

## **F602**

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### **§483.12**

**The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation as defined in this subpart. This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident’s medical symptoms.**

### **INTENT §483.12**

Each resident has the right to be free from **misappropriation of property and exploitation.**

**NOTE:** Refer to F609 for requirements related to reporting of a reasonable suspicion of a crime.

### **DEFINITIONS §483.12**

**“Exploitation,”** as defined at §483.5, means “taking advantage of a resident for personal gain, through the use of manipulation, intimidation, threats, or coercion.”

**“Misappropriation of resident property,”** as defined at §483.5, means “the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident’s belongings or money without the resident’s consent.”

### **GUIDANCE §483.12**

Residents’ property includes all residents’ possessions, regardless of their apparent value to others since they may hold intrinsic value to the resident. Residents are permitted to keep personal clothing and possessions for their use while in the facility, as long as it does not infringe upon the rights of other residents (See F557). Examples of resident property include jewelry, clothing, furniture, money, and electronic devices, the resident’s personal information such as name and identifying information, credit cards, bank accounts, driver’s licenses, and social security cards.

Examples of misappropriation of resident property include, but are not limited to:

- Identity theft;
- Theft of money from bank accounts;
- Unauthorized or coerced purchases on a resident’s credit card;
- Unauthorized or coerced purchases from resident’s funds;
- A resident who provides a gift to staff in order to receive ongoing care, based on staff’s persuasion; and

- A resident who provides monetary assistance to staff, after staff had made the resident believe that staff was in a financial crisis.

Facility staff are in a position that may be perceived as one of power over a resident. As such, staff may be able to manipulate or unduly influence decisions by the resident. Staff must not accept or ask a resident to borrow personal items or money, nor should they attempt to gain access to a resident's holdings, money, or personal possessions through persuasion, coercion, request for a loan, or solicitation. For example, exploitation may include, but is not limited to, when a resident, or resident representative, has given his/her money or belongings to staff as a result of coercion, or because the resident, or resident representative, believes that it was necessary (e.g., in order to receive good care). A resident's apparent consent is not valid if it is obtained from a resident lacking the capacity to consent, or consent is obtained through intimidation, coercion or fear, whether it is expressed by the resident or suspected by staff.

Another example of misappropriation of resident property is the diversion of a resident's medication(s), including, but not limited to, controlled substances for staff use or personal gain.

## **INVESTIGATIVE PROTOCOL FOR MISAPPROPRIATION OF RESIDENT PROPERTY AND EXPLOITATION §483.12 OBJECTIVES**

To determine:

- Whether a resident(s) was free from misappropriation of resident property and exploitation (F602);
- If the facility developed, implemented and educated staff on policies and procedures that prohibit misappropriation of resident property and exploitation (F607);
- If the facility developed and implemented pre-employment procedures (F606); and
- How the facility protects, reports, investigates, and acts upon alleged violations of misappropriation of resident property and exploitation (F609, F610).

## **USE**

Use this protocol during any type of survey as necessary in order to investigate an allegation of misappropriation of property or exploitation.

## **PROCEDURES §483.12 OFFSITE SURVEY PREPARATION**

Information related to an alleged violation may be obtained from:

- Reports from the ombudsmen or other State Agencies;
- Any related previously-cited deficiencies (CASPER Report 3); and
- A complaint and/or facility self-report including:
  - Name of alleged victim(s), alleged perpetrator(s) and witnesses, if any;

- Narrative/specifics of the allegation(s) including frequency and pervasiveness of the allegation; and
- Whether the allegation was reported by the facility and to other agencies.

## **ONSITE SURVEY ACTIVITIES**

If a surveyor receives an allegation of misappropriation of resident property or exploitation during the survey, he/she must immediately report this to the facility administrator, or his/her designated representative if the administrator is not present. The survey team should determine whether the facility then takes appropriate action in accordance with the requirements at F609 and F610.

During the course of the investigation, if it is determined that the resident's property was misplaced and found and not misappropriated, or the property loss was not related to a facility failure to protect the property (e.g., resident/family accidentally disposed of the item or took the item home), the investigation may be stopped.

Obtain and review the facility's policies and procedures related to misappropriation of resident property and exploitation. It is not necessary for these items to be maintained in one document or manual.

## **OBSERVATION**

Depending on the nature of the incident, the surveyor should conduct observations that are related to the allegation. Observations include, but are not limited to,

- For allegations of theft of medications, how medications are secured and accessed.
- For allegations of stolen property, where the property was stored, whether it was in a secure area, and how the property was accessed.

