

Abuse Reporting and Resident Rights

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Presenters:

Mary Constance Chester, RN, HFEM II

Omar Fausto, RN, HFES

(Riverside District Office)



Objectives:

At the end of this presentation, you will:

- ❖ Be familiar with the federal regulations and state statutes
- ❖ Be aware of the reporting requirements under these regulations/statutes
- ❖ Be able to review your current policies and procedures; revise as necessary
- ❖ Be able to determine and follow the more stringent requirement between the federal and state requirements
- ❖ Be able to find and ascertain resources available

State (CA) Statutes and Letter

Overview:

Welfare and Institution Code (WIC)

- 15630(a)
- 15610.07(a) and (b)
- 15610.67

All Facilities Letter (AFL)

- 12-50 (*Authority: WIC 15610.67 and 15630*)

Health and Safety Code (HSC)

- 1481.91(a), (b), (c), and (d)

Federal Regulations and F-tags

Overview:

Code of Federal Regulations

- §483.10 Resident Rights (*portions are included in F604 and F605*)
- §483.12 Freedom from Abuse, Neglect, and Exploitation

F-tags (Appendix PP)

- F600 Free from Abuse and Neglect
- F602 Free from Misappropriation/Exploitation
- F603 Free from Involuntary Seclusion
- F604 Right to be Free from Physical Restraint
- F605 Right to be Free from Chemical Restraint

Federal Regulations and F-tags

Overview (Cont.):

☐ F-tags (Appendix PP)

- F606 Not Employ/Engage Staff with Adverse Actions
- F607 Develop/Implement Abuse/Neglect, etc.; Policies
- F608 Reporting of Reasonable Suspicion of a Crime
- F609 Reporting of Alleged Violations
- F610 Investigate/Prevent/Correct Alleged Violation

WIC 15630(a) – Mandated Reporter

Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

**This makes all facility staff as mandated reporters.*



WIC 15610.07(a) and (b) (Definition of Abuse)

(a) “Abuse of an elder or a dependent adult” means any of the following:

(1) Physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.

(2) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

(3) Financial abuse, as defined in Section 15610.30.

(b) This section shall become operative on July 1, 2016.

This is the **State’s definition of abuse*

WIC 15610.67 and 15630 (AFL 12-50)

If suspected abuse results in serious bodily injury, then facilities must do the following:

- Report the incident immediately and no later than two hours by telephone to local law enforcement, and
- Send a written report within two hours to the local law enforcement agency, the L&C Program and the Ombudsman.

WIC 15610.67 and 15630 (AFL 12-50)

If the suspected abuse **does not** result in serious bodily injury, the mandated reporter must:

- Report the incident by telephone within 24 hours to local law enforcement agency.
- Provide a written report to the local Ombudsman, the L&C Program and the local law enforcement agency within 24 hours.

WIC 15610.67 and 15630 (AFL 12-50)

In addition, the statute has created a new time frame for suspected abuse not resulting in serious bodily injury by a resident with a diagnosis of dementia. In these cases, mandated reporters must do the following:

- Report the incident to the local Ombudsman or the local law enforcement agency by telephone as soon as possible.
- And a written report must follow within 24 hours to either the local Ombudsman or the local law enforcement agency.
- According to statute, the L&C Program is not required to receive these reports.

****This statement is what confuses a lot of the facilities***



WIC 15610.67 and 15630 (AFL 12-50)

- Facilities should continue reporting incidents using the Form 341 (Report of Suspected Dependent Adult/Elder Abuse) for all instances of abuse under the EADACPA (Elder Abuse and Dependent Adult Civil Protection Act).
- The revised mandated reporting requirements attempted to align the EADACPA with the federal Elder Justice Act.

However, the two laws have separate and distinct reporting requirements for elder abuse. Facilities are responsible to have policies and procedures in place to satisfy both state and federal requirements when reporting abuse

WIC 15610.67 and 15630 (AFL 12-50)

- Facilities are responsible for following all applicable laws.
- The California Department of Public Health's failure to expressly notify facilities of statutory or regulatory requirements **does not** relieve facilities of their responsibility for following all state and federal laws and regulations.

Now...What does Health and
Safety Code (HSC) say?

HSC 1418.91 (a), (b), (c), and (d)

(a) A long-term health care facility shall report all incidents of alleged abuse or suspected abuse of a resident of the facility to the department immediately, or within 24 hours.

