



Regulatory Roundup

Weekly Webinar for Long-Term Care Professionals

 [IHCA.org/regulatory-roundup](https://ihca.org/regulatory-roundup)

PRESENTERS

Lori Davenport

Indiana Health Care Association

Team Members from

Indiana Department of Health

December 21, 2023



Today's Agenda

 [IHCA.org/regulatory-roundup](https://www.ihca.org/regulatory-roundup)

- Upcoming Education – Katie Niehoff
- Discussion on Chapter 5 – Brenda Buroker
- Q&A – Lori Davenport

There will be no December 28 or January 4 meeting.



2024 IHCA/INCAL Webinar Schedule

| Documentation in Depth | The Impact of the MDS | Abuse & Neglect Program Checkup | Nurturing Behavioral Health & Psychosocial Well-Being | 5-Star Work Plans | Reducing Hospital Readmissions |
|---|--|---|---|--|---|
| <ul style="list-style-type: none">• January 16• February 20• March 19• April 16• May 21• June 18• July 16• August 20• September 17• October 15• November 19• December 17 | <ul style="list-style-type: none">• February 7• February 14• February 21• February 28• March 6 | <ul style="list-style-type: none">• August 7• August 14• August 21• August 28• September 4• September 11 | <ul style="list-style-type: none">• September 18• September 25• October 2• October 9• October 16• October 23 | <ul style="list-style-type: none">• May 30 | <ul style="list-style-type: none">• December 19 |

Upcoming Education

Webinars

- Documentation for Falls & Accidents (1st webinar in the new series), Jan. 16
 - Details [HERE](#)

Dementia Care Trainings

- <https://www.ihca.org/our-services/professional-development/events-and-education#section-4/>
 - Alzheimer's Disease & Dementia Care Seminar (virtual, live online workshops) – This is the required course for Certified Dementia Practitioner (CDP) certification
 - March 14
 - September 17

Save the Dates – details coming soon!

- **Mastering Recruitment & Retention**, a webinar series starting March 8
- **Life Safety Code Intensive Workshop**, March 27-28 in Carmel
- **Spring Conference: Managed Care**, April 16-17 in French Lick



Indiana
Department
of
Health

IHCA CALL: DISCUSSION ON CHAPTER 5

TAMMY ALLEY

LONG-TERM CARE DEPUTY DIRECTOR

BRENDA BUROKER

LONG-TERM CARE DIRECTOR

12/21/2023

OUR MISSION:

To promote, protect, and improve the health and safety of all Hoosiers.

OUR VISION:

Every Hoosier reaches optimal health regardless of where they live, learn, work, or play.



What is new - October 2023

- Complaints and facility-reported incidents
 - In preparation, IDOH is taking a critical look at the complaint program
- David Burgess took on the role of program manager
- New policy for abuse reporting completed in 2022
 - New policy and procedure for the timely review of complaints and incidents
- New timeframes for intake and prioritization

What must be reported

- All allegations of abuse, neglect, exploitation, or mistreatment, including injuries of unknown source and misappropriation of resident property
- Allegation: An alleged violation is a situation or occurrence that is observed or reported by any person but has not yet been investigated, and if verified, could be noncompliance with requirements.

Triage

Date starts upon receipt of the complaint or facility reported incident

- Immediate jeopardy – within three business days
- Non-immediate jeopardy (high) – within an annual average of 15 business days, not to exceed 18 days
- Non-immediate jeopardy (medium) - 45 calendar days
- Non-immediate jeopardy (low) – next onsite survey

Substantiated/unsubstantiated

- Change in terminology

- The role of the surveyor is not to validate whether the events contained in the allegation had occurred, but it is to determine whether the facility is in compliance with the federal requirements for Medicare/Medicaid-certified providers/suppliers.
- The words **substantiated** and **unsubstantiated** are no longer used in a complaint investigation.

- Investigation

- The state must review all complaint allegations and conduct a standard or abbreviated standard survey to investigate complaints of violation of requirements if review of the allegation concludes:
 - A deficiency may have occurred; and
 - Only a survey can determine whether a deficiency exists or not

Policy and procedure

- Develop and implement written procedures for a timely review and investigation of allegations of resident abuse and neglect, and misappropriation of resident property for both complaints and facility reported incidents
- Facilities send all alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property
- The results of all facility investigations
- Reasonable suspicions of crimes against a resident
 - If a state receives information that a suspected crime may have occurred in a facility and there is indication that it has not been reported to law enforcement, the state must forward the information to law enforcement.

Initial report of the incident

- Facility must provide sufficient information to describe the alleged violation and indicate how residents are being protected.
 - It is important to provide as much information as possible so the state can take necessary action.
 - The goal is to protect other residents.
- A follow-up report must be made within five working days.
 - Describe the results of the investigation
 - Corrective actions taken
 - Was the allegation verified?

Immediate jeopardy priority

- If (1) the alleged noncompliance may have caused, or may likely cause, serious injury, harm, impairment or death to a resident; and (2) the facility has not implemented adequate protection for all residents or the state has not received sufficient evidence to conclude that residents are adequately protected, this investigation must be completed within three business days.
- If the facility reports the alleged compliance may have risen to an immediate jeopardy, but the facility has potentially implemented adequate protection for the residents, this investigation must be completed within seven business days.

