



Abuse and Neglect Implementation Checklist (F607)

On June 29, 2022, the Centers for Medicare & Medicaid Services (CMS) updated Appendix PP of the State Operations Manual. New and revised guidance covers significant sections of the Requirements of Participation and must be implemented by October 24, 2022.

LeadingAge has developed implementation checklists to assist members as they work toward compliance. The checklists and other resources are not exhaustive and LeadingAge strongly encourages members to review the CMS guidance to ensure compliance with all required elements.

Excerpts from the guidance and suggested action items are organized according to the headings provided by CMS in the State Operations Manual, Appendix PP. Excerpts are italicized, with new/revised guidance noted in red text.

§483.12 Freedom from Abuse, Neglect, and Exploitation

F607 Develop/Implement Abuse/Neglect etc. Policies

Definitions (p. 135)

New Guidance:

DEFINITIONS

“Covered individual” is anyone who is an owner, operator, employee, manager, agent or contractor of the facility (see section 1150B(a)(3) of the Act).

“Crime”: Section 1150B(b)(1) of the Act provides that a “crime” is defined by law of the applicable political subdivision where the facility is located. A political subdivision would be a city, county, township or village, or any local unit of government created by or pursuant to State law.

“Law enforcement,” as defined in section 2011(13) of the Act, is the full range of potential responders to elder abuse, neglect, and exploitation including: police, sheriffs, detectives, public safety officers; corrections personnel; prosecutors; medical examiners; investigators; and coroners.

“Serious bodily injury” means an injury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; requiring medical intervention such as surgery, hospitalization, or physical rehabilitation; or an injury resulting from criminal sexual abuse (see sections 2011(19)(A) and (B) of the Act).

“Criminal sexual abuse”: In the case of “criminal sexual abuse” which is defined in section 2011(19)(B) of the Act, serious bodily injury/harm shall be considered to have occurred if the conduct causing the injury is conduct described in section 2241 (relating to aggravated sexual abuse) or section 2242 (relating to sexual abuse) of Title 18, United States Code, or any similar offense under State law. In other words, serious bodily injury includes sexual intercourse with a resident by force or incapacitation or through threats of harm to the resident or others or any sexual act involving a child. Serious bodily injury also includes sexual intercourse with a resident who is incapable of declining to participate in the sexual act or lacks the ability to understand the nature of the sexual act.

Action Items:

- Review Abuse Prevention policies and applicable policies related to abuse investigations, abuse reporting, etc. to ensure appropriate definition of key terms.
- Train staff on definitions of key terms.

Guidance

I. Screening (p. 137)

New Guidance:

NOTE: If a facility has not developed and/or implemented policies and procedures related to screening procedures prior to employment, a finding of noncompliance should be considered at F607, not F606. If it is determined that the facility employed or engaged an individual, either directly or under contract, who was found guilty by a court of law of abuse, neglect, misappropriation of property, exploitation or mistreatment, or had a finding entered into the State nurse aide registry or has a disciplinary action in effect against his/her professional license concerning abuse, neglect, mistreatment of residents or misappropriation of resident property, a finding of noncompliance must be cited at F606.

Action Items:

- Review abuse prevention policies and policies related to pre-employment screening to ensure consistency. Ensure policies and protocols include checking state nurse aide registries and professional licensing registries.
- Ensure Human Resources and applicable staff are trained on pre-employment screening policies and protocols.

VII. Reporting/Response (p. 140)

New Guidance (in red):

The facility must have written procedures that must include:

- *Post a conspicuous notice of employee rights, including the right to file a complaint with the State Survey Agency if they believe the facility has retaliated against an employee or individual who reported a suspected crime and how to file such a complaint;*

To encourage reporting of reasonable suspicions of a crime, facilities should develop and implement policies and procedures that promote a culture of safety and open communication in the work environment. This may be accomplished through prohibiting retaliation against an employee who reports a suspicion of a crime. Actions that constitute retaliation against staff include:

- *When a facility discharges, demotes, suspends, threatens, harasses, or denies a promotion or other employment-related benefit to an employee, or in any other manner discriminates against an employee in the terms and conditions of employment because of lawful acts done by the employee.*
- *When a facility files a complaint or a report against a nurse or other employee with the state professional licensing agency because of lawful acts done by the nurse or employee for reporting a reasonable suspicion of a crime to law enforcement.*

An example of retaliation would be if a staff member, on behalf of or as an agent of the facility, harasses an employee who had reported a reasonable suspicion of a crime. In addition to developing policies prohibiting retaliation for reporting suspicions of a crime, the facility must develop and implement policies and procedures for posting notice in a conspicuous location informing covered individuals of their rights under section 1150B of the Act, including the right to file a complaint with the State Survey Agency if they believe the facility has retaliated against an employee or individual who reported a suspected crime and how to file such a complaint.