(b) A failure to comply with the requirements of this section shall be a class “B” violation.

HSC 1418.91 (a), (b), (c), and (d)

(Cont.)

(c) For purposes of this section, “abuse” shall mean any of the conduct described in subdivisions (a) and (b) of Section 15610.07 of the Welfare and Institutions Code.

(d) This section shall not change any reporting requirements under Section 15630 of the Welfare and Institutions Code, or as otherwise specified in the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA), Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code.



HSC 1418.91 (a), (b), (c), and (d)

(Cont.)

- ❖ Long term care (LTC) facilities are required to report alleged abuse to the department (Licensing and Certification [L&C])
- ❖ Report needs to be immediately, or within 24 hours
- ❖ Failure to report to L&C will result in “B” citation

*Nothing in the statute specifies an exemption of reporting to L&C if the alleged perpetrator has a diagnosis of dementia

What does the Code of Federal Regulations (CFR) say?

Federal Regulations

§483.5 Definitions. (F540)

Abuse. Abuse is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology.

Willful, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.



Federal Regulations

Let's focus on:

- 1) F608 - Reporting of Reasonable Suspicion of a Crime**
- 2) F609 - Reporting of Alleged Violations**

Federal Regulations

Reporting of Reasonable Suspicion of a Crime (F608)

Definitions:

“Covered individual” is anyone who is an owner, operator, employee, manager, agent or contractor of the facility

“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.

Note: “Act” – Social Security Act



Federal Regulations

Reporting of Reasonable Suspicion of a Crime (F608)

Definitions (cont.):

*“**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.*

Federal Regulations

Reporting of Reasonable Suspicion of a Crime (F608)

Definitions (cont.):

*“**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 section 2011(19)(A) of the Act).*

Federal Regulations

Reporting of Reasonable Suspicion of a Crime (F608)

F608 (Reporting of Reasonable Suspicion of a Crime)

§483.12(b) The facility must develop and implement written policies and procedures that:

§483.12(b)(5) (i) Annually notifying covered individuals, as defined at section 1150B(a)(3) of the Act, of that individual's obligation to comply with the following reporting requirements.

- ❖ The facility must notify the “covered individuals” of the obligation to comply with the reporting requirement annually



Federal Regulations

Reporting of Reasonable Suspicion of a Crime (F608)

F608

§483.12(b) The facility must develop and implement written policies and procedures that:

§483.12(b)(5)(i):

(A) Each covered individual shall report to the State Agency and one or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime against any individual who is a resident of, or is receiving care from, the facility.

Federal Regulations

Reporting of Reasonable Suspicion of a Crime (F608)

F608

§483.12(b) The facility must develop and implement written policies and procedures that:

§483.12(b)(5)(i):

(B) Each covered individual shall report immediately, but not later than 2 hours after forming the suspicion, if the events that cause the suspicion result in serious bodily injury, or not later than 24 hours if the events that cause the suspicion do not result in serious bodily injury.

Federal Regulations

Reporting of Reasonable Suspicion of a Crime (F608)

F608 requires:

- ✓ Facility to notify staff and contractors annually of the obligation to report reasonable suspicion of a crime

- ✓ Facility staff to report to L&C and one or more law enforcement entities:
 - Immediately, but not later than 2 hours after forming the suspicion, if the events that cause the suspicion result in serious bodily injury, or
 - Not later than 24 hours if the events that cause the suspicion do not result in serious bodily injury.

Federal Regulations

F609 (Reporting of Alleged Violations)

§483.12(c) In response to allegations of abuse, neglect, exploitation, or mistreatment, the facility must:

§483.12(c)(1) Ensure that all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property, are reported immediately, ***but not later than 2 hours after the allegation is made, if the events that cause the allegation involve abuse or result in serious bodily injury***, or not later than 24 hours if the events that cause the allegation do not involve abuse and do not result in serious bodily injury, to the administrator of the facility and to other officials (including to the State Survey Agency and adult protective services where state law provides for jurisdiction in long-term care facilities) in accordance with State law through established procedures.