Examples to provide in the report

- Monitoring of the alleged victim
- Provision of social service
- Immediate assessment and treatment of the victim
- Immediate notification of physician and resident representative
- Removal of the alleged perpetrator
- Notification to other agencies or law enforcement

Reporting abuse to law enforcement

- When verifying the allegation has been reported to law enforcement, include the following information:
 - Who submitted the report
 - What was reported
 - Date and time
 - Police report number
- When the state finds deficient practice with abuse, the state must report the findings to local law enforcement and Medicaid Fraud

Immediate jeopardy (IJ) complaints

Examples of intakes that must be assigned this priority:

- All intakes alleging abuse of a resident and it is uncertain they are adequately protected
- All intakes alleging eviction of a resident to an unsafe location
- Fires resulting in serious injury or death

Non-IJ: High, medium, and low

- **Non-IJ high** - One or more allegations that may have caused harm that negatively impacts the individual's mental, physical and/or psychological status and are of such consequence to the person's well-being that a rapid response is indicated
- **Non-IJ medium** – The alleged noncompliance with one or more of the requirements caused no actual physical and/or psychological harm but there is potential for more than minimal harm to the resident
 - Facility-reported incidents are assigned this level when there is no actual harm and the facility has not provided an adequate response
- **Non-IJ low** – The alleged noncompliance caused no actual harm with a potential for minimal harm
 - Facility-reported incidents are assigned this level when there is minimal harm AND the facility has provided an adequate response

No further action necessary

- Facility-reported incidents that are not to be reported under federal law or regulation
- Facility-reported incidents involving injuries where the resident was able to explain or describe how it happened as long as there is no indication of abuse or neglect
- Facility-reported incidents involving lost items which are found and no theft is suspected
- The alleged noncompliance occurred before the last annual survey and there is sufficient evidence there is no continuing noncompliance.

Administrative review

- Assigned this priority if no onsite investigation is required.

Prioritization:

| Provider Type | Intake Prioritization | | | |
|-----------------------------------|---|--|---|---|
| | Immediate Jeopardy (IJ) | Non-IJ High | Non-IJ Medium | Non-IJ Low |
| Nursing home <i>complaints</i> | SA must initiate an onsite survey within 3 business days of receipt of the initial report. | SA must initiate an onsite survey within an annual average of 15 business days of receipt of the initial report, not to exceed 18 business days. | SA must initiate an onsite survey within 45 calendar days of receipt of the initial report. | SA must track/trend for potential focus areas during the next onsite survey, or initiate a new complaint survey. |
| Nursing home <i>incidents</i> | <p>With inadequate resident protection, SA must initiate an onsite survey within 3 business days of receipt of the initial report.</p> <p>With potentially adequate resident protection, SA must initiate an onsite survey within 7 business days of receipt of the initial report.</p> <p>See Section 5310.2A.</p> | SA must initiate an onsite survey within an annual average of 15 business days of receipt of the initial report, not to exceed 18 business days. | With an inadequate facility response, SA must initiate an onsite survey within 45 calendar days of receipt of the initial report. | With a potentially adequate facility response, SA must track/trend for potential focus areas during the next onsite survey, or initiate a new complaint survey. |

Follow the Definitions

“Misappropriation of resident property,” as defined at §483.5, means “the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident’s belongings or money without the resident’s consent.”

Examples of misappropriation of resident property include, but are not limited to:

- Identity theft;
- Theft of money from bank accounts;
- Unauthorized or coerced purchases on a resident’s credit card;
- Unauthorized or coerced purchases from resident’s funds;
- A resident who provides a gift to staff in order to receive ongoing care, based on staff’s persuasion; and
- A resident who provides monetary assistance to staff, after staff had made the resident believe that staff was in a financial crisis

Another example of misappropriation of resident property is the diversion of a resident’s medication(s), including, but not limited to, controlled substances for staff use or personal gain.

Misappropriation

If a resident states that his or her belongings are stolen, the facility may make an initial determination whether the item has been misplaced in the resident's room, in the laundry, or elsewhere before reporting misappropriation of property.

Resident states cannot find money taken to ball game would not need to be reported.

Resident to Resident

Resident to Resident

Resident-to-resident altercations that must be reported in accordance with the regulations include any willful action that results in physical injury, mental anguish, or pain, as defined at §483.5.

Required to report:

- Intimidation
- Bullying- Aggressive behavior in which someone intentionally* and repeatedly causes another resident mental anguish or discomfort** (adapted from the American Psychological Association 2)
- Communication that is motivated by an actual or perceived characteristic, such as race, color, religion, sex, disability, or sexual orientation that results in mental anguish or social withdrawal**

Resident to Resident

- Threats of violence
- Inappropriate sexual comments that are used in a deliberately* threatening manner • Inappropriate sexual comments that offend, humiliate, or demean a resident**;
- Taking and/or distributing demeaning or humiliating photographs or recordings of residents through social media or multimedia messaging

Not required unless rises to concerns above

- Non-targeted outbursts
- Residents with certain conditions (e.g., Huntington's/Tourette's) who exhibit verbalizations
- Arguments or disagreements, which do not include any behavior or communication identified in the "Required to Report" column

Resident to Resident

The general examples of physical altercations below illustrate possible cases that would likely NOT need to be reported, **as long as it is not a willful action that results in physical injury, mental anguish, or pain.** Every case is fact specific and all facts, circumstances and conditions involving the event/occurrence would need to be examined. • A resident lightly taps another resident to stop an irritating behavior or get attention, with no resulting physical injury, mental anguish, or pain. • A resident who is slow, impedes the pathway of another resident, such as in the dining room, the other resident nudges the resident out of the way to get to his/her table faster, but there is no harm to the victim. • A resident who swats at another resident who is trying to take some food off his/her plate, and no physical injury, mental anguish, or pain has occurred.

When there is a verbal altercation between two residents where one of the two residents cusses and yells at the other resident, however the other resident does not respond and does not enter into the verbal altercation. Is this incident reportable under res-res abuse guidelines?

Questions?

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Q & A



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