## **Interview:**

The surveyor follows the guidelines below for interviews, which include, but are not limited to:

- Conduct interviews in a private location, preferably seated in order to be able to maintain eye contact with the individual being interviewed;
- Be impartial, use discretion, and non-judgmental language and to the extent possible, ask open-ended, non-leading questions;

**NOTE:** It is important to maintain the confidentiality of the names of the person(s), to the extent possible, who reported the allegation.

- Conduct follow up interviews, as necessary, to evaluate new information obtained, discrepancies or changes in information; and
- Maintain documentation of interviews including dates, times, locations and names of individuals interviewed.

**NOTE:** It is important to attempt to obtain as accurate information as possible, and it may be necessary to obtain assistance from an interpreter if English is not the spoken language of the resident or staff.

### **Resident/Family Interview**

Interview the alleged victim privately; however, the alleged victim may request that another person be present. If so, be aware that the alleged victim may not be comfortable speaking openly in the presence of another person, and another interview may be necessary to follow up on any discrepancies identified. A resident with a cognitive impairment and/or mental illness may mistakenly be assumed to be an incompetent witness. In those situations, interview the alleged victim, to the extent possible, and corroborate statements with other observations, interviews and record review. During the interview, observe the resident's emotions and tone, as well as any nonverbal expressions or gesturing to a particular body area, in response to the questions. Interview the resident, or resident's representative, to determine:

- For an allegation of misappropriation of resident property:
  - What is missing. If the missing item is money, how much;
  - For how long the item has been gone;
  - Whether the resident has any idea of what might have happened to the item;
  - Whether the resident suspects a specific person(s) was involved in the loss of the item(s) and the name, title (if any) and/or relationship to the resident;
  - Whether the resident/family reported the missing property to facility staff and, if so, when and to whom and the facility's response;
  - Whether local law enforcement or other outside agencies were notified, and if so, any response that they are aware of; and
  - How the resident feels about losing the item.
- For an allegation of exploitation:
  - When and where the alleged exploitation occurred;
  - What occurred prior to, during and immediately following the alleged exploitation;
  - Whether he/she can identify who was involved including the alleged perpetrator and/or any witnesses;
  - Why the resident gave the item to the alleged perpetrator or allowed the alleged perpetrator to take the item;
  - How the resident values the item;
  - Whether he/she reported the alleged exploitation to the facility, when and to whom reported and the facility's response; and
  - Whether he/she feels safe, is afraid of anyone, or fearful of retaliation.

### **Staff Interview**

Review staff attendance records from any department to determine who was working at the time of the alleged misappropriation or exploitation and who may have had access to the resident and/or the resident's room to collect information about:

- Whether he/she had knowledge of the allegation and what actions, if any, he/she took in response to the allegation;
- Any changes in the resident's behavior as a result of the allegation;
- Whether an individual has been identified as the alleged perpetrator and how the alleged perpetrator and resident related to one another prior to and after the incident;
- Whether he/she reported the allegation to management/administrative staff or any State or local agencies, and if so, to whom was the allegation reported and when;
- If not reported, what prevented him/her from reporting;
- Whether he/she is fearful of retaliation;
- If he/she reported the allegation, whether he/she feels that retaliation has occurred as a result of reporting the allegation, and if so, what actions were taken against staff; and
- Whether he/she has received training from the facility on misappropriation and exploitation identification, prevention, and reporting requirements.

### **Alleged Perpetrator Interview:**

If the alleged perpetrator is a staff member, the staff member may have been suspended or re-assigned until the investigation is completed and in some situations, the facility may have terminated the employment of the individual. In some cases, the alleged perpetrator may not be in the facility or may refuse to be interviewed. If possible, interview the alleged perpetrator either in person or by phone to determine:

- What information he/she can provide regarding to the allegation of missing property or exploitation;
- Whether he/she was present in the nursing home at the time the alleged misappropriation of property or exploitation occurred;
- Whether he/she has any information on the allegation, such as:
  - When and where the alleged incident occurred; and
  - If he/she has any other information that he/she wishes to share in regard to the investigation.