The sign may be posted in an area that is visible to employees, such as the same area where the facility posts other employee signs, such as labor management posters. Size and type requirements for the sign should be no less than the minimum required for any other required employment-related signs.

Action Items:

- Review Abuse Prevention policies including policies related to reporting allegations of abuse and reporting suspicions of crime. Ensure policies include employees' rights to file complaints without fear of retaliation.
- Post instructional signage on employees' rights to file complaints without fear of retaliation and instructions on how to file complaints in conspicuous locations likely to be seen by staff such as at entrances, in break rooms, in locker rooms, near time clocks,

etc. Sign size and type should meet size and type requirements of other employment-related signs.

- Train staff on how to report suspicion of crimes, what constitutes retaliation, strategies employed by the nursing home to encourage reporting and prevent retaliation, and how to file a complaint if an employee feels retaliation has occurred.

VIII. Coordination with QAPI (p. 142)

New Guidance:

VIII. Coordination with QAPI:

The facility must develop written policies and procedures that define how staff will communicate and coordinate situations of abuse, neglect, misappropriation of resident property, and exploitation with the QAPI program under §483.75.

Cases of physical or sexual abuse, for example by facility staff or other residents, always require corrective action and tracking by the QAA Committee, at §483.75(g)(2).

This coordinated effort would allow the QAA Committee to determine:

- *If a thorough investigation is conducted;*
- *Whether the resident is protected;*
- *Whether an analysis was conducted as to why the situation occurred;*
- *Risk factors that contributed to the abuse (e.g., history of aggressive behaviors, environmental factors); and*
- *Whether there is further need for systemic action such as:*
 - *Insight on needed revisions to the policies and procedures that prohibit and prevent abuse/neglect/misappropriation/exploitation,*
 - *Increased training on specific components of identifying and reporting that staff may not be aware of or are confused about,*
 - *Efforts to educate residents and their families about how to report any alleged violations without fear of repercussions,*
 - *Measures to verify the implementation of corrective actions and timeframes, and*
 - *Tracking patterns of similar occurrences.*

NOTE: For failures related to the development and implementation of policies and procedures to communicate and coordinate with the QAPI program situations of abuse, neglect, misappropriation of resident property, and exploitation, cite tag F607. For failures related to the QAA Committee's identification of quality deficiencies or its development and implementation of action plans to correct identified quality deficiencies, cite tag F867.

Action Items:

- Develop policies to define how staff will communicate and coordinate situations of abuse, neglect, misappropriation of resident property, and exploitation with the Quality Assurance and Performance Improvement program.
- Develop policies to define corrective actions in cases of physical or sexual abuse, whether by staff or other residents, and how these cases will be tracked by the Quality Assessment and Assurance committee.
- Develop policies and protocols to be followed by the QAA committee to help determine:
 - If a thorough investigation is conducted;
 - Whether the resident is protected;
 - Whether an analysis was conducted as to why the situation occurred;
 - Risk factors that contributed to the abuse (e.g., history of aggressive behaviors, environmental factors); and
 - Whether there is further need for systemic action such as:
 - Insight on needed revisions to the policies and procedures that prohibit and prevent abuse/neglect/misappropriation/exploitation,
 - Increased training on specific components of identifying and reporting that staff may not be aware of or are confused about,
 - Efforts to educate residents and their families about how to report any alleged violations without fear of repercussions,
 - Measures to verify the implementation of corrective actions and timeframes, and
 - Tracking patterns of similar occurrences.
- Educate staff and train members of the QAA committee on policies and protocols.

