Date: August 26, 2016

To: Nursing Facilities

From: Eve Lewis, Program Manager, Office of LTC Facilities
Katie Weidner, Program Specialist, Children and Family Services

Re: NURSING FACILITY ABUSE/NEGLECT/MISAPPROPRIATION REPORTING REQUIREMENTS

Purpose: The purpose of this memo is to provide resources to determine what constitutes a reportable incident. For purposes of this memo, an incident includes: any allegation involving abuse of a resident by anyone including staff, another resident, family or visitors; neglect of a resident; misappropriation of a resident's property; or injuries to a resident of unknown source.

This memo includes the following:

A. a handout – WHAT YOU SHOULD KNOW ABOUT REPORTING.

B. a summary of the federal and state definitions of reportable incidents.

C. three flowcharts to determine if the incident is reportable to the child and adult abuse and neglect hotline (1-800-652-1999):
   1. Abuse/Neglect Related Reportable Incident;
   2. Individual to Individual Aggression; and
   3. Individual Injury

D. sample internal investigation reports. Facilities submitting their internal investigation, which is due 5 days after the incident, may use their own report or one of the forms located at the following sites:
   http://dhhs.ne.gov/publichealth/Pages/FacilityForms.aspx

   Injury of Unknown Origin Form: http://dhhs.ne.gov/publichealth/pages/injuryofunknownorigin.aspx
   Misappropriation Form: http://dhhs.ne.gov/publichealth/pages/misappropriation.aspx
   Neglect Form: http://dhhs.ne.gov/publichealth/pages/neglect.aspx
   Physical Abuse Form: http://dhhs.ne.gov/publichealth/pages/physicalabuse.aspx
   Sexual Abuse Form: http://dhhs.ne.gov/publichealth/pages/sexualabuse.aspx
   Verbal Abuse Form: http://dhhs.ne.gov/publichealth/pages/verbalabuse.aspx

E. other resources.
   For more about Adult Protective Services
   http://dhhs.ne.gov/children_family_services/Pages/nea_aps_apsindex.aspx.

What You Should Know About Reporting

If you suspect abuse, neglect or misappropriation/exploitation,
Immediately take action to ensure the safety of the resident/client/patient.
Inform your supervisor (or other designated person) about the incident as soon as possible.

The hotline or your supervisor may ask you questions about the incident, including:

WHO? Provide information about the person(s) suspected of harming the client.
Include the name, position or title at time of incident, and gender of all persons suspected of harming the client.

Provide information about people with specific knowledge of the incident.
Include all persons with specific knowledge of incident. Include the person's name, gender, address and telephone number, if known. Include the person's position or relationship to the affected client.

Individuals Involved
Include all persons who are connected in any way with the incident:

Resident, client, or patient, including mental status if known
Suspect or accused person
Witness(es)
Any others with first-hand knowledge

WHEN? Explain when the incident occurred. Include the month, day, year and time of the incident: *(example: 08/25/2005, 10:30 AM)*. If you do not know the exact day, provide an approximate date, such as the week of March 1, or the month of March, or between March 1 and April 15. If you give approximate dates, explain how you determined the dates.

WHAT? Briefly describe the incident in a precise and accurate manner. Document observable facts regarding the incident in as much detail as possible. Your supervisor may request supporting documents.

WHERE? Identify the specific location where the incident happened. If the incident happened at a location other than the entity, indicate the specific address of that location.

Location. Document physical findings using diagrams, sketches or photographs, as appropriate to include:

- Specific location of room, using room numbers, wings, etc.
- Specific location of objects in the space

EFFECT? Describe the effect of the incident on the client or the client's reaction to the incident. If a client has been physically injured, describe the injury, size of bruise, etc. Describe any indication or expressions of pain, anger, frustration,

DEFINITIONS

Federal	**State of Nebraska** **28-348. Act, how cited.** Sections 28-348 to 28-387 shall be known and may be cited as the Adult Protective Services Act.
Covers all residents	Covers vulnerable adults **28-371. Vulnerable adult.** Vulnerable adult means any person eighteen years of age or older who has a substantial mental or functional impairment or for whom a guardian or conservator has been appointed under the Nebraska Probate Code. **28-368. Substantial functional impairment.** Substantial functional impairment shall mean a substantial incapability, because of physical limitations, of living independently or providing self-care as determined through observation, diagnosis, investigation, or evaluation. **28-369. Substantial mental impairment.** Substantial mental impairment shall mean a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, or ability to live independently or provide self-care as revealed by observation, diagnosis, investigation, or evaluation.
42 Code of Federal Regulations (CFR) 483.13 (c)(2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately (emphasis added) to the administrator of the facility and to other officials in accordance with State law (emphasis added) through established procedures (including to the State survey and certification agency).	**28-372. Report of abuse, neglect, or exploitation; required; contents; notification; toll-free number established.** (IN PART) (1) When any physician, psychologist, physician assistant, nurse, nursing assistant, other medical, developmental disability, or mental health professional, law enforcement personnel, caregiver or employee of a caregiver, operator or employee of a sheltered workshop, owner, operator, or employee of any facility licensed by the department, or human services professional or paraprofessional not including a member of the clergy has reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation or

