threats of punishment or deprivation (See also section 14)
7. “Involuntary seclusion” is defined as separation of a resident from other residents or from her/his room or confinement to her/his room (with or without roommates) against the Resident’s will or the will of the Resident’s legal representative. Emergency or short term monitored separation from other Residents will not be considered involuntary seclusion and may be permitted if used for a limited period of time as a therapeutic intervention to reduce agitation until professional staff can develop a plan of care to meet the Resident’s needs.
8. “Mistreatment” means inappropriate treatment or exploitation of a resident.
9. “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, mental anguish, or mental illness.
10. “Misappropriation of Resident property” means the deliberate misplacement, exploitation, or wrongful temporary or permanent use of a Resident’s belongings or money without the Resident’s consent.
11. Residents must not be subjected to abuse by anyone, including, but not limited to, facility staff, other residents, consultants or volunteers, staff of other agencies serving the

resident, family members or legal guardians, friends, or other individuals.

12. "Injuries of Unknown Source" An injury should be classified as an "injury of unknown source" when both of the following conditions are met:
 - The source of the injury was not observed by any person **or** the source of the injury could not be explained by the resident; **and**
 - The injury is suspicious because of the extent of the injury **or** the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma) **or** the number of injuries observed at one particular point in time **or** the incidence of injuries overtime.
13. Resident-to-resident physical contact that occurs, which includes but is not limited to where residents are hit, slapped, pinched or kicked and results in physical harm, pain or mental anguish is considered resident-to-resident abuse. Resident-to-resident sexual harassment, sexual coercion, or sexual assault is also considered abuse. The facility will presume that instances of abuse cause physical harm, or pain or mental anguish in residents with cognitive and/or physical impairments which may result in a resident unable to communicate physical harm, pain or mental anguish, in the absence of evidence to the contrary. An example would be a resident slapping another resident who is physically or cognitively impaired, even though the resident who was slapped showed no reaction (e.g., yelp or grimace), it is presumed the resident experienced pain.
14. Taking photographs and/or making recording of residents that contain or depict: nudity, sexual and intimate relations, bathing, showering, toileting, providing perineal care, agitating a resident to solicit a response, derogatory statements directed to the resident, showing a body part without the resident's face whether it is the chest, limbs, or back, labeling resident's pictures and/or providing comments in a demeaning manner, directing a resident to use inappropriate language, or showing the resident in a compromised position. This includes keeping such unauthorized photographs and/or recordings or distributing them through multimedia messages or on social media networks.

Reporting:

All allegations of Resident abuse, neglect, exploitation, mistreatment, injuries of unknown origin and misappropriation should be reported **immediately** to the charge nurse. The charge nurse is responsible for **immediately** reporting the allegations of abuse to the Administrator, or designated representative.

All allegations of Resident abuse shall be reported to the Iowa Department of Inspections and Appeals not later than **two (2) hours** after the allegation is made.

All allegations of Resident neglect, exploitation, mistreatment, injuries of unknown origin and misappropriation shall be reported to the Iowa Department of Inspections and Appeals, not later than **two (2) hours** after the allegation is made, if the events that cause the allegation

result in serious bodily injury, or not later than twenty-four (24) hours if the events that cause the allegation involve neglect, exploitation, mistreatment, injuries of unknown origin and misappropriation, but do not result in serious bodily injury.

If there is a reasonable suspicion that the allegation of abuse also constitutes a crime committed against the resident by any person, whether or not the alleged perpetrator is employed by the facility, the Elder Justice Act requires the matter must also be reported to law enforcement. While the federal regulations requires all abuse allegations be reported to DIA within 2 hours , the Elder Justice Act has a different time frame for reporting to the police/sheriff. If the allegation of abuse (that results from a crime) results in serious bodily injury to a resident, a report must be made to law enforcement not later than **two (2) hours** after the allegation is made. If the allegation of abuse does not result in serious bodily injury, a report must be made to law enforcement not later than twenty-four (24) hours (See Elder Justice Act requirements on page 9).

“Serious bodily injury” is “an injury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or requiring surgery, hospitalization, or physical rehabilitation.”

A report shall be made by calling the Department of Inspections and Appeals reporting hotline at (877) 686-0027, submitting an e-mail to the Department at HFD_Complaint@dia.iowa.gov , submitting an online report or sending a fax to (515) 281-7106.

