



483.12 Freedom from Abuse, Neglect, and Exploitation



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Welcome. This is the abuse, neglect, and exploitation section of the training. I am Eimee Casal. I work in CMS' Division of Nursing Homes as a Subject Matter Expert on these subjects.

We appreciate your work in investigating and overseeing the safety of residents in nursing homes. When we place a loved one in a nursing home, we don't expect that they will be harmed during their stay. Abuse, neglect, and exploitation are never acceptable.

Abuse, Neglect, and Exploitation

Ftag	Tag Subject	Key Changes to Regulation or Interpretive Guidelines	Significant Chg/Technical Correction
F600	Abuse/Neglect	Removed language from sexual abuse, Included additional guidance related to neglect	Significant
F602	Misapprop/Exploit	Minor changes to update references to Appendix P	Technical
F603	Involuntary Seclusion	Minor changes to update references to Appendix P	Technical
F604	Physical Restraints	Clarification of when a bed rail meets the definition of a physical restraint	Significant
F605	Chemical Restraints	Minor changes to update references to Appendix P	Technical
F606	Not Employ Staff w/Adverse Action	Revised intent to match the regulation text	Technical
F607	Abuse Policies	Added guidance for coordination with QAPI and provisions the former F608	Significant
F608	Reporting of Suspected Crimes	Deleted- Guidance is at F607/F609	Significant
F609	Reporting Alleged Violations	Revised definitions & guidance related to the timing of reports, added language related to what facilities must report, added provisions from the former F608	Significant

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Having said this, we'll provide a quick overview of the changes that we made to the Interpretive Guidance in Appendix PP. <PAUSE>

Key Changes for F600-Abuse

- All resident to resident altercations do not result in abuse. Surveyors must investigate.
- Removed the language: “Residents without the capacity to consent to sexual activity may not engage in sexual activity.”
- Added language: “The facility must take steps to ensure that the resident is protected from abuse. These steps should include evaluating whether the resident has the capacity to consent to sexual activity.”

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Let's start with Tag F600. We have made a number of changes for citations related to abuse and neglect. For guidance related to resident to resident abuse, we emphasized that not every resident to resident altercation results in abuse. Residents do have social interactions with one another and will not always agree. Surveyors must investigate whether the incident meets the definition of “abuse”. Under sexual abuse, we removed the sentence: “Residents without the capacity to consent to sexual activity may not engage in sexual activity.” This sentence could unintentionally give the impression that all residents without the capacity to consent are not allowed to have any physical intimacy; therefore, we deleted this sentence. We do want to make clear, however, that sexual contact is not consensual if the victim is sedated, is temporarily unconscious, or is in a coma. Also, the facility must take steps to ensure that the resident is protected from abuse. These steps should include evaluating whether the resident has the capacity to consent to sexual activity.

This should exactly match the language that is in our guidance – if not, could be problematic for Allina

Key Changes for F600-Abuse

- Past Noncompliance
 - Investigate each instance thoroughly to determine if the facility took all appropriate actions
 - Determine the date on which the facility had returned to substantial compliance

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In addition, we provided more information under the section for past noncompliance. We remind surveyors that prior to citing a deficiency as past-noncompliance, surveyors should investigate each instance thoroughly to determine if the facility took all the appropriate actions to correct the noncompliance, and determine the date on which the facility had returned to substantial compliance.

Key Changes for F600-Abuse

- Appropriate steps to remediate the noncompliance and protect residents from additional abuse immediately
 - Taking steps to prevent further potential abuse;
 - Reporting the alleged violation and investigation within required timeframes;
 - Conducting a thorough investigation of the alleged violation;
 - Taking appropriate corrective action; and
 - Revising the resident's care plan if the resident's needs change.

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In addition, when a facility is cited for abuse, the facility must take all appropriate steps to rectify the noncompliance and protect residents from additional abuse immediately. Failure to take the following steps could result in findings of current noncompliance and increased enforcement action:

- Taking steps to prevent further potential abuse;
- Reporting the alleged violation and investigation within required timeframes;
- Conducting a thorough investigation of the alleged violation; and
- Taking appropriate corrective action.