New Guidance:

INVESTIGATIVE PROTOCOL FOR POLICIES AND PROCEDURES RELATED TO ALLEGATIONS OF RETALIATION BY THE FACILITY AGAINST A COVERED INDIVIDUAL USE

Use this protocol during any survey, if, based on a complaint or an investigation of abuse, neglect, misappropriation of resident property, or exploitation, an allegation of retaliation by the facility against a covered individual was received. Refer to the CE Pathways for Abuse (Form CMS-20059) and Neglect (Form CMS-20130) and the Investigative Protocols for tags F602, and F603, which gathers information about what information was or was not reported by covered individuals and whether retaliation may have occurred.

The protocol below investigates whether the facility developed and implemented policies and procedures related to:

- *Posting notification of employee rights, and*
- *Prohibiting and preventing retaliation.*

PROCEDURES

Facility Policies and Procedures

Obtain and review the facility's policies and procedures to determine whether the facility is:

- *Posting notification of employee rights, and*
- *Prohibiting and preventing retaliation against covered individuals who make reports of a reasonable suspicion of a crime.*

Observations

Observe whether the facility has posted notification of employee rights and whether the notification includes all of the required components. Note the location of the notification, in relation to whether it is likely to be noticed by all employees.

Interview of State Professional Licensing Authorities

If there is an allegation of facility retaliation against an employee, the surveyor should contact the appropriate State licensing board to determine whether the facility had filed a complaint or report against the employee, and if so, what information was provided in the complaint or report.

Interview Staff

For an allegation of retaliation, interview staff about what occurred, how the facility allegedly retaliated against staff, and when.

Interview – Administrator

Interview the Administrator to determine the following:

- *How the Administrator oversees the implementation of policies and procedures for reporting of suspected crimes;*
- *For an allegation of retaliation:*
 - *Whether any actions were taken against an employee, and if so, what actions and why;*
 - *Whether the facility had submitted a report to the State professional licensing agency against the employee(s), and if so, why.*

Review of Employee Personnel Records

If there is an allegation of retaliation against an employee or other covered individual, obtain a copy of the employee's personnel records, and records for other covered individuals as applicable, to determine if the facility may have taken any action against the individual which may be related to the report of a suspected crime.

NOTE: If the surveyor discovers a reasonable suspicion of a crime committed against a resident of or an individual receiving services from the facility and it has not been reported by a covered

individual, the surveyor reminds the facility of the covered individuals' obligation to report suspected crimes pursuant to section 1150B of the Act within the required timeframes. "Covered individual" is anyone who is an owner, operator, employee, manager, agent or contractor of the facility as defined in section 1150B(a)(3) of the Act. If a covered individual reports the suspected crime to local law enforcement, the surveyor must verify that the report was made (e.g., obtain time/date of report, name of person who received report, case number, etc.). If the covered individual refuses to report, or the surveyor cannot verify that a 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.

Action Items:

- Incorporate investigation protocol into Abuse Prevention program and QAPI program policies including policies related to:
 - Investigation of allegations of abuse
 - Coordination of abuse prevention program with QAPI program
 - Tracking and coordination of abuse prevention by the QAA committee
- Review with staff definitions of "covered individual" and obligations to report reasonable suspicion of a crime against a resident. Review with staff what "reasonable suspicion of a crime" constitutes and how to report.
- Educate staff on employee rights and nursing home policies to prohibit and prevent retaliation against covered individuals who make reports of reasonable suspicion of a crime.
- Review policies related to posting notice of employee rights and prohibiting and preventing retaliation against covered individuals who make reports of reasonable suspicion of a crime. Ensure notices are posted in conspicuous areas likely to be seen by staff.

KEY ELEMENTS OF NONCOMPLIANCE (p. 144)

New Guidance (in red):

To cite deficient practice at F607, the surveyor's investigation will generally show that the facility has failed to do one or more of the following:

- *Develop and implement written policies and procedures that establish coordination with the QAPI program required under §483.75; or*
- *Develop and implement written policies and procedures related to posting conspicuous signage of employee rights related to retaliation against the employee for reporting a suspected crime; and prohibiting and preventing retaliation.*

Action Items:

- Develop and implement written policies and procedures that establish coordination with the QAPI program.
- Develop and implement written policies and procedures related to posting conspicuous signage of employee rights related to retaliation against the employee for reporting a suspected crime; and prohibiting and preventing retaliation.