If the person in charge is the alleged abuser, the staff member shall directly report the abuse to the Department immediately, pursuant to the deadlines established above.

If the allegations of dependent adult abuse involve a caretaker who is not an employee of the facility (e.g. family member, visitor), a report must also be made immediately to **both** the Iowa Department of Inspections & Appeals and the Iowa Department of Human Services (DHS) by phone call 1-800-362-2178 and follow-up documentation is to be submitted to DIA and DHS as requested by DHS or DIA.

Investigation

Should an incident or suspected incident of Resident abuse (as defined above) be reported or observed, the administrator or his/her designee will designate a member of management to investigate the alleged incident.

The administrator or designee will complete documentation of the allegation of Resident abuse and collect any supporting documents relative to the alleged incident.

1. Review documentation in resident record (including review of assessment if resident injury).
2. Assess the resident for injury if the allegation involves physical or sexual abuse;
3. Provide proper notifications to primary care provider, responsible party, etc.
4. Attempt to obtain witness statements (oral and/or written) from all known witnesses.
5. If there is physical evidence that can be preserved, attempt to do so, and maintain in a safe location to minimize risk of evidence being tampered with.

The facility will establish and enforce an environment that encourages individuals to report allegations of abuse without fear of recrimination or intimidation.

Following investigation, the Administrator or designated agent will be responsible for forwarding the results of the investigation to the Department of Inspections & Appeals. This written report shall be forwarded to the Department within five days of the initial report.

Initial/Immediate Protection During Facility Investigation:

Upon receiving a report of an allegation of resident abuse, neglect, exploitation or mistreatment, the facility shall immediately implement measures to prevent further potential abuse of residents from occurring while the facility investigation is in process. If this involves an allegation of abuse by an employee, this will be accomplished by separating the employee accused of abuse from all residents through the following or a combination of the following, if practicable: (1) suspending the employee; (2) segregating the employee by moving the employee to an area of the facility where there will be no contact with any residents of the facility; and in rare instances (3) separating the employee accused of abuse from the resident alleged to have been abused, but allowing the employee to care for and have contact with other residents, only if there is a second employee who remains with and accompanies the employee accused of abuse at all times to supervise all contacts and interactions with the residents.

Following completion of the facility investigation, if the facility concludes that the allegations of resident abuse are unfounded, the employee may be allowed to return to job duties involving resident contact, but the employee must maintain a separation and have no contact with the resident alleged to have been abused, by reassigning the accused employee to an area of the facility where no contact will be made between the accused employee and the resident alleged to have been abused. This separation must be maintained until the Department concludes its investigation and issues the written results of its investigation. **Note: if the DIA determines there was abuse (even though the facility did not substantiate the abuse), there is risk that DIA could cite the facility with Immediate Jeopardy, for allowing an abuser to have access to other residents while the matter was being investigated.**

Elder Justice Act:

If the incident prompting the investigation results in serious bodily injury to a resident and there is a reasonable suspicion that the incident was result of a **crime committed by any person, whether or not the alleged perpetrator is employed by the facility**, the Elder Justice Act requires the matter to be reported to **law enforcement and DIA** within two (2) hours by all persons having knowledge of the matter. "Serious bodily injury" is "an injury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or requiring surgery, hospitalization, or physical rehabilitation." In the absence of serious bodily injury, but with the reasonable suspicion that a crime has been committed by any person, the matter must be reported to law enforcement and DIA immediately, and in no event, more than 24 hours later, even on weekends and holidays, by all persons having knowledge of the matter. (Note: This does not eliminate the separate legal requirement to report all allegations of abuse to DIA within two (2) hours, even if there is no serious bodily injury).

Persons Responsible for Reporting a Crime:

Everyone having knowledge of the criminal act ("covered individual") has an independent duty to report to law enforcement and DIA. Several covered individuals having knowledge may file a single report that includes information about the suspected crime from each covered person.

Any multiple-person report shall include identification of all individuals making the report.

The filing of a single or multiple-person report does not prevent a covered individual from making an individual report separately, in his/her own words, to the DIA and law enforcement, and should not be prevented by the facility.

If, after a report is made regarding a particular incident or suspicion of a crime, additional covered individuals become aware of the same incident or form a similar suspicion based on the same reported events, the original report will be supplemented with additional information including the names of the additional covered individuals along with the date and time of their awareness of such incident or suspicion.