**Facility Investigator Interview.** If the facility was aware of the allegation, identify the staff member responsible for the initial reporting and investigation of alleged misappropriation of resident property or exploitation. This may be the administrator in some facilities. Obtain a copy of the investigation report. Interview the responsible staff person to determine:

- How the facility investigated the allegation of misappropriation or exploitation;
- If the facility did not know if the resident had the property prior to the alleged loss, and how the facility protects the resident's property from loss or theft;
- Whether local law enforcement or other outside agencies were notified, and if so, any response that they are aware of; and
- What findings and resolutions have occurred.

### **Record Review**

It may be necessary to obtain copies of specific entries in the record for the period of time that is relevant to the allegation.

Review the alleged victim's record to obtain necessary information as applicable such as:

- The diagnosis and physician orders including medications;
- The RAI, to include the resident's cognitive status;
- Care plan and interventions/goals;
- Physician's, nurse's, social worker's and other staff members progress notes, as applicable; (e.g. for investigation of drug diversion, whether there was indication of unrelieved pain during certain times of the day for residents who were prescribed the allegedly diverted medication);
- Any lists of resident valuables or resident items brought in to the facility; and
- Social and psychological history.

If staff is identified as the alleged perpetrator, review the staff member's personnel file for information related to:

- The allegation being investigated or history of other allegations;
- Adverse personnel actions taken relevant to exploitation or misappropriation of property;
- Screening that occurred prior to and during employment; and
- Training and orientation related to abuse and neglect prevention.

For an alleged theft of monies if the resident's funds are managed or held by the facility, review the accounting records for the resident's funds, including receipts for expenditures from the resident's funds. Attempt to reconcile whether the items are in the resident's possession.

Review interdisciplinary notes that relates to the alleged exploitation or misappropriation of property for documentation of the following:

- The date/time of the alleged exploitation/misappropriation and/or the date/time when the alleged exploitation/misappropriation was first discovered;
- Any change in the alleged victim's mood and demeanor before and after the alleged misappropriation/exploitation, such as:
  - Distrust;
  - Fear (e.g., fear of being touched or shying away from being touched);
  - Angry outbursts, tearfulness, agitation, trembling, cowering;
  - Panic attacks; and
  - Changes in sleeping patterns.

### **Reports from Other Investigatory Agencies**

At the time of the survey, if another investigatory agency(ies) has completed its investigation, the surveyor should request a copy of the report. Other investigatory agencies may include

State adult protective services, State professional licensing boards, and law enforcement/police reports.

### **Interview with Person Responsible for Quality Assurance**

Interview the person responsible for Quality Assurance activities. Determine how the committee is providing monitoring and oversight of potential and/or actual reported allegations of misappropriation of resident property and exploitation. Evaluate whether the committee has made recommendations such as policy revision and/or training.

### **Administrator Interview**

The administrator is responsible for the overall implementation of the facility policies/procedures to prohibit misappropriation of resident property and exploitation. This includes the obligation to report, investigate, protect the alleged victim, and take corrective actions, as necessary, based upon the outcome of the investigation. Obtain and review the copy of the investigation report, if any. **NOTE** that some of this information may have already been obtained from the facility investigator. Interview the administrator to determine:

- When he/she was notified of the alleged exploitation/misappropriation, and when the initial report was made to the required agencies and law enforcement as required;
- Who was/is responsible for the investigation, whether it has been completed and the outcome, or whether the investigation is ongoing;
- When the results of the investigation were reported to the administrator and to the required agencies;
- Whether the alleged perpetrator, if an employee, had previous warnings or incidents at the facility;
- How the alleged victim and other residents at risk of exploitation/misappropriation were protected during the investigation;
- What actions were taken to prevent misappropriation and exploitation after the investigation was completed;
- Whether any changes were necessary to the facility's policies and procedures;
- How the facility assures that retaliation does not occur when staff or a resident reports an allegation of misappropriation of resident property or exploitation;
- What actions have been taken for education of staff and residents regarding the facility's prevention plan and reporting requirements; and
- How does the facility protect the resident's property from loss or theft.

Provide an opportunity for the facility to provide any other information regarding the alleged misappropriation of the resident's property or exploitation.

### **Additional Investigatory Activities Related to Allegations of Drug Diversion**

For allegations of drug diversion, the surveyor determines:

- If there is evidence and/or potential outcomes such as unrelieved pain. For example, there may be evidence that on a particular shift, or when a particular staff member is working, a resident's pain symptoms are not relieved to the extent possible, but the pain symptoms

are relieved on other shifts, based upon validated evidence (see also tag F697 for concerns related to pain management);

- Whether pharmacy policies at a minimum, address safeguarding and access, monitoring, administration, documentation, reconciliation and destruction of controlled substances (see also tag F755 for concerns related to facility procedures for pharmacy services);
- Whether the pharmacist has established a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable accurate reconciliation and that the drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled (see also tag F755 for concerns related to responsibilities of the licensed pharmacist); and
- Determine whether the resident's clinical record provides accurate documentation of the administration of a controlled medication and resident outcomes related to the medication administration (see also tag F755 for concerns related to procedures for administration and documentation of controlled substances).

