

Ohio Assisted Living

Abuse+ Reporting Requirements to ODH

Background Licensed Residential Care Facilities (RCFs) (assisted living facilities) are required to report certain instances of abuse, neglect, exploitation, and misappropriation of resident property to the Ohio Department of Health (ODH) pursuant to licensure requirements.

In addition, facilities certified under the Medicaid Waiver program have a duty to report certain incidents, including abuse, neglect, and exploitation involving Medicaid Waiver residents, to the Ohio Department of Aging (ODA) or to the local adult protective services program, and to the County Department of Medicaid.

Purpose This informational document is intended to assist RCFs with an understanding of their duty to report to ODH, along with how and when such reports are to be submitted.

The summaries on the pages that follow track the legal requirements. RCFs are free, however, to report more liberally if they so choose.

Purchase To purchase an ODH Reporting Assessment Tool that complies with the Ohio requirements that facilities may use internally to decide when and what to report, visit the [EVOLVE Assisted Living Store](https://documents.evolve-legal.com/assisted-living), available at <https://documents.evolve-legal.com/assisted-living>.

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REQUIRED REPORTS TO ODH

Ohio licensure law provides that no person (defined as specific licensed health professionals) who *knows* or *suspects* that a resident has been abused, neglected, or exploited, or that a resident's property has been misappropriated by an individual used by a residential care facility to provide services to residents shall fail to report that knowledge or suspicion to the facility.

Individuals in the following categories are required to report knowledge or suspicion to the facility **Administrator**:

- licensed therapists (OT, PT, SLP),
- therapy assistants,
- physicians,
- physician assistants,
- registered nurses,
- licensed practical nurses,
- social workers,
- dentists,
- optometrists,
- pharmacists,
- psychologists, and
- licensed counselors.

An Administrator of an assisted living facility who *knows* or *suspects* that a resident has been abused, neglected, or exploited, or that a resident's property has been misappropriated **by any individual used by the facility to provide services to residents**, must then report to the Director of Health.

An individual used by the facility to provide service to residents includes employees, contractors, and volunteers. Other residents, family members, and visitors are not included as they are not individuals used by the facility to provide services, and do not trigger reporting requirements to the state under the licensure laws.



ODH LICENSURE DEFINITIONS

Resident

Resident includes a resident, former resident or deceased resident.

Therefore, licensed health professionals and the administrator would still be required to report the knowledge or suspicion involving a resident, even if the person became aware of the knowledge or suspicion after an individual was discharged or became deceased.

Abuse

Abuse is defined as physical abuse, psychological abuse and sexual abuse.

Physical Abuse is defined as *knowingly causing physical harm* or *recklessly causing serious physical harm* to a resident by physical contact with the resident or by use of physical or chemical restraint, medication, or isolation as punishment, for staff convenience, excessively, as a substitute for treatment, or in amounts that preclude habilitation and treatment.

Psychological Abuse is defined as *knowingly or recklessly causing psychological harm* to a resident whether verbally or by action.

Sexual Abuse is defined as sexual conduct or contact with a resident, as those terms are defined in the criminal code (hence, presuming non-consensual behavior).

Sexual Conduct is defined as vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. It is also defined as any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

*Except for incidents involving Sexual Abuse, facilities are only **required** to report Abuse when the action is committed **knowingly or recklessly, and it results in physical or psychological harm** to the resident. Additionally, if the incident is due to a reckless as opposed to a knowing action, then the resulting physical harm must be **serious**.*

Thus, in addition to analyzing the act, the facility should also evaluate the intention of the alleged staff actor, as well as the result of the act to determine whether it is reportable.

Neglect

Neglect is defined as recklessly failing to provide a resident with any treatment, care, goods, or service necessary to maintain the health or safety of the resident when the failure results in serious physical harm to the resident.

*As with Abuse resulting from reckless behavior, facilities are only required to report Neglect to ODH when the incident results in **serious physical harm** to the resident, and the actor is an individual used by the facility to provide services.*

Misappropriation

Misappropriation is defined as the depriving, defrauding, or otherwise obtaining the real or personal property of a resident by any means prohibited by Ohio law.

Exploitation

Exploitation is defined as taking advantage of a resident, regardless of whether the action was for personal gain, whether the resident knew of the action or whether the resident was harmed.

The law does not define or provide examples of what is meant by “taking advantage of a resident.” However, generally, accepting anything of monetary value from a resident more than what he/she is required to pay for services and/or using manipulation to control a resident’s behavior are likely to constitute incidents of exploitation.

Knows or Suspects

Facilities are only *required* to report to ODH when they *know* or *suspect* that abuse, neglect, or misappropriation has occurred as defined above, and the person who committed the action is a person used by the facility to provide services to the resident.

Accordingly, reports are typically not made until after, rather than before, a preliminary investigation of the alleged incident and based upon the findings such investigation.



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HOW TO REPORT TO ODH

Ohio law states that allegations of abuse, neglect, exploitation, or misappropriation may be presented orally or in writing to the ODH's bureau of survey and certification or bureau of regulatory operations, but contains no reference to a particular form or format that must be used for reporting to the Director of Health. However, ODH prefers that facilities use the online Self-Reported Incident (SRI) Form available through the Enhanced Information Dissemination & Collection (EIDC) system.

In the event of an internet outage or similar failure, ODH instructs facilities that they may report to the ODH District Office via alternative method (e.g., phone), and then may submit the Self-Reported Incident online once service is restored.

Note that the online form is designed to comply with the federal reporting requirements that apply to nursing facilities. Consequently, there are parts of the form that do not apply to RCFs. Therefore, if a facility chooses to use the online Self-Reported Incident Form, it should note the following differences:

- *Facility type will be "RCF", not SNF/NF.*
- *Facilities do not need to report "Injuries of Unknown Source," so that box should not be checked.*
- *The alleged actor will always be a staff member. If it is a visitor or another resident, the facility is not required to report.*
- *The facility will either be checking the "substantiated" box or the "unsubstantiated – evidence is inconclusive – abuse, neglect or misappropriation is suspected" box, because facilities are only required to report actual or suspected abuse, neglect, exploitation, or misappropriation. If the investigation reveals no evidence of abuse, neglect, exploitation, or misappropriation, then the facility is not required to report.*



WHEN TO REPORT TO ODH

When a facility receives an allegation of abuse, neglect, misappropriation, or exploitation, it should immediately begin to investigate to determine if the allegation is substantiated.

The facility should try to complete an investigation as soon as possible, to ensure residents are protected. When the facility concludes or suspects that a resident was exploited, abused, neglected or had property misappropriated by an individual used or employed by the facility, and the requisite harm level is met based on the definitions above, it must be reported to ODH.

Ohio law *contains no specific timeframe* for reporting the knowledge or suspicion to ODH. However, it is recommended that facilities report confirmed incidents or suspected incidents of abuse, neglect, exploitation, or misappropriation of resident property soon after completion of their investigation of the incident.

If using the on-line ODH report form, which is set-up to comply with the federal requirements for nursing facilities, the facility will be completing what is referred to as the "immediate" report and the "final report" at the same time.



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