(In accordance with state law includes reporting requirements of the Adult Protective Services Act.)	observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect, or exploitation, he or she shall report the incident or cause a report to be made to the appropriate law enforcement agency or to the department. Any other person may report abuse, neglect, or exploitation if such person has reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect, or exploitation..... **28-711. Child subjected to abuse or neglect; report; contents; toll free number (partial definition)** When any physician, any medical institution, any nurse, any school employee, any social worker, the Inspector General appointed under section 43-4317, or any other person has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, he or she shall report such incident or cause a report of child abuse or neglect to be made to the proper law enforcement agency or to the department on the toll-free number established by subsection (2) of this section...

	28-350. Definitions, where found. For purposes of the Adult Protective Services Act, unless the context otherwise requires, the definitions found in sections 28-351 to 28-371 shall be used.

Abuse: 42 CFR 488.301 "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. **Physical abuse:** "Physical abuse" includes hitting, slapping, pinching and kicking. It also includes controlling behavior through corporal punishment.	**28-351. Abuse.** Abuse means any knowing or intentional act on the part of a caregiver or any other person which results in physical injury, unreasonable confinement, cruel punishment, sexual abuse, or sexual exploitation of a vulnerable adult. **28-363 Physical injury.** Physical injury shall mean damage to bodily tissue caused by non-therapeutic conduct, including, but not limited to, fractures, bruises, lacerations, internal injuries, or dislocations, and shall include, but not be limited to, physical pain, illness, or impairment of physical function. **28-354 Cruel punishment.** Cruel punishment shall mean punishment which intentionally causes physical injury to a vulnerable adult.
Neglect: 42 CFR 488.301 "Neglect" means failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.	**28-361.01. Neglect.** Neglect means any knowing or intentional act or omission on the part of a caregiver to provide essential services or the failure of a vulnerable adult, due to physical or mental impairments, to perform self-care or obtain essential services to such an extent that there is actual physical injury to a vulnerable adult or imminent danger of the vulnerable adult suffering physical injury or death. **28-357 Essential services.** Essential services shall mean those services necessary to safeguard the person or property of a vulnerable adult. Such services shall include, but not be limited to, sufficient and appropriate food and clothing, temperate and sanitary shelter, treatment for physical needs, and proper supervision. **28-364 Proper supervision.** Proper supervision shall mean care and control of a vulnerable adult which a reasonable and prudent person would exercise under similar facts and circumstances.
Misappropriation of Property: 42 CFR 488.301 "Misappropriation" of resident property means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.	**28-358. Exploitation.** Exploitation means the wrongful or unauthorized taking, withholding, appropriation, conversion, control, or use of money, funds, securities, assets, or any other of property of a vulnerable adult or senior adult by any person by means of undue influence, breach of a fiduciary relationship, deception, or extortion, intimidation, force or threat of force, isolation, or by any unlawful means or by the breach of a fiduciary duty by

	the guardian, conservator, agent under a power of attorney, trustee, or any other fiduciary of a vulnerable adult or senior adult*. *Note: Adult Protective Services does not investigate claims of exploitation of "senior adults" unless they also meet the criteria of "vulnerable adult".
Sexual Abuse: 42 CFR 488.301 "Sexual abuse" includes, but is not limited to, sexual harassment, sexual coercion, or sexual assault.	**28-367. Sexual abuse.** Sexual abuse shall include sexual assault as described in section 28-319 or 28-320 and incest as described in section 28-703. **28-367.01. Sexual exploitation.** Sexual exploitation includes, but is not limited to, unlawful intrusion as described in section 28-311.08 and causing, allowing, permitting, inflicting, or encouraging a vulnerable adult to engage in voyeurism, in exhibitionism, in prostitution, or in the lewd, obscene, or pornographic photographing, filming, or depiction of the vulnerable adult.
Verbal abuse: 42 CFR488.301 "Verbal abuse" is defined as the use of oral, written or gestured language that willfully includes disparaging and derogatory terms to residents or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse include, but are not limited to: threats of harm, saying things to frighten a resident, such as telling a resident that he/she will never be able to see his/her family again.	Not applicable
Mental Abuse: "Mental abuse" is defined as verbal or non-verbal conduct which causes or has the potential to cause the resident to experience humiliation, intimidation, fear, shame, agitation, or degradation. Examples includes, but is not limited to, humiliation, harassment, threats of punishment or deprivation, or the taking of photographs or recordings of residents that are demeaning or humiliating using any type of equipment and keeping or distributing them through multimedia messages or on social media networks.	

