

# **ADULT AND LONG-TERM CARE FACILITY RESIDENT MALTREATMENT REPORTING ACTS**

**ACT 525 OF 2009  
(EFFECTIVE DATE-JULY 31, 2009)**

**RESIDENTIAL CARE FACILITIES (RCF),  
ASSISTED LIVING (ALF) I & II**

**Presented by the Office of Long Term  
Care**

# PURPOSE (12-12-1702)

- Provide a system for the reporting of known or suspected adult and long-term care facility resident maltreatment;
- Ensure the screening safety assessment, and prompt investigation of reports of known or suspected adult and long-term care facility resident maltreatment;

# PURPOSE (12-12-1702)

- Provide for civil action, if appropriate, to protect maltreated adults and long-term care facility residents; and
- Encourage the cooperation of state law enforcement officials, courts, and state agencies in the investigation and assessment, of maltreated adults and long-term care facility residents, and prosecution of offenders.

# PURPOSE (12-12-1702)

- The Arkansas Adult and Long-Term Care Facility Resident Maltreatment Act outlines the reporting requirements imposed by the State of Arkansas.
- **While related to the state requirements, the Adult and Long Term Care Facility Resident Maltreatment Act stands alone-facilities must follow the State (RCF 300-306.6.5) and (ALF 1 & ALF 2, 507-507.7) reporting requirements.**



# **SYNOPSIS OF ACTS 283 OF 2007 & 525 OF 2009**

➤ **This is a synopsis of the Adult and Long-Term Care Facility Resident Maltreatment**

➤ **Effective July 31, 2009**

# WHO MUST REPORT

- All facility personnel are required to report adult maltreatment, including the owner and the administrator.
- In addition; any physician; surgeon; coroner; dentist; dental hygienist; osteopath; resident intern; nurse; member of a hospital's personnel who is engaged in the administration, examination, care or treatment of persons; social worker; case manager; home health worker; mental health profession; peace officer; law enforcement officer; employee of the Department of Human Services; firefighter; emergency medical technical; or an employee of a bank or other financial institution.

# WHAT MUST BE REPORTED?

➤ **ALL...**

➤ **ALLEGED**

➤ **WITNESSED**

➤ **SUSPECTED MALTREATMENT**

# TO WHOM MUST REPORTS BE MADE?

- **IMMEDIATELY** to the administrator or that person's designated agent.
- **IMMEDIATELY** to the local law enforcement agency for the jurisdiction in which the long-term care facility is located.
- **BY 11:00 A.M. THE NEXT BUSINESS DAY** to the Office of Long-Term Care of the Division of Medical Services of the Department of Health and Human Services, under the regulations of that office.

# WHAT IS MALTREATMENT?

- ABUSE
- SEXUAL ABUSE
- NEGLECT
- MISAPPROPRIATION OF RESIDENT PROPERTY
- EXPLOITATION OF RESIDENTS.

# **“ABUSE” MEANS...**

- With regard to any long-term care facility resident or any patient at the Arkansas State Hospital by a caregiver:

# ABUSE MEANS...

- Any intentional unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person, excluding court-ordered medical care or medical care requested by the patient or long-term care facility resident or a person legally authorized to make medical decisions on behalf of the patient or long-term care facility resident;



# ABUSE MEANS...

- Any intentional or demeaning act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm, excluding necessary care and treatment provided in accordance with generally recognized professional standards of care.

# ABUSE MEANS...

- Any intentional threat that a reasonable person would find credible and non frivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause; or

# ABUSE MEANS...

- Any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

# IMPORTANT NOTE

- “**Physical injury**” means the impairment of a physical condition or the infliction of substantial pain on a person.
- If the person is an **ENDANGERED** person or an **IMPAIRED** person, there shall be a presumption that any physical injury resulted in the infliction of substantial pain.

# IMPORTANT NOTE, CONT.

- Long-term care facility resident means a person, regardless of age, living in a long-term care facility.
- A long-term care facility resident is presumed to be an impaired person.

# EXPLOITATION MEANS THE...

- Illegal or unauthorized use or management of an endangered person's or an impaired person's funds, assets, or property;

# EXPLOITATION MEANS THE...

- Use of an endangered person's or an adult impaired person's power of attorney or guardianship for the profit or advantage of one's own self or another, or



# EXPLOITATION MEANS THE...

- Misappropriation of property of a long-term care facility resident, that is, the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a long-term care facility resident's belongings or money without the long-term care facility resident's consent.

# NEGLECT MEANS...

- An act or omission by an endangered person or an impaired person, for example, self-neglect: or an act or omission by a caregiver responsible for the care and supervision of an endangered person or an impaired person constituting:

# NEGLIGENTLY FAILING...

- To provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered person or an impaired person;

# NEGLIGENTLY FAILING...

- To report health problems, or **changes in health problems or changes in health condition** of an endangered person or an impaired person to the appropriate medical personnel;

# NEGLIGENTLY FAILING...

- ...To carry out a prescribed treatment plan.

# “VIOLATIONS OF REGULATIONS”

- The following slides are excerpts from RCF and ALF I & 2 regulations, the violations of which could constitute...