In addition, the resident's care plan must be revised if the resident's needs change as a result of the incident of abuse.

Key Changes for F600-Neglect

- Indifference or disregard for resident care, comfort or safety, resulting in, or may result in, physical harm, pain, mental anguish or emotional distress.
- Noncompliance at Quality of Care does not always result in Neglect at F600

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In addition, under Tag F600 at neglect, we added some language related to when neglect occurs. It is important to remember that not every deficiency at Resident's Rights, Quality of Care, or Quality of Life will result in a finding of neglect. Neglect includes cases where the facility's indifference or disregard for resident care, comfort or safety resulted in, or could have resulted in, physical harm, pain, mental anguish or emotional distress. In other words, the collective effect of different individual failures in the delivery of care and services by staff leads to an environment that promotes neglect. Neglect occurs when the facility is aware of, or should have been aware of, goods or services that a resident requires but the facility fails to provide them to the resident, resulting in, or may result in, physical harm, pain, mental anguish, or emotional distress.

The guidance provides an example where there was noncompliance under Quality of Care, but not Neglect at F600, to help illustrate this point to surveyors. In one of the examples, we provide a scenario where a survey team identifies that a facility had failed to perform a skin assessment for a resident, resulting in failure to implement interventions to prevent the development of an avoidable Stage 2 pressure ulcer for a resident. Upon further investigation, the survey team finds that the facility identified the pressure ulcer and treated it with no further

worsening. While the survey team would identify noncompliance at F686, the facility would not generally be cited at F600 as well. A citation at neglect would require additional evidence that identifies that the facility knew, or should have known, to provide necessary staff, supplies, services, policies, training, or staff supervision and oversight to meet the resident's needs, but continued to fail to take action, necessary to avoid harm to the resident.

Key Changes for F600-Deficient Practice Statement

- Abuse Template: Based on [observations/interviews/record review], the facility failed to protect the resident's(s') right to be free from [Type(s) of abuse: mental abuse/verbal abuse/physical abuse/sexual abuse/deprivation of goods and services] by [Perpetrator type: staff/a resident/a visitor]....
- Neglect Template: Based on [observations/interviews/record review], the facility failed to protect the resident's(s') right to be free from neglect....

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Lastly for tags related to abuse and neglect, the guidance includes a template for the Deficient Practice Statement for Tag F600, as shown on this slide. Surveyors should follow this, as it will assist CMS in identifying the different types of abuse and neglect cases, and the type of perpetrator involved.

Key Changes for F604

- Physical Restraints
 - When is a bed rail a restraint?
 - It keeps a resident from voluntarily getting out of bed in a safe manner due to his/her physical or cognitive inability to lower the bed rail independently

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Under Tag F604, we clarified when a bed rail is considered to be a physical restraint—it is a restraint when it keeps a resident from voluntarily getting out of bed in a safe manner due to their physical or cognitive inability to lower the bed rail independently.

Key Changes for F607

- Facilities must develop and implement policies and procedures that include coordination with QAPI
 - How are cases communicated to the QAA Committee?

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Under Tag F607, we included guidance to implement a Phase 3 requirement—nursing homes are now required to include QAPI coordination in their policies and procedures for prohibiting abuse and neglect. We would expect that the facility's policies and procedures would direct staff in how information is shared with the Quality Assessment and Assurance, or QAA Committee—this is important so that the QAA Committee could oversee facility processes and determine whether more systemic actions are necessary.

Key Changes for F607/F609

- Deleted-F608
- F607 – Citations related to the failure to develop and implement written policies and procedures related to posting a conspicuous notice of employee rights, and prohibiting and preventing retaliation.
- F609- Citations related to the facility's failure to ensure the reporting of suspected crimes and notifying covered individuals of their reporting responsibilities.
- The respective Investigative Protocols have also been moved.