"Involuntary seclusion" is defined as separation of a resident from other residents or from her/his room or confinement to her/his room (with or without roommates) against the resident's will, or the will of the resident's legal representative. Emergency or short term monitored separation from other Residents will not be considered involuntary seclusion and may be permitted if used for a limited period of time as a therapeutic intervention to reduce agitation until professional staff can develop a plan of care to meet the resident's needs.	**28-370. Unreasonable confinement.** Unreasonable confinement means confinement which intentionally causes physical injury to a vulnerable adult or false imprisonment as described in section 28-314 or 28-315.
" Injury of Unknown Origin"- An injury should be classified as an "injury of unknown origin" when both of the following conditions are met: - The source of the injury was not observed by any person or the source of the injury could not be explained by the resident - **AND** - The injury is suspicious because of the extent or the location of the injury or the number of injuries observed at one particular point in time or the incidents of injuries over time.	

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
Facility Adult and Child Abuse/Neglect Reporting Instructions

An Abuse/Neglect Related Reportable Incident

There is reason to suspect or believe abuse has occurred, **OR** an allegation has been made, **OR** conditions are present that could result in abuse/neglect?

- Take steps to protect Individual
- Notify Administration
- Begin internal investigation

Immediately report to:
Adult and Child Abuse and Neglect Hotline
1-800-652-1999

Is there a reasonable suspicion of a crime?

YES

Is there a serious physical injury?

YES

Report to local law enforcement within two hours of forming suspicion

NO

NO

Report to local law enforcement within 24 hours of forming suspicion

Conduct Internal Investigation

Send internal investigation report to:
Health Facility Investigations
Attn: Intakes
PO BOX 94986
Lincoln, NE 68509 OR
DHHS.HealthFacilitiesInvestigation@nebraska.gov OR
Fax Number: (402) 471-1679
Phone Number: (402) 471-0316

- **For Nursing Homes:**
Due within 5 working days from the allegation.
- **For ICF/DD:**
Due within 7 working days from the allegation
- **All others:**
Due as requested

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
Facility Adult and Child Abuse/Neglect Reporting Instructions

Individual to Individual Aggression

- Take steps to protect Individual
- Notify Administration
- Begin internal investigation

Was there a **serious physical injury?** (Neglect is a possibility)

NO → **No need to** report to Abuse and Neglect Hotline

1. Record findings that validate this conclusion
2. Act to prevent recurrence of incident and protect resident - i.e., any needed re-assessment, care revision, staff training and equipment modification at assure resident's safety.

YES

Call Adult and Child Abuse and Neglect hotline
1-800-652-1999

Is there a reasonable suspicion of a crime?

YES → Is there a reasonable suspicion of a crime causing the **serious physical injury?**

YES → Report to local law enforcement within two hours of forming suspicion

NO → Report to local law enforcement within 24 hours of forming suspicion

NO

Complete Internal Investigation

Send completed report to:
Health Facility Investigations
Attn: Intakes
PO BOX 94986
Lincoln, NE 68509 OR
DHHS.HealthFacilitiesInvestigation@nebraska.gov OR
Fax Number: (402) 471-1679
Phone Number: (402) 471-0316

- **For Nursing Homes:**
Due within 5 working days from the allegation.
- **For ICF/MR:**
Due within 7 working days from the allegation
- **All others:**
Due as requested

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES

Facility Adult and Child Abuse/Neglect Reporting Instructions

Individual Injury

- Take steps to protect individual
- Notify Administration
- Begin internal investigation

Was the source of the injury; observed by any person; or explained by the resident and the explanation is reasonable?

YES

Is the injury significant for the resident **OR** Does the explanation create reason to suspect or believe abuse or neglect occurred?

YES

Go to the **Abuse/ Neglect Related Reportable Incident** flowchart

NO

NO

No Report to the Hotline Required
Document the reasons that no report was required and take steps to prevent future occurrence.

Was the injury suspicious because of; the extent of the injury; 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 **OR** Is the injury significant for the resident?

NO

Meets definition of **Injury of unknown origin**

YES

Call Adult and Child Abuse and Neglect Hotline
1-800-652-1999

Is there a reasonable suspicion of a crime?

YES

Is there a serious physical injury?

YES

NO

NO

Report to local law enforcement within 24 hours of forming suspicion

Report to local law enforcement within two hours of forming suspicion

Complete Internal Investigation

Send report to:
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