

- Has had a disciplinary action in effect against his/her professional license by a state professional licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents, or misappropriation of resident property; **or**
- Failed to report to the State nurse aide registry or licensing authorities any knowledge of actions taken by a court of law that would indicate unfitness as a staff member of a nursing home.

## **F607**

**(Rev. 211; Issued: 02-03-23; Effective: 10-21-22; Implementation: 10-24-22)**

**§483.12(b) The facility must develop and implement written policies and procedures that:**

**§483.12(b)(1) Prohibit and prevent abuse, neglect, and exploitation of residents and misappropriation of resident property,**

**§483.12(b)(2) Establish policies and procedures to investigate any such allegations, and**

**§483.12(b)(3) Include training as required at paragraph §483.95,**

**§483.12(b)(4) Establish coordination with the QAPI program required under §483.75.**

**§483.12(b)(5) Ensure reporting of crimes occurring in federally-funded long-term care facilities in accordance with section 1150B of the Act. The policies and procedures must include but are not limited to the following elements.**

**§483.12(b)(5)(ii) Posting a conspicuous notice of employee rights, as defined at section 1150B(d)(3) of the Act.**

**§483.12(b)(5)(iii) Prohibiting and preventing retaliation, as defined at section 1150B(d)(1) and (2) of the Act.**

## **INTENT**

This regulation was written to provide protections for the health, welfare and rights of each resident residing in the facility. In order to provide these protections, the facility must develop written policies and procedures to prohibit and prevent abuse, neglect, exploitation of residents, and misappropriation of resident property. These written policies must include, but are not limited to, the following components:

- Screening [See §§483.12(a)(3) and 483.12(b)(1)];
- Training [See §483.12(b)(3)];
- Prevention [See §483.12(b)(1)];
- Identification [See §483.12(b)(2)];
- Investigation [See §483.12(b)(2)];

- Protection [See §§483.12(b)(2) and 483.12(c)(3)]; and
- Reporting/response [See §§483.12(b)(2), 483.12(b)(4), 483.12(b)(5), 483.12(c)(1) and (4)].

In order to ensure that the facility is doing all that is within its control to prevent such occurrences, these policies must be implemented (i.e., carried out), otherwise, the policies and procedures would not be effective. The facility is expected to provide oversight and monitoring to ensure that its staff, who are agents of the facility, implement these policies during the provision of care and services to each resident residing in the facility. A facility cannot disown the acts of its staff, since the facility relies on them to meet the Medicare and Medicaid requirements for participation by providing care in a safe environment.

**NOTE:** For purposes of this guidance, “staff” includes employees, the medical director, consultants, contractors, volunteers. Staff would also include caregivers who provide care and services to residents on behalf of the facility, students in the facility’s nurse aide training program, and students from affiliated academic institutions, including therapy, social, and activity programs.

## **DEFINITIONS**

**“Covered individual”** is anyone who is an owner, operator, employee, manager, agent or contractor of the facility (see section 1150B(a)(3) of the Act).

**“Crime”:** Section 1150B(b)(1) of the Act provides that a “crime” is defined by law of the applicable political subdivision where the facility is located. A political subdivision would be a city, county, township or village, or any local unit of government created by or pursuant to State law.

**“Law enforcement,”** as defined in section 2011(13) of the Act, is the full range of potential responders to elder abuse, neglect, and exploitation including: police, sheriffs, detectives, public safety officers; corrections personnel; prosecutors; medical examiners; investigators; and coroners.

**“Serious bodily injury”** means 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; requiring medical intervention such as surgery, hospitalization, or physical rehabilitation; or an injury resulting from criminal sexual abuse (see sections 2011(19)(A) and (B) of the Act).

**“Criminal sexual abuse”:** In the case of “criminal sexual abuse” which is defined in section 2011(19)(B) of the Act, serious bodily injury/harm shall be considered to have occurred if the conduct causing the injury is conduct described in section 2241 (relating to aggravated sexual abuse) or section 2242 (relating to sexual abuse) of Title 18, United States Code, or any similar offense under State law. In other words, serious bodily injury includes sexual intercourse with a resident by force or incapacitation or through threats of harm to the resident or others or any sexual act involving a child. Serious bodily injury also includes sexual intercourse with a

resident who is incapable of declining to participate in the sexual act or lacks the ability to understand the nature of the sexual act.

