

## Abuse Prevention and Investigative Tools

*(Applicable regulations and guidelines can be found in the State Operations Manual (SOM) Appendix J - Guidance to Surveyors: Intermediate Care Facilities for Individuals with Intellectual Disabilities and the SOM Appendix Q: Guidelines for Determining Immediate Jeopardy).*

### I. As part of preventing abuse, neglect, and mistreatment, facilities must:

- Develop, implement, and monitor policies and procedures that prohibit abuse, neglect, and mistreatment.
- Provide staff training on what constitutes abuse, neglect, mistreatment and the reporting requirements.

### II. Definitions

#### Federal (Appendix J)

#### Abuse (W127 and W150) -

"Threat," for the purposes of this guideline, is considered any condition/situation which could cause or result in severe, temporary or permanent injury or harm to the mental or physical condition of clients, or in their death.

"Abuse," for the purposes of this guideline, is the willful infliction of injury, unreasonable confinement, intimidation or punishment with the resulting physical harm, pain or personal anguish."

"Physical abuse" refers to any action intended to cause physical harm or pain, trauma or bodily harm (e.g., hitting, slapping, punching, kicking, pinching, etc.). It includes use of corporal punishment as well as the use of any restrictive, intrusive procedure to control inappropriate behavior for purposes of punishment.

"Verbal abuse" refers to any use of insulting, demeaning, disrespectful, oral, written or gestured language directed towards and in the presence of the client.

"Psychological abuse" includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation, sexual coercion and intimidation (e.g. living in fear in one's own home). Since many clients residing in ICF/IIDs are unable to communicate feelings of fear, humiliation, etc. associated with abusive episodes, the assumption is made that any actions that would usually be viewed as psychologically or verbally abusive by a member of the general public, would also be viewed as abusive by the client residing in the ICF/IID regardless of that client's perceived ability to comprehend the nature of the incident.

"Sexual abuse" includes an incident where a client is coerced or manipulated to participate in any form of sexual activity for which the client did not give affirmative permission (or gave affirmative permission without the attendant understanding required to give permission) or sexual assault against a client who is unable to defend him/herself.

#### Neglect (W149) –

"Neglect" means failure to provide goods or services necessary to avoid physical harm, mental anguish or mental illness. Staff failure to intervene appropriately to prevent self-injurious behavior may constitute neglect. Staff failure to implement facility safeguards, once client to client aggression is identified, may also constitute neglect.

**Mistreatment (W149) –**

"Mistreatment," for the purposes of this guideline, includes behavior or facility practices that result in any type of client exploitation such as financial, physical, sexual, or criminal. Mistreatment also refers to the use of behavioral management techniques outside of their use as approved by the specially constituted committee and facility policies and procedures.

**Injuries of Unknown Source (W153) –**

An injury should be reported as an “injury of unknown source” when:

- The source of the injury was not witnessed by any person and the source of the injury could not be explained by the client; and
- The injury raises suspicions of possible abuse or neglect 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.

For injuries that do not rise to the level of reportable “injuries of unknown source”, the facility should follow its policies and procedures for incident recording, investigation, and tracking.

**III. In all cases of alleged abuse, neglect, and mistreatment, the role of the facility is to:**

- Intervene in the situation.
- Report the situation to proper authorities.
- Investigate the allegation.
- Prevent further abuse while the investigation is in process.
- Have documented evidence that the facility:
  1. Intervened
  2. Reported
  3. Prevented further abuse
  4. Investigated
  5. Took corrective action to prevent reoccurrence

**IV. Reporting Requirements**

<b>Federal Regulation</b>	<b>What it means...</b>
<b>W153</b> states "The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures."	The facility must immediately report any suspicious injuries of unknown source and all allegations of mistreatment, neglect or abuse to a client residing in the facility regardless of who is the alleged perpetrator (e.g., facility staff, parents, legal guardians, volunteer staff from outside agencies serving the client, neighbors, or other individuals, etc.).

<p><b>W148</b> states "Notify promptly the client's parents or guardian of any significant incidents, or changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence."</p>	<p>"Significant" incidents or changes in the client's condition include serious injury, unusual seizure activity, hospitalization, serious illness, accident, death, allegations of abuse, neglect, or mistreatment, unauthorized absence, or any notifications the parent or legal guardian's request.</p>
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## **V. Investigative Tools**

When developing facility policy and procedures, consultation with local law enforcement regarding notification procedures and evidence handling is recommended.