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In addition, we made changes regarding which tags to cite when a facility is not in compliance with requirements related to reporting a suspicion of a crime. F608 should no longer be used for citing deficiencies and has been deleted. Instead, the requirements under 1150B will be split into two tags:

- Tag F607 will be used for citations related to the failure to develop and implement written policies and procedures related to posting of conspicuous notice of employee rights, and prohibiting and preventing retaliation.
- Tag F609 will be used for citations related to the facility's failure to ensure the reporting of suspected crimes and notifying covered individuals of their reporting responsibilities

With this change, we've also moved the Investigative Protocol from F608 to tags F607 and F609. For example, if there is an allegation of retaliation by the facility against a covered individual, the Investigative Protocol under Tag F607 should be used.

Key Changes for F609-Reporting of Suspected Crimes

- Deficient practice statement: Based on [observations/interviews/record review], the facility failed to develop and/or implement policies and procedures for ensuring the reporting of a reasonable suspicion of a crime in accordance with section 1150B of the Act...

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We recognize that the failure to ensure the reporting of suspected crimes is now under the same tag for the reporting of alleged violations. In order to assist in reporting, our guidance instructs surveyors to include standardized language in the Deficient Practice Statement, if F609 is cited related to failure to ensure the reporting of crimes. This standardized language is displayed on the slide.

Key Changes for F609-Reporting of Suspected Crimes

- Examples of actions that policies and procedures should address:
 - Orienting new staff and assuring that covered individuals are annually notified;
 - Identifying barriers and implementing interventions to remove barriers and promote a culture of transparency and reporting;
 - Working with law enforcement annually to determine which crimes are reported;
 - Assuring that covered individuals can identify what is reportable and providing in-service training; and
 - Providing periodic drills.

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Under Tag F609, to ensure the reporting of suspected crimes, CMS provides guidance to surveyors about what the facility's policies and procedures should address. Examples described in the guidance include, but are not limited to, the following:

- Orienting new staff to the reporting requirements and assuring that covered individuals are annually notified of their responsibilities in a language they understand;
- Identifying barriers on reporting such as fear of retaliation or causing trouble for someone, and implementing interventions to remove barriers and promote a culture of transparency and reporting;
- Working with law enforcement annually to determine which crimes are reported;
- Assuring that covered individuals can identify what is reportable as a reasonable suspicion of a crime and providing in-service training; and
- Providing periodic drills across all levels of staff and all shifts to assure that covered individuals understand the reporting requirements.

Key Changes for F609-Reporting of Suspected Crimes

- Surveyors should investigate and document the failure to develop and/or implement policies and procedures for reporting suspected crimes.
- If the covered individual refuses to report, or the surveyor cannot verify that the report was done, the surveyor must consult with his/her supervisor immediately.

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Even in the presence of a policy and procedure, failure to report a reasonable suspicion of a crime is indicative of failure to implement the facility's policies and procedures. Surveyors should investigate and document the failure to develop and/or implement policies and procedures for reporting suspected crimes. For example, this may include how the facility may have not provided notification to its employees or how covered individuals are fearful of reporting or do not want to get others in trouble.

Also, the guidance was revised to instruct surveyors of situations where covered individuals in the facility had not reported a suspected crime to law enforcement. If the covered individual refuses to report, or the surveyor cannot verify that the 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.

F609-Reporting of alleged violations

- Clarified guidance for alleged violations which must be reported:
 - Staff to resident abuse
 - Resident to resident altercations

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Lastly, over the years, CMS has received questions from surveyors and providers regarding the reporting requirements, especially in the areas of resident to resident altercations, neglect, and misappropriation of resident property and exploitation. Although there weren't any changes to the regulations related to the reporting of alleged violations of abuse, neglect, and exploitation, CMS added additional guidance to tag F609, including examples of each type of alleged violation. Please note that some States may require additional types of incidents to be reported; however, surveyors would not review these incidents under F609 and would review these under their State licensure authority.