## **GUIDANCE**

The facility must develop and implement policies and procedures that include the following seven components:

### **I. Screening:**

The facility must have written procedures for screening potential employees for a history of abuse, neglect, exploitation, or misappropriation of resident property in order to prohibit abuse, neglect, and exploitation of resident property, and consistent with the applicable requirements at §483.12(a)(3). This includes attempting to obtain information from previous employers and/or current employers, and checking with the appropriate licensing boards and registries. See F729 for requirements related to registry verification and multi-State registry verification.

Additionally, a facility's services may be furnished under arrangement, with a registry, contracted, or temporary agency staff, or students from affiliated academic institutions. The facility's policies must also address how pre-screening occurs for prospective consultants, contractors, volunteers, caregivers and students in its nurse aide training program and students from affiliated academic institutions, including therapy, social, and activity programs. The facility should require these individuals be subject to the same scrutiny prior to placement in the facility, whether screened by the facility itself, the third-party agency, or academic institution. The facility should maintain documentation of the screening that has occurred.

The facility must have written procedures for screening that may include, but are not limited to:

- For prospective employees, reviewing:
  - The employment history (e.g., dates of employment position or title), particularly where there is a pattern of inconsistency;
  - Information from former employers, whether favorable or unfavorable; and/or
  - Documentation of status and any disciplinary actions from licensing or registration boards and other registries.

NOTE: If a facility has not developed and/or implemented policies and procedures related to screening procedures prior to employment, a finding of noncompliance should be considered at F607, not F606. If it is determined that the facility employed or engaged an individual, either directly or under contract, who was found guilty by a court of law of abuse, neglect, misappropriation of property, exploitation or mistreatment, or had a finding entered into the State nurse aide registry or has a disciplinary action in effect against his/her professional license concerning abuse, neglect, mistreatment of residents or misappropriation of resident property, a finding of noncompliance must be cited at F606.

In addition, a facility must develop and implement policies and procedures to prohibit and prevent both abuse and neglect. This would include screening prospective residents to determine whether

the facility has the capability and capacity to provide the necessary care and services for each resident admitted to the facility. The facility's written procedures may include, but are not limited to:

- For prospective residents, reviewing:
  - An assessment of the individual's functional and mood/behavioral status;
  - Medical acuity; and
  - Special needs (e.g., mechanical ventilation care, dialysis, hospice).

The facility can then determine whether – in consideration of current staffing patterns, staff qualifications, competency and knowledge, clinical resources, physical environment, and equipment- it can safely and competently provide the necessary care to meet the resident's needs. For example, a resident may have a prior history of distressed behaviors such as unsafe wandering, physically aggressive behaviors including sexually aggressive behaviors, or mental/psychiatric illnesses. In order to provide protections and a safe environment for the resident and other residents, the facility must determine whether it has sufficient competent and qualified staff in order to meet the needs of the resident. If the individual is admitted, pre-admission screening information may provide information that may be used as part of the initial assessment and care planning data.

## **II. Training:**

The facility must have written policies and procedures that include training new and existing nursing home staff and in-service training for nurse aides in the following topics which include:

- Prohibiting and preventing all forms of abuse, neglect, misappropriation of resident property, and exploitation;
- Identifying what constitutes abuse, neglect, exploitation, and misappropriation of resident property;
- Recognizing signs of abuse, neglect, exploitation and misappropriation of resident property, such as physical or psychosocial indicators;
- Reporting abuse, neglect, exploitation, and misappropriation of resident property, including injuries of unknown sources, and to whom and when staff and others must report their knowledge related to any alleged violation without fear of reprisal; and • Understanding behavioral symptoms of residents that may increase the risk of abuse and neglect and how to respond. These symptoms, include, but are not limited to, the following:
  - Aggressive and/or catastrophic reactions of residents;
  - Wandering or elopement-type behaviors;
  - Resistance to care;
  - Outbursts or yelling out; and
  - Difficulty in adjusting to new routines or staff.

**NOTE:** The provision of training on abuse prohibition alone does not relieve the nursing home of its responsibility to assure that the resident is free from abuse. Ongoing oversight and supervision of staff assures that its policies and procedures are implemented as written.

**NOTE:** Federal regulations at 42 CFR §483.95(c) and §483.95(g) specify that a facility must develop, implement, and maintain a training program that includes staff training related to abuse, neglect, and exploitation. If the facility fails to develop and implement policies and procedures that include training as required at 42 CFR §483.95(c) and (g)(2), then F607 would be cited. Refer to tag F943 if there are concerns related to the development, implementation and maintenance of an effective training program for all new and existing staff, which includes training on activities that constitute abuse, neglect, exploitation, and misappropriation of resident property; procedures for reporting incidents; and dementia management. Refer to tag F947 for concerns related to the provision of in-service training, which must include dementia management training and resident abuse prevention training.