In cases where there is suspected or known sexual assault/abuse, serious injury or theft, law enforcement should be notified prior to notification of other sources. In all cases, physical evidence should not be handled until law enforcement arrives.

If an injury is present, proper notification of the injury should be written at the time of discovery, and pictures taken if possible. It is important to document what action the facility took to prevent further alleged abuse and to protect the individual.

### **For Injuries of Unknown Source:**

The following probes are offered to assist facilities in their internal investigation of injuries of unknown source. Please note they are not inclusive and not required to be used.

- What did the individual say caused the injury?
- Is the individual alert, oriented, confused, cooperative, and/or combative/resistive?
- Where is the location of the injury?
- Does the individual transfer self or need assistance? If assisted, how many staff are required or is a mechanical lift used?
- Does the individual toilet himself or need assistance?
- What is the individual's mobility status (i.e., self, one person assist, two person assist, walker, wheelchair, cane, other adaptive equipment)?
- What is the individual's fingernail and toenail status?
- What is the skin status of the individual?
- Were there any previous skin tears/bruises on the individual?
- What is the hydration status of the individual?
- What medication is the individual taking that might cause bruising?
- Were interviews conducted with the assigned caregiver(s) for the shift the injury was noted and the previous shift?
- Were interviews conducted with other individuals?
- Was adaptive equipment assessed and evaluated to rule out causation?
- What is the fingernail status of the caregiver(s)?
- What was the last in-service date of caregivers on transfers/lifting and dealing with combative individuals?
- How are caregivers evaluated and monitored?
- Observe assigned caregiver(s) for the shift of injury and previous shift for repositioning, transferring, toileting, and transportation technique.
- Observe individuals who self-assist for transferring, toileting, and mobility technique in the environments they visit (home, worksite, day program, community center, etc.).

## VI. Conduct Affecting Individuals

- What should be reported?
  - \* All allegations of abuse, neglect, mistreatment, and injuries of unknown source (see definition above).
- Who to report to?
  - \* Administrator, CP/AP, parent/guardian(s), and nursing personnel and law enforcement if applicable.
- Time frames for reporting:
  - \* Immediately.
- What to include in your report:
  - \* Initial report:
    1. Initial phone call.
    2. Name of victim/individual.
    3. Name of person who allegedly abused/neglected the individual.
    4. Date, time, and location of alleged abuse/neglect.
    5. Specific information regarding the allegation.
    6. Names of any witnesses to the incident.
  - \*Investigation Report:
    1. Who was interviewed?
    2. Content of interview(s).
    3. Copy of written statements obtained from witnesses and alleged perpetrator with name, date, and signature if possible.
    4. Individual/victim diagnosis, ADL capabilities and information regarding the ability of the individual/victim to be interviewed.
    5. Individual/victim reaction to incident if able to obtain.
    6. Any circumstances surrounding the incident.
    7. Who was notified (e.g. parent/guardian, physician, family, etc.)? When was notification made and by whom?
    8. Information regarding any medical care that was necessary as a result of the incident.
    9. Steps the facility took to intervene and measures taken to prevent reoccurrence and protect the individual(s).
    10. Nursing notes from the day before, the day of and the day after the incident, if applicable.
    11. The individual's program plan and behavior plan if pertinent.
    12. Pertinent staff personnel file information.
- Points to remember:
  - \* **ALL allegations of abuse, neglect, mistreatment, and injuries of unknown source MUST be reported immediately to all appropriate authorities and/or agencies.**
  - \* **The facility has a responsibility to protect individuals from abuse, neglect, and mistreatment.**
  - \* **The facility has a responsibility to identify, intervene in the abuse and protect the individual(s), and take measures to prevent further occurrences of abuse, neglect, and mistreatment.**
  - \* **The facility or system reviews specific incidents for "lessons learned," forming a feedback loop for necessary policy changes which gives the facility the capacity to prevent abuse.**
  - \* **Investigations may be used to help determine if the facility is in compliance with the regulations to protect individuals from harm.**

For additional training offered online through the CMS web please [click here](#).