➤ **NEGLECT!**

# RCF PROFESSIONAL SERVICES

- The resident shall be assisted in making arrangements to secure all community based health or other professional services, examinations and reports needed to maintain and/or document the maintenance of the resident's health, safety and welfare. ***Necessary Rx, Rehab., medical services.***



# RCF PROFESSIONAL SERVICES

- The facility must have written emergency medical policy and procedures that shall include , at a minimum, the requirement that in the event of a resident's illness or accident, the facility shall:
  - Notify the resident's personal physician, or in the event such a physician is not available, a qualified alternative.
  - Take immediate and appropriate steps to see that the resident receives necessary medical attention including transfer to an appropriate medical facility. *Change of condition, necessary Rx., medical services, rehab.*

# ALF REVIEW/REVISION OF SERVICES

- Revision of the services plan portion of the occupancy admission agreement shall be revised **immediately upon any significant change** to the resident.
- **NOTE:** *Report to the appropriate medical personnel.*

# NEGLECT EXAMPLES ALF'S

- **Retention Condition (601.4):** No resident shall be permitted to remain in an assisted living facility if the resident's condition requires twenty-four (24) hour nursing care or other services that an assisted living facility is not authorized by law to provide. ***Change of Condition, necessary Rx, Rehab., medical services.***



# NEGLECT EXAMPLES ALF'S CONT'D.

- Dietary Services (700.3.4): In the event that a resident is unable or unwilling to consume regular meals served to him or her for more than two (2) consecutive days, the facility shall immediately notify the resident's personal physician or advance practice nurse and take appropriate action to ensure the physician or advance practice nurse's instructions are implemented. ***Change of condition, prescribed treatment plan.***



# NEGLECT EXAMPLES ALF'S CONT'D.

- Direct Care Services (701): The assisted living facility shall ensure the resident receives direct care services in accordance with the services plan portion of the occupancy admission agreement.  
***Prescribed treatment plan.***

# NEGLECT EXAMPLES ALF'S CONT'D.

- **Health Care Services (703.2.1):** If the resident's needs-assessment or evaluation indicates that the resident requires health care services, the resident is not appropriate for Level I assisted living unless the health needs can be met by a licensed home health agency on a short-term basis. ***Prescribed treatment plan, necessary Rx, Rehab. medical services.***





# NEGLECT EXAMPLES ALF'S CONT'D.

- **Admission, Discharges, Transfers (ASCU)(806 a. 5.):** The ASCU shall not maintain a resident who requires a level of care greater than for which the facility is licensed to provide, and for whom the ASCU is unable to provide the level or types of services to address the needs of the resident. ***Necessary Rx, Rehab., medical services, supervision.***



# NEGLECT EXAMPLES ALF'S CONT'D.

- **Compliance Agreements (704):** A Level I assisted living facility shall not admit any resident whose needs are greater than the facility is licensed to provide. ***Necessary Rx, Rehab., medical services.***



# NEGLIGENTLY FAILING...

- To provide goods or services to a long-term care facility resident necessary to avoid physical harm, mental anguish, or mental illness as defined in regulations promulgated by the Office of Long-Term Care of the Division of Medical Services of the Department of Human Services.

# SEXUAL ABUSE MEANS...

- Deviate sexual activity, sexual contact, or sexual intercourse, as those terms are defined in 5-14-101, with another person who is not the actor's spouse and who is incapable of consent because he or she is mentally defective, mentally incapacitated, or physically helpless, as those terms are defined in 5-14-101.

# REPORTING PENALTIES

## 12-12-1720

- Any person or caregiver required by this subchapter to report a case of suspected adult maltreatment of a long-term care facility resident maltreatment who purposely fails to do so shall be guilty of a **Class B misdemeanor**.

# REPORTING PENALTIES

## 12-12-1720

- Any person or caregiver required by this subchapter to report a case of suspected adult maltreatment of long-term care facility resident maltreatment who purposely fails to do so **“IS” civilly liable for damages proximately caused by the failure.**

# REPORTING PENALTIES

## 12-12-1720

- Any person required to report suspected adult maltreatment of long-term care facility resident maltreatment who knowingly fails to make the report in the manner and time provided in this subchapter shall be guilty of a **Class C Misdemeanor**.

# REPORTING PENALTIES

## 12-12-1720

- Any person, official, or institution willfully making false notification under this subchapter knowing the allegations to be false shall be guilty of a **Class A misdemeanor**.



# IMMUNITY FOR INVESTIGATION PARTICIPANTS (12-12-1713)

- Any person, official, or institution acting in good faith in the making of a report, the taking of a photograph, or the removal of a maltreated person under this subchapter **shall have immunity from liability and suit for damages, civil or criminal**, that otherwise might result by reason of those actions.



# GOOD FAITH PRESUMED

- The **good faith** of any person required to report a case of adult maltreatment or long-term care facility resident maltreatment **SHALL BE PRESUMED.**

# NOTICE OF FOUNDED REPORTS

- **FOUNDED REPORT:** Is where an allegation is supported by a preponderance of evidence.
- **Notice** will be sent to the **administrator** of the facility at which the incident occurred, and the administrator of the facility in which the perpetrator is employed;
- **Notice** will be sent by OLTC to the resident and a copy will be sent to the administrator for forwarding to the resident's legal guardian, if any.

# NOTICE OF UNFOUNDED REPORTS

- Notice of unfounded reports will be sent to administrators of facilities at which the incident occurred. A copy of the report will be included for the administrator to send to the resident's legal guardian, if there is one.

- **ALL FOUNDED REPORTS** will be transmitted to, and entered in, the Adult Abuse Registry, for RN's & LPN's, the reports will be entered in the Adult Protective Services (APS) Registry.
- **ALL UNFOUNDED REPORTS** shall be expunged one (1) year after the completion of the investigation.

**REMEMBER**

**PROTECT!**

**REPORT!**

**INVESTIGATE!**