

APPENDIX E.3.

MANDATED REPORTS, ADDITIONAL REPORTING REQUIREMENTS, RESTRICTIONS ON EMPLOYEES AND SUSPICIOUS DEATH NOTIFICATIONS

Please note: by definition under OAPSA abuse includes neglect. Reports of neglect received from facility staff are also considered mandatory reports.

General Requirements of Mandated Reporters- §15.151

§15.151(a) (b) and (d) addresses the mandatory abuse reporting requirements and other obligations for facility employees. All facility employees have an obligation to report suspected abuse. This means that an administrator or an employee of a “facility” must make a report if they suspect it is likely or probable that abuse occurred. Essentially, there only needs to be a hint that it is likely or probable.

Reportable alleged abuse scenarios include:

- Staff to older adult;
- older adult to older adult; and
- any other person to older adult.

When a facility staff person suspects abuse they are required to:

- Immediately make an oral report to the AAA.
- Immediately notify the facility administrator or designee that the report was made.
- Make a written report to the AAA within 48 hours. *

Facility staff can ask their administrator or the designee to help them call in the report to the AAA and they can ask for help with completing written reports.

*The mandatory abuse report is the form utilized by most facilities (Appendix E.5). The only exception is for nursing homes. Nursing homes are permitted to utilize the PB22 form instead of the mandatory abuse reporting form. Refer to § 15.153 for contents of the report.

Additional Reporting Requirements of Mandated Reporters- §15.152

In addition to the reporting obligations required by §15.151, facilities have additional reporting requirements if the suspected abuse rises to the level of what is considered serious abuse. Serious abuse is:

- Sexual abuse
Intentionally, knowingly or recklessly causing or attempting to cause rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest. The definition does not include sexual harassment.
- Serious physical injury
An injury that does one of the following:
 - (i) Causes a person severe pain.
 - (ii) Significantly impairs a person's physical functioning, either temporarily or permanently.
- Serious bodily injury
Injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ.
- Suspicious death
A death that is unexpected and its circumstances or the cause of death is medically or legally unexplained.

The standard for facility staff to complete the additional reporting requirements is reasonable cause to suspect that it is likely or probable that serious abuse occurred, essentially there only needs to be a hint that it is likely or probable that the abuse rises to the level of serious.

Restrictions on Employees- §§15.156 (a-e)

The area agency on aging involvement with restrictions on employees is for mandatory reports only. Restrictions on employees:

When a facility has reasonable cause to suspect that an employee may have committed abuse, the facility must make a decision on what the status of the employee will be while investigations are being completed.

The facility can initially decide if they want to suspend the employee pending investigation or develop and implement an individual plan of supervision. Many facilities choose to suspend a staff person until the investigation is completed. There are times when a facility is unable to suspend a staff person due to low staffing or other personnel issues.

Frequently there are several investigations occurring at the same time. Multiple Investigative activities can be occurring simultaneously and may include:

- The facility
- Licensing
- Protective services
- Law enforcement
- Advocacy agencies
- MH/ID agencies

The facility must notify the AAA and licensing if a staff person is suspended or if they choose to develop and implement a plan of supervision. If the facility chooses to use a plan of supervision, then the plan is put in writing by the facility and submitted for approval to the licensing agency and to the Area Agency on Aging. The area agency on aging shall communicate their established time frames for the facility to submit the proposed plan of supervision.

Licensing and the area agency on aging must approve the proposed plan of supervision. Once a plan of supervision is submitted for approval the area agency on aging shall:

- Collaborate, in a timely manner, with licensing. The area agency on aging and licensing can work together and decide to agree, disagree or recommend changes to the plan of supervision.
- Communicate, in a timely manner, with the facility any decisions to reject or modify the plan.
- Communicate, in a timely manner, the acceptance of the plan of supervision. Protective service workers can communicate the acceptance of the plan orally or in writing.

There are times when a facility suspends a staff person and completes their investigation within a few days. Once the facility completes the investigation, they may want to bring the individual back to work. Unfortunately, licensing and the protective service caseworker may not be finished with their respective investigations. In this situation, the home can request a change from a suspension to a plan of supervision. The protective service worker and licensing must work together on approval or denial of the plan. It is not unusual for licensing to request that the individual remain suspended until their investigation is complete. Communication between the facility, licensing and the AAA is imperative. Additionally, any changes to the plan of supervision must be approved by the AAA and licensing agency prior to implementation. See §15.156 (b)

A facility must follow the approved plan of supervision. The facility may not change the plan of supervision without notifying licensing and the protective service unit. Licensing and the protective service unit must approve any changes in the plan.

Once the mandatory abuse report is investigated and an investigative outcome is made, the protective service worker must communicate the findings to licensing and the facility. Providing the facility with the final status of the report is only for mandatory abuse reports.

Protective service workers may not tell a facility when the individual, that has been suspended or has a plan of supervision in place, may return to work. The decision to allow the staff person to return to work or to remove the plan of supervision is handled by licensing. Since licensing oversees the regulatory compliance of the facility the direction on whether an individual may return is provided by licensing and not the AAA.

When a protective service investigation is completed for a mandatory report and a determination is made, the protective service worker should complete the following actions:

1. Contact licensing and obtain a status on their investigation and notify licensing of the final PS investigation status outcome (substantiated or unsubstantiated)
2. Contact the facility administrator or designee and provide the final status of the investigation (substantiated or unsubstantiated) §15.157 (10) (i).
3. If the investigation is unsubstantiated inform the facility that the AAA investigation is complete but that the final decision to remove the plan of supervision or suspension status of the employee is at the discretion of licensing. Suggest that the home contact licensing for direction.
4. If the investigation is substantiated the protective service worker may share, with the facility, appropriate information on the services that will be provided in the protective service plan. Protective services can include communicating identified care concerns and suggesting areas for improvement in the facility care plan. §15.157 (10) (ii).

Communication between the facility, licensing and the protective service worker is imperative. The goal is to collaborate to ensure the older adult's safety and quality of care. By reviewing care concerns and developing a plan to improve and maintain quality care the older adult's well-being and quality of life will be enhanced.

Protective service workers may not recommend personnel action or provide facilities with guidance on disciplinary actions. The decision to terminate or maintain an employee is at the discretion of the facility. Protective service workers may advocate

for the facility to provide a substitute staff person to provide care when a report of abuse or neglect is substantiated. The protective service worker may ask the facility for a plan to keep the older adult safe and comfortable when a staff person's employment is continued after an incident of abuse or neglect.

When there is an abuse allegation, regarding an older adult receiving care services from any home health care provider, the agency must follow the requirements §15.156. If a plan of supervision is implemented the agency must also provide periodic, random direct observation and evaluation of the employee and care recipient. A staff person, employed by the home health care agency for at least 1 year, must provide the supervision. For a home health agency in business for less than 1 year, supervision shall include random, direct observation and evaluation by an employee with prior employment experience of at least 1 year with one or more other home health care agencies.

Even if an allegation of abuse or neglect is substantiated, by protective services, a facility has the option to keep the employee. If criminal charges are filed the facility must inform licensing. Licensing will then direct that the employee be denied access to the facility. If the employee is a director, operator, administrator or supervisor, the employee shall be subject to restrictions determined by the licensing agency to assure the safety of older adults residing in the facility. The protective service worker does not direct any of the above actions.

If a protective service worker becomes aware of criminal charges against an employee, it would be appropriate to communicate the information to licensing.