### **III. Prevention:**

The facility must have and implement written policies and procedures to prevent and prohibit all types of abuse, neglect, misappropriation of resident property, and exploitation that achieves (but is not limited to):

- Establishing a safe environment that supports, to the extent possible, a resident's consensual sexual relationship and by establishing policies and protocols for preventing sexual abuse, such as the identify when, how, and by whom determinations of capacity to consent to a sexual contact will be made and where this documentation will be recorded; and the resident's right to establish a relationship with another individual, which may include the development of or the presence of an ongoing sexually intimate relationship;
- Identifying, correcting and intervening in situations in which abuse, neglect, exploitation, and/or misappropriation of resident property is more likely to occur. This includes the implementation of policies that address the deployment of trained and qualified, registered, licensed, and certified staff on each shift in sufficient numbers to meet the needs of the residents, and assure that the staff assigned have knowledge of the individual residents' care needs and behavioral symptoms, if any (see also F727 related to proficiency of nurse aides);
- Assuring that residents are free from neglect by having the structures and processes to provide needed care and services to all residents, which includes, but is not limited to, the provision of a facility assessment to determine what resources are necessary to care for its residents competently;
- The identification, ongoing assessment, care planning for appropriate interventions, and monitoring of residents with needs and behaviors which might lead to conflict or neglect, such as:
  - Verbally aggressive behavior, such as screaming, cursing, bossing around/demanding, insulting to race or ethnic group, intimidating;

- Physically aggressive behavior, such as hitting, kicking, grabbing, scratching, pushing/shoving, biting, spitting, threatening gestures, throwing objects;
  - Sexually aggressive behavior such as saying sexual things, inappropriate touching/grabbing;
  - Taking, touching, or rummaging through other's property;
  - Wandering into other's rooms/space;
  - Residents with a history of self-injurious behaviors;
  - Residents with communication disorders or who speak a different language; and
  - Residents that require extensive nursing care and/or are totally dependent on staff for the provision of care.
- Ensuring the health and safety of each resident with regard to visitors such as family members or resident representatives, friends, or other individuals subject to the resident's right to deny or withdraw consent at any time and to reasonable clinical and safety restrictions;
  - Providing residents and representatives, information on how and to whom they may report concerns, incidents and grievances without the fear of retribution; and providing feedback regarding the concerns that have been expressed. (See F585 for further information regarding grievances).

The facility may also develop and implement policies and procedures, which achieve the following:

- Identifying, correcting and intervening in situations in which abuse, neglect, exploitation, and/or misappropriation of resident property is more likely to occur. This includes an analysis of and implementation of policies that address at a minimum:
  - Features of the physical environment that may make abuse, neglect, exploitation, and misappropriation of resident property more likely to occur, such as secluded areas of the facility; and
  - The identification of who is responsible for the supervision of staff on all shifts and how supervision will occur in order to identify inappropriate staff behaviors, such as using derogatory language, rough handling, ignoring residents while giving care, and directing residents who need assistance with the bathroom to urinate or defecate in their beds.
- Providing staff information on how and to whom they may report concerns, such as insufficient staffing or a shortage in supplies, without the fear of retribution; and providing feedback regarding the concerns that have been expressed.

#### **IV. Identification:**

The facility must have written procedures to assist staff in identifying abuse, neglect, and exploitation of residents, and misappropriation of resident property. This would include

identifying the different types of abuse- mental/verbal abuse, sexual abuse, physical abuse, and the deprivation by an individual of goods and services.

Because some cases of abuse are not directly observed, understanding resident outcomes of abuse could assist in identifying whether abuse is occurring or has occurred. Possible indicators of abuse include, but are not limited to:

- An injury that is suspicious because the source of the injury is not observed or the extent or location of the injury is unusual, or because of the number of injuries either at a single point in time or over time; and
- Sudden or unexplained changes in the following behaviors and/or activities such as fear of a person or place, or feelings of guilt or shame.