If the surveyor, during the investigation, has determined that a resident's medications were diverted, the State agency (SA) should make referrals to the following agencies as appropriate, such as:

- Drug Enforcement Administration (DEA),
- Local law enforcement,
- State Boards of Nursing, Pharmacy, and Nursing Home Administrators, and/or
- Other agencies the SA is required to notify in accordance with State law.

## **KEY ELEMENTS OF NONCOMPLIANCE §483.12**

To cite deficient practice at F602, the surveyor's investigation will generally show that the facility failed to protect a resident's right to be free from misappropriation of resident property and/or exploitation.

## **POTENTIAL TAGS FOR ADDITIONAL INVESTIGATION**

During the investigation, the surveyor may have determined that concerns may also be present with related outcome, process and/or structure requirements. The surveyor is cautioned to investigate these related requirements before determining whether non-compliance may be present. Some examples of related requirements that should be considered include the following:

- 42 CFR §483.10(e)(2), F557- Right to Have Personal Property
- 42 CFR §483.10(f)(10)(i)-(ii), F567-Protection/Management of Personal Funds
- 42 CFR §483.10(i), F584 – Safe Environment
- 42 CFR §483.10(j), F585- Grievances
- 42 CFR §483.12(a)(3)-(4), F606 - Not Employ/Engage Staff with Adverse Actions

- 42 CFR §483.12(b)(1)-(5), F607 – Develop/Implement Abuse/Neglect, etc. Policies
- 42 CFR §483.12(b)(5), (c)(1), and (c)(4), F609 – Reporting of Alleged Violations
- 42 CFR §483.12(c)(2) - (4), F610 – Alleged Violations-Investigate/Prevent/Correct
- 42 CFR §483.25(k), F697- Pain Management - Determine if there is evidence and/or potential outcomes such as unrelieved pain. For example, evidence that on a particular shift, or when a particular staff member is working, a resident’s pain symptoms are not relieved to the extent possible, but the pain symptoms are relieved on other shifts, based upon validated evidence.
- 42 CFR §483.45, §483.45(a)-(b), F755- Pharmacy Svcs/Procedures/Pharmacist/Records and 42 CFR §483.45(g)-(h), F761- Label/Store Drugs & Biologicals - Determine whether pharmacy policies at a minimum, address safeguarding and access, monitoring, administration, documentation, reconciliation and destruction of controlled substances; Determine whether the pharmacist has established a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable accurate reconciliation and that the drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled.
- 42 CFR §483.75 (g)(2)(ii)- F867- QAA Activities
- 42 CFR §483.95(c), F942- Abuse, Neglect, and Exploitation Training
- 42 CFR §483.95(g), F946-Required In-Service Training for Nurse Aide

#### **DEFICIENCY CATEGORIZATION §483.12**

In addition to actual or potential physical harm, always consider whether psychosocial harm has occurred when determining severity level (See Psychosocial Outcome Severity Guide).

#### **Examples of Severity Level 4 Noncompliance Immediate Jeopardy to Resident Health or Safety include, but are not limited to:**

- The facility failed to assure that a resident’s personal property was safeguarded and that staff did not misappropriate resident’s property. A resident, who had a medical condition in which she had loss of hair, owned two wigs which were personalized for her needs which she used consistently during the daytime hours. Staff documented that the resident was “crying loudly, shouting and was hysterical” and when investigated, she stated someone had stolen her wigs over the weekend. She stated she told staff and they discounted her complaints. The resident refused to leave her room or see anyone, was extremely agitated, and wanted the police called. During the facility investigation, two employees who had worked the evening shift over the weekend, were heard by other staff members, talking and laughing about how they had taken the resident’s wigs.

#### **Examples of Severity Level 3 Noncompliance Actual Harm that is not Immediate Jeopardy include, but are not limited to:**

- The facility had failed to protect residents from misappropriation of resident property, had failed to immediately report and investigate alleged violations, and had failed to implement policies and procedures – for reporting the possible crime to law enforcement.