Investigating/substantiating cases of CNA abuse

IHCA/ICAL

Winter Workshop

January 14, 2009

CNA Abuse

- 483.13 (b) and (c) F223 and F224 state that, “The resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment and involuntary seclusion” and “Each resident has the right to be free from mistreatment, neglect and misappropriation of funds.”

CNA Abuse

- Most CNA abuse cases are opened as the result of the facility reporting a case of substantiated abuse. A thorough investigation by the facility is the first and most critical part of the entire process. Without that, we have no case.

CNA Abuse

- On March 10, 2005, our office sent out an Informational Letter, 2005-1, entitled, Resident Abuse Reporting in SNF/NFs. This guidance clarifies reporting expectations related to F225 and F226. The letter defines the types of abuse must be reported (i.e. physical, verbal, sexual) to the State Agency.

CNA Abuse

- It identifies the incidents of abuse that must be reported including all types of resident-, staff-, family-, or visitor- to resident abuse. In addition, it includes Investigation Guidelines for any kind of potential abuse or neglect situation. It states that while no guidance can identify every aspect of a good investigation,

CNA Abuse

some essential components of a good investigation include:

- Date and time of the incident.
- A clear and legible description of exactly what occurred.
- All pertinent staff (or other witnesses) must be interviewed and the results of the interview documented in some form, with a signed written statement whenever possible.

CNA Abuse

- The person accused of abuse, neglect or exploitation must be interviewed regarding the allegations and that interview must be documented. The facility must attempt to get a signed, written statement from the accused. If the accused refuses to give a signed written statement, the facility must document that refusal along with the interview.

CNA Abuse

- Documentation of an interview of the resident involved.
- All visible injuries must be **measured** and described in detail.

CNA Abuse

- You might be surprised to know how many of the reports of abuse that the CNA abuse committee (comprised of surveyors who have been to CMS-sponsored Basic training) are unable to substantiate due to inaccurate, incomplete or missing information related to one or more of these components.

CNA Abuse

- Imagine it was your job to go forward with the a CNA abuse case based on the following investigation. As we go through it, think about the essential components of a good investigation and what parts of the investigation are incomplete.

CNA Abuse

- The report states the incident happened at 10:00 on 12/12/08. (A.M. or P.M?)

- A multi-page fax identified on the cover page that it was a “Resident to Resident” incident. As you pick it up, you think that it is going to state that one resident hit another.

CNA Abuse

- Page #1 identified the document as an Abuse Investigation and stated that the incident happened on 12/12/08 and was reported on 12/13/08. No time was given. It stated that an identified resident reported physical abuse but was there was NO injury.

CNA Abuse

- It gave no other information about the incident but referred to statements of 2 other staff. It identified the person “directly involved” by a first name only (we will call her Jane). It could not be determined if this was a resident or a staff member.

CNA Abuse

- Page 2 was a written statement but the signature was not legible. Again, it could not be determined if the person was a resident or a staff member. The statement stated that a person [identified by first name only – Jane], “layed on the couch most of the night…passed out on the couch. I yelled her name…she didn’t budge….” The statement did not include any info related to the resident who was physically abused.

CNA Abuse

- Page 3 was a written statement, apparently by the same person who wrote the statement on page 2. It identified the staff by name, but not title and stated that when she went down to change the identified resident, the resident told her that when [Jane] the CNA changed her, she “hurt her leg that is in the cast and she tried to pull the wet pad out the wrong way and was using her fist to push it back down. When I changed her, [the resident’s name] had the wet beads from the pad all over her.”

CNA Abuse

- This statement appeared to be copied on the top half of the Abuse Investigation form. The bottom half of the form included places to summarize the investigators findings and a Summary of the Outcome of the Investigation and Any Corrective Action taken. Both sections referred to an accompanying Summary Statement.

CNA Abuse

- The 4th page, identified as the final page of the Abuse investigation form, included a place for additional comments and the Administrator's signature. Both sections were blank.