#### **V. Investigation:**

The facility must have written procedures for investigating abuse, neglect, misappropriation, and exploitation that include:

**NOTE:** See also Section VI regarding protection of the alleged victim.

- Identifying staff responsible for the investigation;
- Exercising caution in handling evidence that could be used in a criminal investigation (e.g., not tampering or destroying evidence);
- Investigating different types of alleged violations;
- Identifying and interviewing all involved persons, including the alleged victim, alleged perpetrator, witnesses, and others who might have knowledge of the allegations;
- Focusing the investigation on determining if abuse, neglect, exploitation, and/or mistreatment has occurred, the extent, and cause; and
- Providing complete and thorough documentation of the investigation.

#### **VI. Protection:**

The facility must have written procedures that ensure that all residents are protected from physical and psychosocial harm during and after the investigation. This must include:

- Responding immediately to protect the alleged victim and integrity of the investigation;
- Examining the alleged victim for any sign of injury, including a physical examination or psychosocial assessment if needed;
- Increased supervision of the alleged victim and residents;
- Room or staffing changes, if necessary, to protect the resident(s) from the alleged perpetrator;
- Protection from retaliation; and
- Providing emotional support and counseling to the resident during and after the investigation, as needed.

#### **VII. Reporting/Response:**

The facility must have written procedures that must include:

- Immediately reporting all alleged violations to the Administrator, state agency, adult protective services and to all other required agencies (e.g., law enforcement when applicable) within specified timeframes;
- Assuring that reporters are free from retaliation or reprisal;
- Post a conspicuous notice of employee rights, including the right to file a complaint with the State Survey Agency if they believe the facility has retaliated against an employee or individual who reported a suspected crime and how to file such a complaint;
- Reporting to the State nurse aide registry or licensing authorities any knowledge it has of any actions by a court of law which would indicate an employee is unfit for service;
- Taking all necessary actions as a result of the investigation, which may include, but are not limited to, the following:
  - Analyzing the occurrence(s) to determine why abuse, neglect, misappropriation of resident property or exploitation occurred, and what changes are needed to prevent further occurrences;
  - Defining how care provision will be changed and/or improved to protect residents receiving services;
  - Training of staff on changes made and demonstration of staff competency after training is implemented;
  - Identification of staff responsible for implementation of corrective actions;
  - The expected date for implementation; and
  - Identification of staff responsible for monitoring the implementation of the plan.

To encourage reporting of reasonable suspicions of a crime, facilities should develop and implement policies and procedures that promote a culture of safety and open communication in the work environment. This may be accomplished through prohibiting retaliation against an employee who reports a suspicion of a crime. Actions that constitute retaliation against staff include:

- When a facility discharges, demotes, suspends, threatens, harasses, or denies a promotion or other employment-related benefit to an employee, or in any other manner discriminates against an employee in the terms and conditions of employment because of lawful acts done by the employee.
- When a facility files a complaint or a report against a nurse or other employee with the state professional licensing agency because of lawful acts done by the nurse or employee for reporting a reasonable suspicion of a crime to law enforcement.

An example of retaliation would be if a staff member, on behalf of or as an agent of the facility, harasses an employee who had reported a reasonable suspicion of a crime.

In addition to developing policies prohibiting retaliation for reporting suspicions of a crime, the facility must develop and implement policies and procedures for posting notice in a conspicuous location informing covered individuals of their rights under section 1150B of the Act, including the right to file a complaint with the State Survey Agency if they believe the facility has retaliated against an employee or individual who reported a suspected crime and how to file such a complaint.

The sign may be posted in an area that is visible to employees, such as the same area where the facility posts other employee signs, such as labor management posters. Size and type requirements for the sign should be no less than the minimum required for any other required employment-related signs.

### **VIII. Coordination with QAPI:**

The facility must develop written policies and procedures that define how staff will communicate and coordinate situations of abuse, neglect, misappropriation of resident property, and exploitation with the QAPI program under §483.75.

Cases of physical or sexual abuse, for example by facility staff or other residents, always require corrective action and tracking by the QAA Committee, at §483.75(g)(2).

This coordinated effort would allow the QAA Committee to determine:

- If a thorough investigation is conducted;
- Whether the resident is protected;
- Whether an analysis was conducted as to why the situation occurred;
- Risk factors that contributed to the abuse (e.g., history of aggressive behaviors, environmental factors); and
- Whether there is further need for systemic action such as:
  - Insight on needed revisions to the policies and procedures that prohibit and prevent abuse/neglect/misappropriation/exploitation,
  - Increased training on specific components of identifying and reporting that staff may not be aware of or are confused about,
  - Efforts to educate residents and their families about how to report any alleged violations without fear of repercussions,
  - Measures to verify the implementation of corrective actions and timeframes, and
  - Tracking patterns of similar occurrences.