First, let's review what types of alleged violations related to abuse must be reported. All allegations of staff to resident abuse must be reported. Staff may receive allegations from any source, including other staff, residents, and family members. Also, each occurrence must be reported. If staff are aware of or witnessed any abuse that occurs, it must be reported.

With respect to reporting resident to resident altercations, facilities are not required to report all altercations to the State under Federal regulations. We know that arguments and altercations occur among residents, as they do in any social

setting. In the Interpretive Guidance, we carved out examples of what must be reported, and would require additional investigation by the facility to determine whether resident to resident abuse occurred. In some instances, we also described cases that facilities do not need to report.

Resident to Resident Altercations-Mental/Verbal Conflict

Required to Report

- Bullying
- Threats of violence

Not Required to Report

- Non-targeted outbursts

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We also separated resident altercations into the following categories – Mental/Verbal Conflict, Sexual Contact, and Physical Altercations. Under the category of Mental/Verbal Conflict, we would expect, for example, that bullying or threats of violence are examples of altercations that must be reported to the State. We would not expect the facility to report non-targeted outbursts.

Resident to Resident Altercations-Sexual Contact

Not Required to Report

- Consensual sexual contact between residents who have the capacity to consent
- Affectionate contact such as hand holding or hugging or kissing a resident who indicates that he/she consents to the action through verbal or non-verbal cues

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Next, we provided guidance on what types of sexual contact to report. Facilities are not required to report all sexual contact between residents. For example, consensual sexual contact between residents who have the capacity to consent to sexual activity would not have to be reported. In addition, affectionate contact such as hand holding or hugging or kissing a resident who indicates that they consent to the action through verbal or non-verbal cues would not need to be reported. Finally, sexual activity between residents in a relationship, such as married couples or partners, unless one of the residents indicates that the activity is unwanted through verbal or non-verbal cues, would not need to be reported.

Resident to Resident Altercations-Sexual Contact

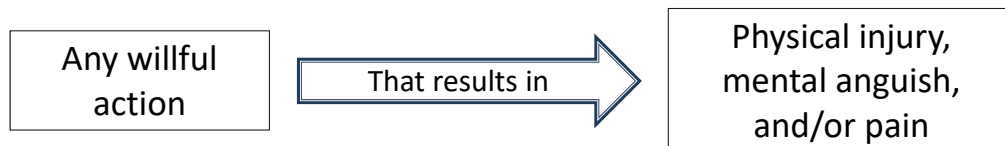
Required to Report

- Touching a resident's sexual organs and the resident being touched indicates the touching is unwanted through verbal or non-verbal cues
- Sexual activity or fondling where one of the resident's capacity to consent to sexual activity is unknown
- Instances where the alleged victim is transferred to a hospital for examination and/or treatment of injuries resulting from possible sexual abuse
- Other unwanted actions for the purpose of sexual arousal or sexual gratification

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However, there are instances of sexual contact between residents that must be reported. On this slide, we've displayed examples that you can review. <PAUSE to give time to read>

Resident to Resident Altercations-Physical



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Next, let's discuss resident-to resident physical altercations. In the guidance, we've outlined, that any resident to resident altercation where a willful action results in physical injury, mental anguish, or pain must be reported. Willful actions include, but are not limited to, hitting, slapping, punching, and choking. We included examples of willful actions and the results of those actions, such as physical injuries, mental anguish, and pain.

Physical altercations that don't result in physical injury, mental anguish, and pain do occur. While these types of cases do not have to be reported, physical altercations can increase the risk for abuse to occur in the facility.

Resident-Resident Physical Altercations Not Reported

- The facility must meet requirements related to:
 - Appropriate assessment;
 - Care planning by the interdisciplinary team
 - Implement care planning interventions as necessary;
 - Provide care and services according to acceptable standards of practice, and
 - Development and implementation of policies and procedures to prevent abuse.