CNA Abuse

- Page 5 included a list of residents who were interviewed by another staff member. They all stated the CNA's treated them well. The identified resident's name was not on the list nor was there any other documentation that anyone spoke to this resident about the incident.

CNA Abuse

- Page 6 was an undated/untimed written statement by a licensed nurse that “On [12/13/08] at about 2230 I was told by [the CNA who wrote the statement above] that [Jane] was rough with [identified resident] by using her fist to put attends in place. Later that night I asked [Jane] to change [another resident? – only a first name listed] and as she was changing her, I heard [this other resident] holler, “Ow that hurts.” There was no evidence of investigation into the incident with this 2nd resident.

CNA Abuse

- Page 7 included another undated/untimed written statement by the same nurse who wrote the statement on page 6. It stated, “On [date] at 2:30 [Jane] fell asleep on the couch. The other aide tried to wake her. One hour later I proceeded to where she was and tried to wake her. About 15 min later she all of a sudden jumped up. I have told her before it’s not a wise idea to lay down on the couch. She laid down in between rounds.”

CNA Abuse

- An unsigned/undated Summary note on page 8 stated, “Resident [no name listed] stated that a CNA pushed a panty liner through her thighs with her fist while being agitated her during changing her. CNA has not come in to speak to DNS regarding this incident. DNS has 2 witness statements. CNA [Jane Doe] has been terminated for this incident as also was witnessed sleeping during her shift.”

CNA Abuse

- Would this investigation leave you with some questions? What might they be?
- Many times, after reviewing the investigations, we have more questions than answers
- Part of our process in opening a CNA case includes sending a letter to the facility requesting the following:

CNA Abuse

- Employee information, i.e., full name, address, phone number, social security number, hire date, and termination date.
- Employee history, i.e., application, performance evaluations, and any other disciplinary actions.

CNA Abuse

- Any signed statements from the person involved in the incident and any signed statements by any eyewitnesses, including eyewitness phone numbers and addresses.
- A detailed description of the incident, the incident report, the full investigation, and any actions taken.

CNA Abuse

- This letter is to give the facility another opportunity to determine if all the information submitted, was indeed all the information they had, including signed witnessed statements, ensuring we have the correct spelling and full name of the CNA, the resident, any witnesses, etc.

CNA Abuse

- Let's talk a little about each of these different areas related to a thorough investigation…
- Date and time of the incident.
  - A report states the incident happened on 12/12/08 at 4 PM. CNA Sally or Joe responds back to us that s/he didn't work that day or left at 2 PM that day. When we verify it with the facility, they have no record that the CNA worked that day or that shift.

CNA Abuse

- What would happen if you were given a ticket (based on a camera that was positioned a little out of sync) for running a red light at the corner of 6th and main in Boise at noon on 1/2/09 but you can prove you (and your car) were at Winco in Nampa that day?
- There goes the case

CNA Abuse

- A clear and legible description of exactly what occurred.
  - Sometimes it is very difficult to figure out what exactly happened to whom, as evidenced in the case above. This is even more difficult if parts of the investigation are hard to read due to hand writing, trying to put too much information in a small space, etc.
  - This is the basis of the case.

CNA Abuse

- Interview ALL pertinent witnesses – staff, resident, visitors, etc. and have them sign a written statement whenever possible.
  - In the case mentioned above, it appeared that the staff were interviewed; however it could not be determined when the statements were garnered and the content led to more questions than answers.

CNA Abuse

- It could not be determined that the facility followed up on these issues including what the CNA meant by, “When I changed her, she had the wet beads from the pad all over her”. Nor was any indication of follow up to the lack of immediate investigation by the LN, why she sent the CNA in to change another resident, her apparent lack of response when the other [unidentified] resident hollered, “Ow that hurts.”

CNA Abuse

- If something isn’t clear, ask some more probing questions, but not leading questions.
- Remember, these witnesses may be called upon to give statements regarding this case in front of a hearing officer or judge someday down the road. You do not want these kinds of vague or potentially inflammatory statements used against them.