**NOTE:** For failures related to the development and implementation of policies and procedures to communicate and coordinate with the QAPI program situations of abuse, neglect, misappropriation of resident property, and exploitation, cite tag F607. For failures related to the QAA Committee's identification of quality deficiencies or its development and implementation of action plans to correct identified quality deficiencies, cite tag F867.

**Refer also to the CE Pathways for Abuse (Form CMS-20059) and Neglect (Form CMS-20130) and the Investigative Protocols for tags F602 and F603.**

## **INVESTIGATIVE PROTOCOL FOR POLICIES AND PROCEDURES RELATED TO ALLEGATIONS OF RETALIATION BY THE FACILITY AGAINST A COVERED INDIVIDUAL**

## **USE**

Use this protocol during any survey, if, based on a complaint or an investigation of abuse, neglect, misappropriation of resident property, or exploitation, an allegation of retaliation by the facility against a covered individual was received. Refer to the CE Pathways for Abuse (Form CMS-20059) and Neglect (Form CMS-20130) and the Investigative Protocols for tags F602, and F603, which gathers information about what information was or was not reported by covered individuals and whether retaliation may have occurred.

The protocol below investigates whether the facility developed and implemented policies and procedures related to:

- Posting notification of employee rights, and
- Prohibiting and preventing retaliation.

## **PROCEDURES**

### **Facility Policies and Procedures**

Obtain and review the facility's policies and procedures to determine whether the facility is:

- Posting notification of employee rights, and
- Prohibiting and preventing retaliation against covered individuals who make reports of a reasonable suspicion of a crime.

### **Observations**

Observe whether the facility has posted notification of employee rights and whether the notification includes all of the required components. Note the location of the notification, in relation to whether it is likely to be noticed by all employees.

### **Interview of State Professional Licensing Authorities**

If there is an allegation of facility retaliation against an employee, the surveyor should contact the appropriate State licensing board to determine whether the facility had filed a complaint or report against the employee, and if so, what information was provided in the complaint or report.

### **Interview Staff**

For an allegation of retaliation, interview staff about what occurred, how the facility allegedly retaliated against staff, and when.

### **Interview – Administrator**

Interview the Administrator to determine the following:

- How the Administrator oversees the implementation of policies and procedures for reporting of suspected crimes;
- For an allegation of retaliation:
  - Whether any actions were taken against an employee, and if so, what actions and why;
  - Whether the facility had submitted a report to the State professional licensing agency against the employee(s), and if so, why.

### **Review of Employee Personnel Records**

If there is an allegation of retaliation against an employee or other covered individual, obtain a copy of the employee's personnel records, and records for other covered individuals as applicable, to determine if the facility may have taken any action against the individual which may be related to the report of a suspected crime.

NOTE: If the surveyor discovers a reasonable suspicion of a crime committed against a resident of or an individual receiving services from the facility and it has not been reported by a covered individual, the surveyor reminds the facility of the covered individuals' obligation to report suspected crimes pursuant to section 1150B of the Act within the required timeframes. "Covered individual" is anyone who is an owner, operator, employee, manager, agent or contractor of the facility as defined in section 1150B(a)(3) of the Act. If a covered individual reports the suspected crime to local law enforcement, the surveyor must verify that the report was made (e.g., obtain time/date of report, name of person who received report, case number, etc.). If the covered individual refuses to report, or the surveyor cannot verify that a report was done, the surveyor must consult with his/her supervisor immediately, and the State Agency must report the potential criminal incident to law enforcement immediately.

### **KEY ELEMENTS OF NONCOMPLIANCE**

To cite deficient practice at F607, the surveyor's investigation will generally show that the facility has failed to do one or more of the following:

- Develop and implement written policies and procedures that prohibit and prevent abuse, neglect and exploitation of residents and misappropriation of resident property and includes the screening of prospective employees and residents; **or**
- Develop and implement written policies and procedures for the investigation of allegations of abuse, neglect and exploitation of residents and misappropriation of resident property and includes the staff identification of abuse, neglect, exploitation, and misappropriation of resident property, protection of residents during investigations, and the reporting of allegations and investigative findings and taking corrective actions; **or**
- Develop and implement written policies and procedures that include training as required at §483.95; **or**
- Develop and implement written policies and procedures that establish coordination with the QAPI program required under §483.75; **or**