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In cases where an altercation has occurred but does not meet the criteria for reporting, the facility must meet requirements related to:

- Appropriate assessment ,
- Care planning by the interdisciplinary team,
- Providing care and services according to acceptable standards of practice to prevent harm as a result of resident to resident altercations, and
- The development and implementation of policies and procedures to prevent abuse of residents .
- Through these actions, the facility can determine areas of needed improvement in care/service provision, staff training or staff placement.

Key Changes for F609

- Clarified guidance for alleged violations
 - Injuries of unknown source

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Next, let us review the requirements for reporting injuries of unknown source. We have received questions from surveyors about which injuries must be reported, such as bruises and skin tears.

Injuries of Unknown Source

- An injury should be classified as an “injury of unknown source” when ALL of the following criteria are met:
 - The source of the injury was not observed by any person; and
 - 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.

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An injury should be classified as an “injury of unknown source” when ALL of the following criteria are met:

- The source of the injury was not observed by any person; and
- 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, or
 - The number of injuries observed at one particular point in time, or
 - The incidence of injuries over time.

Injuries of Unknown Source

- Examples of Injuries of Unknown Source Which Must Be Reported – Unobserved/Unexplained
 - Skin tears in sites other than the arms or legs
 - Symmetrical skin tears on both arms
 - Patterned bruises that suggest hand marks or finger marks, or bruising pattern caused by an object
 - Bilateral bruising of the inner thighs, and “wrap around” bruises that encircle the legs, arms or torso.
 - Facial injuries, including facial fractures, black eye(s), bruising, or bleeding or swelling of the mouth or cheeks with or without broken or missing teeth

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To illustrate this better, we provided examples of what facilities are required to report and not required to report. Some examples of injuries that must be reported include unobserved or unexplained:

- Skin tears in sites other than the arms or legs
- Symmetrical skin tears on both arms
- Patterned bruises that suggest hand marks or finger marks, or bruising pattern caused by an object
- Bilateral bruising of the inner thighs, and “wrap around” bruises that encircle the legs, arms or torso.
- Facial injuries.

In the guidance, we have also identified injuries that would not require a report, such as bruising in an area where the resident has had recent medical tests as long as there is no other indication that abuse or neglect occurred.

Key Changes for F609

- Clarified guidance for alleged violations
 - Neglect

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CMS' interpretive guidance provides information to surveyors about reporting alleged violations of neglect. In developing the guidance for reporting neglect, we had reviewed examples from CMS-2567s. Through our review, we had identified situations where facility failures continued but were not reported to supervisory staff or administration, resulting in the State survey agency not being notified. In other cases, staff report failures but there is a lack of action. In these situations, neglect can occur. For example, CMS expects that a facility would report if there are repeated lapses in care that result in the development of an avoidable Stage 3 or 4 pressure ulcer. It is important that facility staff report such instances, as it could prevent further harm to residents in the facility.

Misappropriation of Resident Property/Exploitation

- Examples of what must be reported
 - Theft of personal property, such as jewelry; and
 - Unauthorized or coerced purchases on a resident's credit card; and
 - Missing prescription medications

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CMS' interpretive guidance provides examples of alleged violations of misappropriation of resident property and exploitation that must be reported. A few of the examples described in the Interpretive Guidance include:

- Theft of personal property, such as jewelry; and
- Unauthorized or coerced purchases on a resident's credit card; and
- Missing prescription medications

Examples of items that aren't required to be reported include the theft of minor items with little to no monetary or sentimental value.

We've spent most of our time so far talking about what types of alleged violations that facilities must report.

Key Changes for F609

- Clarified what information to include in the initial and investigation reports
- This information is located as Exhibits in the SOM

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We're now going to move forward and discuss examples of information that is included in facility reports. There are two reports that facilities must submit for each alleged violation- an initial report and an investigation report. Samples of these reports are found as exhibits in the SOM.

Let's review the initial report first. To recap, if the alleged violation involves abuse or serious bodily injury, it must be reported immediately, but no later than 2 hours. If the alleged violation involves neglect, misappropriation of resident property, or exploitation and involves no serious bodily injury, it must be reported no later than 24 hours.

