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## Clarification of Abuse Reporting Obligations

On March 30, IHCA received clarification from the Department of Inspections & Appeals regarding resident abuse reporting requirements, after the Department received further guidance from CMS:

### **Timeline for Reporting Abuse:**

For nursing facilities that participate in Medicaid or Medicare:

All allegations of resident abuse **MUST** be reported to the Department within twenty-four (24) hours from the time the allegation is made. While Iowa regulations provide that dependent adult abuse must be reported to the Department by “the person in charge” “within 24 hours of such notification or the next business day” [481 I.A.C. 52.2(2)(a)], the federal regulations require a twenty-four hour reporting period, and do not recognize the “next business day” provision under Iowa law.

If the 24 hour deadline for reporting falls on a weekend or a holiday, a facility is still required to notify the Department by making a report on the on-line system, leaving a message on the abuse reporting hotline at (877) 686-0027, submitting an e-mail to the Department at [HFD\\_Complaint@dia.iowa.gov](mailto:HFD_Complaint@dia.iowa.gov) or sending a fax to (515) 281-7106.

Assisted living programs and residential care facilities are still subject to the Iowa regulation relating to dependent adult abuse that provides that abuse must be reported within 24 hours or the next business day, and are not subject to the CMS clarification.

The same twenty hour reporting requirement applies to Medicare certified hospice programs pursuant to 42 C.F.R. §418.52(b)(4).

### **Where Reports of Abuse Must Be Reported:**

**ALL** reports of resident or dependent adult abuse, regardless of the identity of the alleged perpetrator must be reported to the Department of Inspections & Appeals. In addition, if the allegation involves an alleged perpetrator who is a non-employee, non-contracted individual (e.g. family member, legal surrogate, visitor, friend) who fits the definition of a “caretaker” defined as a “related or nonrelated person who has the responsibility for the protection, care, or custody of a dependent adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court”, a report must also be made to the Iowa Department of Human Services.

## **Types of Abuse to Be Reported:**

The Department reminds facilities that the definition of resident abuse under F223 is broadly written and provides that “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.”

“Abuse” means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish.

“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.

“Physical abuse” includes hitting, slapping, pinching and kicking.

Under these broad federal definitions, resident-to-resident physical contact that occurs where residents are hit, slapped, pinched or kicked **AND** that results in physical harm, pain or mental anguish must be reported to the Department.

For nursing facilities, the reporting requirements under 50.7(3) that requires Department notification “when a facility has knowledge of a pattern of acts committed by the same resident on another resident that results in any physical injury” still applies, but if the resident-on-resident contact fits the definition of abuse noted above, it must be reported pursuant to F223, even if a report under 50.7 is not required.

The Department also reminds nursing facilities that the regulation under F225 [42 C.F.R. 483.13(c)(2)] includes the reporting of injuries of unknown source: “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 procedures.” These allegations are likewise reportable to the Department under the twenty-four (24) deadline described above.

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 over time.

**Facilities must review their written abuse policies and revise the written policies to address the clarifications relating to abuse reporting noted above, and educate employees on the revisions to abuse policies.**

**Facilities also need to review the curriculum used in dependent adult abuse training as the curriculum approved by the Department of Public Health Abuse Education Review Panel does not include training on resident abuse under the federal regulations pursuant to F223 - F226.**

If you have any questions, do not hesitate to contact [Ted Stopulos](#), IHCA ICAL Director of Governmental and Regulatory Affairs; [Mary Jane Carothers](#), IHCA ICAL Director of Quality and Clinical Services; or IHCA ICAL Legal Consultants [Ken Watkins](#) or [Lynn Böes](#), with David Brown Law.