Federal Regulations

Reporting of Alleged Violations (F609)

Definitions:

*“**Alleged violation**” is a situation or occurrence that is observed or reported by staff, resident, relative, visitor or others but has not yet been investigated and, if verified, could be noncompliance with the Federal requirements related to mistreatment, exploitation, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property.*

Federal Regulations

Reporting of Alleged Violations (F609)

Definitions:

- The definition of “**immediately**” means as soon as possible in the absence of a shorter State time frame requirement, but not later than 2 hours after the allegation is made, if the events that cause the allegation involve abuse or result in serious bodily injury, or not later than 24 hours if the events that cause the allegation do not involve abuse and do not result in serious bodily injury.

Federal Regulations

Reporting of Alleged Violations (F609)

Guidance in reporting allegation:

It is the responsibility of the facility to ensure that all staff are aware of reporting requirements and to support an environment in which staff and others report all alleged violations of mistreatment, exploitation, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property.

Federal Regulations

Reporting of Alleged Violations (F609)

Guidance in reporting allegation:

During investigations, some staff have stated that he/she was aware, or had knowledge, that the incident had occurred, but did not report because he/she did not think it met the definition of abuse, neglect, mistreatment, exploitation, or misappropriation of resident property.

Federal Regulations

Reporting of Alleged Violations (F609)

Guidance in reporting allegation:

Anecdotal reports have indicated that failure to report an alleged violation may be due to, but not limited to, the following:

- An individual's allegation is not believed due to a history of reporting false allegations;
- Staff fear of retaliation, or fear losing his/her job;
- Sympathy for co-workers, for example, not wanting to cause trouble for the co-worker;
- Communication, cultural, or language issues; or
- Residents/resident representatives may fear retaliation.

*Takeaway – Facilities have to report all allegations

Federal Regulations

Reporting of Alleged Violations (F609)

Guidance in reporting allegation:

An individual (e.g., a resident, visitor, facility staff) who reports an alleged violation to facility staff does not have to explicitly characterize the situation as “abuse,” “neglect,” “mistreatment,” or “exploitation”

Rather, if facility staff could reasonably conclude that the potential exists for noncompliance, then it would be considered to be reportable and require action

Federal Regulations

Reporting of Alleged Violations (F609)

Guidance in reporting allegation:

In some situations, the facility may initially evaluate an occurrence to determine whether it meets the definition of an “alleged violation.”

For example, upon discovery of an injury, the facility must immediately take steps to evaluate whether the injury meets the definition of an “injury of unknown source.”

*“Injuries of unknown source” – An injury should be classified as an “injury of unknown source” when **both** of the following criteria 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 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.*

Federal Regulations

Reporting of Alleged Violations (F609)

Guidance in reporting allegation:

(Cont.)

Similarly, if a resident states that his or her belongings are missing, 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.

Federal Regulations

Reporting of Alleged Violations (F609)

Guidance in reporting allegation:

However, if the alleged violation meets the definition of abuse, neglect, exploitation or mistreatment, **the facility should not make an initial determination whether the allegation is credible before reporting the allegation.**

Federal Regulations

Reporting of Alleged Violations (F609)

Guidance in reporting allegation:

The phrase “**in accordance with State law**” modifies the word “officials” only. State law may stipulate that alleged violations and the results of the investigations be reported to additional State officials beyond those specified in Federal regulations. This phrase does not modify what **types** of alleged violations must be reported or the time frames in which the reports are to be made.

(Cont. - next slide)

Federal Regulations

Reporting of Alleged Violations (F609)

Guidance in reporting allegation:

(Cont. from previous slide)

States may not eliminate the obligation for any of the alleged violations (i.e., mistreatment, neglect, abuse, injuries of unknown source, exploitation, and misappropriation of resident property) to be reported, nor can the State establish longer time frames for reporting than mandated in the regulations at §483.12(c)(1) and (4). No State can override the obligation of the nursing home to fulfill the requirements under §483.12(c), as long as the Medicare/Medicaid certification is in place.

*This explains why the WIC and/or the HSC (State statutes) cannot modify the Federal reporting requirements – the types of alleged violations, time frames, and obligations of the nursing facility.

Federal Regulations

Reporting of Alleged Violations (F609)

Guidance in reporting allegation:

There is a table found in F608 and F609 for reporting reasonable suspicion of a crime and allegation of abuse

[Reporting Table](#) (attachment)

Sample Scenarios (6)

Scenario # 1:

An allegation of abuse was witnessed by staff; no serious bodily injury (05/01/18, at 11 pm). Staff does not report to the Administrator until after eight (8) hours (05/02/18 at 7 am). The Administrator immediately reports to L&C, law enforcement, and the Ombudsman upon learning of the allegation at 8 am (05/02/18).