Initial Reporting - Examples of Information

- Basic facility information
- Allegation type
- When the facility became aware of the incident
- Information about the alleged victim and perpetrator
- Witnesses
- Details about the allegation, including outcomes to the alleged victim
- Notifications that were made to law enforcement or other agencies.
- Steps taken immediately to ensure resident(s) are protected
- Who is submitting the report

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In the initial report, facilities must provide sufficient information to describe the alleged violation and indicate how residents are being protected. It is important that this information is as complete as possible so that the SA can initiate actions necessary to oversee the protection of residents. In our guidance, we've provided examples of information that should be reported which include, but are not limited to, the following:

- Basic facility information
- Allegation type
- When the facility became aware of the incident
- Information about the alleged victim and perpetrator
- Witnesses
- Details about the allegation, including outcomes to the alleged victim
- Notifications that were made to law enforcement or other agencies.
- Steps taken immediately to ensure resident(s) are properly protected
- Who is submitting the report

Investigation Reporting - Examples of Information

- Any additional outcomes to the resident.
- Whether the allegation was reported to the resident representative
- Whether the allegation was reported to another agency
- Steps taken to investigate the allegation. This may include a summary of interviews with the alleged victim, witnesses, the alleged perpetrator, other residents who have had contact with the alleged perpetrator, staff responsible for oversight of the location where the alleged victim residents, and staff responsible for oversight of the alleged perpetrator.

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Similarly, for the investigation report, facilities must provide sufficient information to describe the results of the investigation, and indicate any corrective actions taken, if the allegation was verified. The report should include any updates to information provided in the initial report and provide the following additional information:

- Any additional outcomes to the resident.
- Whether the allegation was reported to the resident representative
- Whether the allegation was reported to another agency
- Steps taken to investigate the allegation, as shown on the slide.

Investigation Reporting - Examples of Information (continued)

- Information from the resident's record
- Summary of other documents obtained, such as a police report, discharge summaries
- Conclusion
- Corrective action taken
- Who investigated the incident
- Who is submitting the report

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- Information from the resident's record
- Summary of other documents obtained, such as a police report or discharge summaries
- The conclusion, which includes whether the alleged violation was verified or inconclusive.
- Corrective action taken
- Who investigated the incident
- Who is submitting the report

The facility must submit reports that are accurate, to the best of its knowledge at the time of submission of the report. It is important that facilities not make reports that are misleading, such as reports that deliberately omit facts, or reports that are designed to make the incident appear less serious than it was, or reports that misrepresent the facility's response. Deliberate misrepresentations or omissions could result in a deficiency at F609 or may give rise to other deficiencies. We understand that facilities may not have all of the information required at the time they submit the report, for example, results of a resident's medical exam or laboratory tests may still be pending at the time of initial reporting. However,

facilities must submit the information they have available at the time of reporting.

Revisions to the Critical Element Pathways for Abuse and Neglect

- Critical Element Pathway for Abuse- Form CMS-20059
- Critical Element Pathway for Neglect-Form CMS-20130

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To reflect the changes to the Interpretive Guidance, we have also made changes to the Critical Element Pathways for both abuse and neglect. Please refer to CMS-20059 for the CE pathway for Abuse and CMS-20130 for Neglect.

Acknowledgments

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We just wanted to acknowledge those from the State survey agencies and CMS who had provided feedback for this guidance.

Thank You

If you have questions about this training please send them to:

DNH_TriageTeam@cms.hhs.gov



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Thank you for participating in this webinar. We hope that you find that this information is helpful. Today, we reviewed the highlights of the surveyor guidance to you. You can refer to Appendix PP for additional information.

If you have questions about this training please send them to the DNH Triage mailbox at: DNH_TriageTeam@cms.hhs.gov

Thank you for your continued efforts towards our shared goal in providing quality care to America's nursing home residents.

Congratulations

You have completed this section of the training.



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Congratulations! You have successfully completed this section of the training.