

Documents Used in Module 5 Lesson 2

The Social Security Act Section 1819g1c	1
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SOCIAL SECURITY ACT

TITLE XVIII--HEALTH INSURANCE FOR THE AGED AND DISABLED

SEC. 1819. REQUIREMENTS FOR, AND ASSURING QUALITY OF CARE IN, SKILLED NURSING FACILITIES

(g) SURVEY AND CERTIFICATION PROCESS.--

(1) STATE AND FEDERAL RESPONSIBILITY.—

(C) INVESTIGATION OF ALLEGATIONS OF RESIDENT NEGLECT AND ABUSE AND MISAPPROPRIATION OF RESIDENT PROPERTY.--The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident. The State shall, after providing the individual involved with a written notice of the allegations (including a statement of the availability of a hearing for the individual to rebut the allegations) and the opportunity for a hearing on the record, make a written finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority. A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

SOCIAL SECURITY ACT

TITLE XIX--GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

SEC. 1919. REQUIREMENTS FOR NURSING FACILITIES

(g) SURVEY AND CERTIFICATION PROCESS.—

(1) STATE AND FEDERAL RESPONSIBILITY.—

(C) INVESTIGATION OF ALLEGATIONS OF RESIDENT NEGLECT AND ABUSE AND MISAPPROPRIATION OF RESIDENT PROPERTY.--The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident. The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority. A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

[Code of Federal Regulations]
[Title 42, Volume 3, Parts 430 to End]
[Revised as of October 1, 1999]
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PART 488--SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES--Table of Contents

Subpart E--Survey and Certification of Long-Term Care Facilities

Sec. 488.335 Action on complaints of resident neglect and abuse, and misappropriation of resident property.

(a) Investigation. (1) The State must review all allegations of resident neglect and abuse, and misappropriation of resident property and follow procedures specified in Sec. 488.332.

(2) If there is reason to believe, either through oral or written evidence that an individual used by a facility to provide services to residents could have abused or neglected a resident or misappropriated a resident's property, the State must investigate the allegation.

(3) The State must have written procedures for the timely review and investigation of allegations of resident abuse and neglect, and misappropriation of resident property.

(b) Source of complaints. The State must review all allegations regardless of the source.

(c) Notification--(1) Individuals to be notified. If the State makes a preliminary determination, based on oral or written evidence and its investigation, that the abuse, neglect or misappropriation of property occurred, it must notify in writing--

(i) The individuals implicated in the investigation; and

(ii) The current administrator of the facility in which the incident occurred.

(2) Timing of the notice. The State must notify the individuals specified in paragraph (c)(1) of this section in writing within 10 working days of the State's investigation.

(3) Contents of the notice. The notice must include the--

(i) Nature of the allegation(s);

(ii) Date and time of the occurrence;

(iii) Right to a hearing;

(iv) Intent to report the substantiated findings in writing, once the individual has had the opportunity for a hearing, to the nurse aide registry or appropriate licensure authority;

(v) Fact that the individual's failure to request a hearing in writing within 30 days from the date of the notice will result in reporting the substantiated findings to the nurse aide registry or appropriate licensure authority.

(vi) Consequences of waiving the right to a hearing;

(vii) Consequences of a finding through the hearing process that the alleged resident abuse or neglect, or misappropriation of resident property did occur; and

(viii) Fact that the individual has the right to be represented by an attorney at the individual's own expense.

(d) Conduct of hearing. (1) The State must complete the hearing and the hearing record within 120 days from the day it receives the request

for a hearing.

(2) The State must hold the hearing at a reasonable place and time convenient for the individual.

(e) Factors beyond the individual's control. A State must not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(f) Report of findings. If the finding is that the individual has neglected or abused a resident or misappropriated resident property or if the individual waives the right to a hearing, the State must report the findings in writing within 10 working days to--

(1) The individual;

(2) The current administrator of the facility in which the incident occurred; and

(3) The administrator of the facility that currently employs the individual,

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if different than the facility in which the incident occurred;

(4) The licensing authority for individuals used by the facility other than nurse aides, if applicable; and

(5) The nurse aide registry for nurse aides. Only the State survey agency may report the findings to the nurse aide registry, and this must be done within 10 working days of the findings, in accordance with Sec. 483.156(c) of this chapter. The State survey agency may not delegate this responsibility.

(g) Contents and retention of report of finding to the nurse aide registry. (1) The report of finding must include information in accordance with Sec. 483.156(c) of this chapter.

(2) The survey agency must retain the information as specified in paragraph (g)(1) of this section, in accordance with the procedures specified in Sec. 483.156(c) of this chapter.

(h) Survey agency responsibility. (1) The survey agency must promptly review the results of all complaint investigations and determine whether or not a facility has violated any requirements in part 483, subpart B of this chapter.

(2) If a facility is not in substantial compliance with the requirements in part 483, subpart B of this chapter, the survey agency initiates appropriate actions, as specified in subpart F of this part.

[59 FR 56238, Nov. 10, 1994; 60 FR 50118, Sept. 28, 1995]