CNA Abuse

- Interviewing the person accused of abuse, neglect or exploitation and documenting that interview:
  - This is a crucial part of the investigation. Prior to talking to the accused, think about how you are going to approach them and the information you want to garner.

CNA Abuse

- As calmly as possible, the responsible person on the shift should try to gather the facts, asking open-ended questions. They may find, for instance, that the CNA is very ill or that there is a misunderstanding with the resident. On the other hand, it could involve a multitude of other issues that need to be investigated.

CNA Abuse

- It is just as important to do this with the person who spent half the night sleeping on the couch at the facility, or is late to work about half the time or is a bit rough around the edges as it is it with the CNA whom everybody loves and is totally reliable or who is “going through a rough time” and may have been a “little short-tempered” that day.

CNA Abuse

- Sometimes when the facility has failed to obtain a signed, written statement from the accused or the facility fails to document the refusal, we get a whole other story from the CNA when they are asked to tell their side of the story. They may tell us how short-staffed the facility was that night,

CNA Abuse

- or that the LN told them to make sure a certain resident got a shower that day, implying that they should do whatever it takes to get it done even when the resident is agitated. These actions resulted in injury to the resident. All the facts need to be gathered in an effort to ascertain intent to harm a resident.

CNA Abuse

- Although not our issue, these factors may play into whether or not the CNA is able to draw unemployment upon termination from the facility.

CNA Abuse

- Other information that may be garnered (and should raise a red flat) include such things as staff were so busy because Resident Joe Blow's alarm kept sounding every 5 minutes & one staff had to keep going in to check on him; they were short staffed (2 staff called in sick so one staff on the hall had to be called to another hall to help and Resident Mary Jones was in the dying process and we didn't want to leave her alone) or a CNA was passed out/ sleeping on the couch again during his/her shift.

CNA Abuse

- Be aware of factors that may motivate one CNA to report abuse on another CNA, especially if they report something that happened a week ago or a few days ago. I.E., did one CNA just lose their boyfriend to the accused or was there some other fall out that took place between the two outside of work.

CNA Abuse

If these issues are identified, you need to document how your facility is addressing them. If it is a staff-training issue, did the facility institute measures to prevent it from happening in the future?

Without these crucial interviews, the facility is missing a major piece of the puzzle.

CNA Abuse

- Are charge nurses being held accountable for their actions, including ensuring the floor was properly staffed, taking actions when they know they have some CNAs who are “a little rough around the edges”, telling CNAs to bathe, change or provide other critical care for “hard to care for residents” without providing the training/assistance necessary to ensure the safety and dignity of both the resident and the CNA?

CNA Abuse

- If it all comes down to one staff person's word against another, document what evidence you have that makes you think that one person is more reliable than another.
- This will assist the CNA Committee because often times this is all we have to go forward with the case.

CNA Abuse

- Documentation of an interview of the resident(s) involved.
  - If it is possible to interview the resident, have them tell you and/or show you what happened. Document this interview word for word. Have them sign the statement if they are able to do so. If it was the roommate or family member who witnessed the abuse or neglect, have them document exactly what they saw or heard.

CNA Abuse

- If the resident is unable to tell you or show you want happened, indicate that on the investigation as well. Give as much detail as you can about how the resident reacted to the incident, i.e., was the resident visibly upset, did s/he cry, did s/he appear embarrassed, mad, or did not want to discuss it.

CNA Abuse

- All visible injuries must be **measured** and described in detail.
  - If the injuries are visible, indicate the exact size, position, color, etc. of the injury. Also, include other extenuating information such as if the resident was on Coumadin, just as if you were completing the incident report and could not substantiate abuse or neglect.

CNA Abuse

- Without these key components, our office is unable to substantiate abuse or runs the risk of the case being overturned on appeal. If the CNA chooses to appeal a valid finding by the CNA Committee, it makes it very difficult for the LTC supervisor to defend the case before a hearing officer if the case is not properly investigated or there are many loose ends.

CNA Abuse

- The facility's failure to properly investigate a case of abuse, whether it be resident-to-resident, staff-to-resident or visitor-to-resident, could result in a citation from the State Survey agency.