



Freedom from Abuse, Neglect and Exploitation (§483.12)

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Freedom from Abuse, Neglect and Exploitation (§483.12) Summary

Focus of this regulation is to;

- ✓ ensure that residents are not subjected to abuse, neglect, misappropriation of property, and exploitation

- ✓ establish requirements for the facility's response to any allegations that has occurred

Freedom from Abuse, Neglect and Exploitation (§483.12) Summary

Updates and revisions to this section were intended to;

- ✓ recognize that abuse continues to occur

- ✓ provide language that will build on progress to improve conditions in nursing homes started by the nursing home reforms of the Omnibus Budget Reconciliation Act of 1987

Freedom from Abuse, Neglect and Exploitation (§483.12) Effective Dates

Phase 1 (November 28, 2016) with two exceptions:

- §483.12(b)(5) requiring a facility to develop and implement written policies and procedures that ensure reporting of crimes in accordance with section 1150B of the Social Security Act (the Elder Justice Act requirement).
 - November 28, 2017; Phase 2

- §483.12(b)(4) requiring a facility to develop and implement written policies and procedures that establish coordination with the QAPI program
 - November 28, 2019; Phase 3

Freedom from Abuse, Neglect and Exploitation (§483.12) Differences

- ✓ Formerly listed in the “Resident behavior and facility practices” section and titled “Staff Treatment of Residents”
- ✓ Adds “exploitation” to the list of actions/occurrences from which a facility must protect its residents and incorporates the concept into the various elements of §483.12 (employment prohibitions, prevention, training, reporting, investigating, etc.)

Freedom from Abuse, Neglect and Exploitation (§483.12) Differences

Consistent with the current rule;

- the new rule addresses the inappropriate use of restraints
 - CMS also addresses restraints in “Quality of Care and Quality of Life”.
 - It is unknown where CMS will position its interpretive guidelines on this topic.

Freedom from Abuse, Neglect and Exploitation (§483.12) Differences

The current rule prohibits facilities from employing certain individuals.

- the new rule expands this to include individuals who provide services under a different arrangement, such as a volunteer or a contractor
- in the preamble to the new rule, CMS indicates that facilities must exercise reasonable care in selecting volunteers and contractors and promises to provide additional, sub-regulatory guidance on this issue

Freedom from Abuse, Neglect and Exploitation (§483.12) Differences

The new rule expands the list of individuals whom a facility may not employ or otherwise engage:

- The current rule prohibits facilities from employing individuals who have been;
 - found guilty of abuse, neglect, or mistreatment by a court of law and/or had a finding entered into the state nurse aide registry concerning abuse, neglect, or mistreatment of residents or misappropriation of their property.
- The new rule adds exploitation of residents and misappropriation of resident property to that list

Freedom from Abuse, Neglect and Exploitation (§483.12) Differences

The new rule adds a category;

- ✓ a facility may not employ or otherwise engage a person who has a **disciplinary action in effect against his or her professional license** by a state licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property
- CMS notes that this prohibition applies to disciplinary actions against a professional license that are currently in effect, which leaves facilities some flexibility to exercise discretion with regard to previous disciplinary actions.

Freedom from Abuse, Neglect and Exploitation (§483.12) Differences

The new rule adds a category;

- ✓ as to the scope of inquiry that facilities will be required to make,
 - in the preamble, CMS indicates they will expect a facility to check the state in which the facility is located and potentially bordering states or other states the individual is known to have been licensed in, based on his/her resume or other employment information available to the facility.
 - further guidance is expected on this topic

The new rule retains the existing requirement that a facility must report to the state nurse aide registry or licensing authorities any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff.

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Differences

The new rule states that facilities must;

- ✓ develop and implement written policies and procedures that prohibit and prevent abuse, neglect, and exploitation of residents and misappropriation of resident property, and
- ✓ establish policies and procedures to investigate any such allegations
 - ❖ This is consistent with current interpretive guidelines, but the regulation itself now requires written policies.
 - ❖ Note, again, the addition of exploitation.

Freedom from Abuse, Neglect and Exploitation (§483.12)

Differences

- ✓ written policies and procedures must include the new training requirements for abuse, neglect and exploitation set out in §483.95 (the training regulation)

- ✓ adds the requirement that facility's policies and procedures must coordinate with the QAPI program (*to be implemented in Phase 3*)

Freedom from Abuse, Neglect and Exploitation (§483.12) Differences

- ✓ requires facilities to establish policies and procedures to ensure reporting of crimes in accordance with section 1150B of the Social Security Act; the “Elder Justice Act” (*to be implemented in Phase 2*)

- ✓ the new rule adds adult protective services to the list of officials who must be notified

Freedom from Abuse, Neglect and Exploitation (§483.12) Differences

- New §483.12(c) will require that facilities;
- 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

Freedom from Abuse, Neglect and Exploitation (§483.12)

Differences

Under the current rule, a facility must prevent further potential abuse from occurring while it investigates an alleged violation of the rule.

- the new rule is broader and makes clear that a facility must prevent any further violation from occurring during its investigation – whether it be abuse, neglect, exploitation, or mistreatment

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Differences

Definitions have been modified to eliminate confusion regarding what actions or circumstances rise to the level of these terms:

- **Abuse** - 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.

Freedom from Abuse, Neglect and Exploitation (§483.12) Differences

- **Abuse** - also includes the deprivation by an individual of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being.
- **Willful** - The individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.
- **Sexual Abuse** - Non-consensual sexual contact of any type with a resident.

Freedom from Abuse, Neglect and Exploitation (§483.12) Differences

- **Neglect** - the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish or emotional distress.
- **Mistreatment** - the inappropriate treatment or exploitation of a resident.
- **Exploitation** - taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats, or coercion.

Freedom from Abuse, Neglect and Exploitation (§483.12) Differences

- **Misappropriation of Resident Property** - the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent.
- **Resident Representative** - includes but not limited to ... an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications.

Freedom from Abuse, Neglect and Exploitation (§483.12) Key Actions

Phase 1 requirements will be effective November 28, 2016

- Providers should begin preparing now in order to be in compliance.
- Providers should be sure to watch for CMS' release of interpretive guidance about this section.
 - the guidance will be especially important to understanding the new concept of exploitation and other areas of the regulation.

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Next Steps

1. Revise policy and procedures to ensure they;
 - reflect the new requirements, including all new and revised definitions and the new concept of exploitation
 - reflect the revised employment prohibitions (for applicant screening and employee discipline) and extend the same to individuals whom a facility does not employ but otherwise engages – such as a volunteer or contractor

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Next Steps

2. Compare existing staff training to the requirements in new §483.95 (training requirements), and align as needed.
3. As you begin to develop your QAPI program and the written plan, remember that the requirement to ensure there is a method for monitoring of incidents (trends, patterns etc.) indicating abuse, neglect, misappropriation and exploitation are to be reviewed and discussed within the QAPI program. (Phase 3 implementation date)