Is the facility in compliance with the requirements of:

1. WIC 15610.67?

Answer: Yes

2. HSC 1418.91?

Answer: Yes

3. F609?

Answer: **No. It should have been reported immediately, no later than 2 hours to the Administrator and all other required outside entities.**

Scenario # 2:

An allegation of abuse was witnessed by staff; no serious bodily injury. The perpetrator of the alleged abuse was a resident that has a diagnosis of dementia. The incident was reported to the Administrator within two (2) hours. The Administrator reports the event to law enforcement and Ombudsman in 20 hours, but did not report to L&C at all.

Is the facility in compliance with the requirements of:

1. WIC 15610.67?

Answer: Yes

2. HSC 1418.91?

Answer: **No. It should have been reported to L&C within 24 hours. The facility will be issued a class “B” citation.**

3. F609?

Answer: **No. It should have been reported to L&C immediately, no later than 2 hours.**

Scenario # 3:

An allegation of abuse was witnessed by staff, which resulted in serious bodily injury. The facility reports the event to law enforcement, Ombudsman, and L&C in six (6) hours.

Is the facility in compliance with the requirements of:

1. WIC 15610.67?

Answer: **No. It should have been reported immediately, no later than 2 hours.**

2. HSC 1418.91?

Answer: **No. It should have been reported to L&C immediately. The facility will be issued a class "B" citation.**

3. F609?

Answer: **No. It should have been reported immediately, no later than 2 hours.**

Scenario # 4:

A resident reported to staff she was roughly handled by staff during the PM shift. This resident has a history of making up stories against staff. There was no reported serious bodily injury. Since the resident has a history of accusing staff of mishandling her, the staff did not report the allegation to the Administrator, L&C, law enforcement, and Ombudsman.

Is the facility in compliance with the requirements of:

1. WIC 15610.67?

Answer: **No. It should have been reported within 24 hours.**

2. HSC 1418.91?

Answer: **No. It should have been reported to L&C within 24 hours. The facility will be issued a class “B” citation.**

3. F609?

Answer: **No. It should have been reported immediately, no later than 2 hours to the Administrator, L&C, law enforcement, and Ombudsman.**

Scenario # 5:

A family member (FM) reported to staff his/her mother was left lying in her urine for three (3) hours. The FM further stated, “You guys neglected my mother!” There was no serious bodily injuries reported. Staff reported the event to the Administrator immediately. The Administrator reported the event to L&C, law enforcement, and Ombudsman within 14 hours.

Is the facility in compliance with the requirements of:

1. WIC 15610.67?

Answer: Yes.

2. HSC 1418.91?

Answer: Yes.

3. F609?

Answer: Yes. *(Note: Not an allegation of abuse or serious bodily injury per CFRs)*

Scenario # 6:

A resident reported to the charge nurse she was yelled at by a staff member two (2) days ago, but would not tell the nurse the name of the alleged perpetrator. There was no reported serious bodily injury. This was reported to the DON (Administrator's designee) immediately.

Subsequently, the DON conducted an investigation to find out who the alleged perpetrator could be (which took him/her approximately one hour to figure out). The DON then reported the event to L&C, law enforcement, and Ombudsman (within 2 hours of the initial report).

Is the facility in compliance with the requirements of:

1. WIC 15610.67?

Answer: Yes.

2. HSC 1418.91?

Answer: Yes.

Scenario # 6:

(Cont.)

Is the facility in compliance with the requirements of:

3. F609?

Answer: No. The guidance stipulates, If an alleged violation has been identified and reported to the administrator/designee, the facility must immediately report it and provide protection for the identified resident(s) prior to conducting the investigation of the alleged violation.

In addition, if the alleged violation meets the definition of abuse, neglect, exploitation or mistreatment, the facility should not make an initial determination whether the allegation is credible before reporting the allegation.



Resources:

❑ Welfare and Institution Code

❑ Health and Safety Code

❑ CMS Website: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Nursing-Homes.html>

❖ Appendix PP

❖ LTC Survey FAQs

❖ CMS SME Videos (including abuse and neglect):

<https://www.youtube.com/playlist?list=PLaV7m2-zFKpjyxSQUk-ySAJsnyj8dMzj0>

