

Title 15 - Mississippi Department of Health

Part III – Office of Health Protection

Subpart 01 – Health Facilities Licensure and Certification

CHAPTER 59 MINIMUM STANDARDS FOR CERTIFIED NURSE AIDES

100 GENERAL PURPOSE.

100.01 Any aide that has been found by the licensing agency to have abused neglected, or misappropriated the property of a long-term care resident, shall be placed on the Nurse Aide Registry. Only the licensing agency may flag and/or place adverse findings against a nurse aide due to resident abuse, resident neglect, or misappropriation of resident property on the Nurse Aide Registry. The purpose of these regulations is to provide the procedural guidelines relating to all aspects of the administrative hearing process, should one be requested, for the placement of findings against a nurse aide on the Nurse Aide Registry.

101 AUTHORITY.

101.01 Administrative Hearings are held pursuant to Title 42 of the Code of Federal Regulations (CFR), Sections 483.156(a), Establishment of Registry, and 483.158(c), Registry Content.

102 DEFINITIONS.

102.01 **Abuse.** Shall mean the willful infliction of physical pain, intimidation, injury or mental anguish on a long-term care resident, or the willful deprivation of goods or services which are necessary to attain or maintain the physical, mental, and/or psychosocial health of a long-term care resident. This presumes that instances of abuse of all residents, even those in a coma, cause physical harm, or pain or mental anguish. “Abuse” shall not mean conduct which is a part of the treatment and care of, and in furtherance of the health and safety of a patient or resident. However, it shall include, but not be limited to, exploitation, involuntary seclusion, physical abuse, psychological abuse, psychosocial well-being, sexual abuse and/or verbal abuse.

1. **Exploitation.** Shall mean the illegal or improper use of a resident or his resources for another’s profit or advantage.
2. **Involuntary Seclusion.** Shall mean separation of a resident from other residents or from his or her room or confinement to his or her room (with or without roommates) against the resident’s will, or the will of the resident’s legal representative. Emergency or temporary monitored separation from other residents will not be considered involuntary seclusion and may be permitted if used for a limited period of time as a

therapeutic intervention to reduce agitation as determined by professional staff and consistent with the resident's plan of care or until professional staff can develop a plan of care to meet the resident's needs.

3. **Physical Abuse.** Shall include hitting, slapping, pinching, kicking, etc..., by which physical and/or psychological harm or trauma occurs. It also includes controlling behavior through corporal punishment.
4. **Psychological Abuse.** Shall include, but is not limited to, intentional humiliation, harassment, threats of punishment or deprivation, whereby individuals suffer psychological harm or trauma.
5. **Sexual Abuse.** Shall include, but is not limited to, sexual harassment, sexual coercion, or sexual assault.
6. **Verbal Abuse.** Is defined as any use of oral, written or gestured language that willfully includes disparaging and derogatory terms to residents or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse include, but are not limited to: threats of harm, saying things to frighten a resident, such as telling a resident that he/she will never be able to see her/his family again.
7. **Mental Abuse.** Shall include, but is not limited to, humiliation, harassment, threats of punishment or deprivation.

- 102.02 **Aide.** Shall mean a certified nurse aide (CNA) who has met all requirements of the licensing agency and whose name appears on the Nurse Aide Registry. For purposes of alleged violation(s) by a student/trainee nurse aide, said individual is to be considered under the same guidelines as an aide.
- 102.03 **Court.** Shall mean the chancery court of the county in which the nurse aide resides or the First Judicial District Chancery Court of Hinds County.
- 102.04 **Department.** Shall mean the Mississippi Department of Health.
- 102.05 **Director.** Shall mean the Director of Division of Health Facilities Licensure and Certification, Mississippi Department of Health.
- 102.06 **Finding.** Shall mean a determination made by the licensing agency that validates allegations of abuse, neglect, mistreatment, or misappropriation against a long-term care resident by an aide. The determination shall be based on clear and convincing evidence.
- 102.07 **Hearing Officer.** Shall mean an individual appointed by the Director to preside over the Administrative Hearing with power to administer oaths, take testimony, rule on questions of evidence and make agency determinations of fact. The

Hearing Officer may be employee of the Department or the Licensing Agency provided this individual is not directly involved in the investigation.

- 102.08 **Investigator**. Shall mean an employee of the licensing agency who is a surveyor assigned to collect information regarding all alleged charges of resident abuse, resident neglect or misappropriation of resident property by an aide towards a resident.
- 102.09 **Licensing Agency**. Shall mean the Division of Licensure and Certification of the Mississippi Department of Health, which is the Mississippi Survey Agency.
- 102.10 **Long-Term Care Resident**. Shall mean any resident of a skilled nursing facility (SNF) and/or nursing facility (NF). For the purposes of these regulations, “resident” shall mean resident of a long-term care facility.
- 102.11 **Misappropriation of Resident Property**. Is defined as the patterned or deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent.
- 102.12 **Neglect**. Shall mean the failure to supply the long term care resident with the care, food, clothing, goods, shelter, health care, supervision, or other services which are necessary to maintain his/her mental and physical health. Neglect occurs on an individual basis when a resident does not receive care in one or more areas (e.g., absence of frequent monitoring for a resident known to be incontinent, resulting in being left to lie in urine or feces).
- 102.13 **Surveyor**. Shall mean an individual who has successfully completed the Health Care Financing Administration approved training and passed the Surveyor Minimum Qualifications Test (SMQT).

103 **PROCEDURE.**

- 103.01 Whenever information is received, or when the licensing agency has cause to believe that an aide has abused, neglected, or misappropriated the property of a long-term care resident, the licensing agency shall investigate the same. Documentation of said investigation shall be made including, but not limited to, the nature of the allegation and the evidence that led the licensing agency to conclude that the allegation was valid or not.
- 103.02 Once an allegation that resident neglect, resident abuse, or misappropriation of resident property is found valid, based on oral or written evidence and investigation, the State completes the following notification procedures:
1. The State notifies the following in writing within ten (10) working days of the investigation:
 - a. Aide(s) implicated in the investigation;

- b. The current administrator of the facility in which the incident occurred; and
 - c. Nurse Aide Registry.
2. Upon receipt of a copy of the notice of right to hearing by the Nurse Aide Registry, a disciplinary flag will be entered in the Nurse Aide Registry to indicate that an investigation has been conducted, allegations have been found valid by the licensing agency, and the aide has been notified of his/her right to a hearing. No specific details are entered on the Nurse Aide Registry at this time.
3. Notice of Right to Hearing is sent to the aide at his/her last known address registered with the nursing home or the licensing agency. Attached to the notice shall be a written finding by the Licensing Agency stating the reasons for its determination. The notice is sent via regular United States Postal Services mail and Certified Mail, Return Receipt Requested.
4. The notice will include the following information:
 - a. A statement informing the aide of the nature of the allegation and his/her conduct constituting the violation and confirmation of the findings by the licensing agency's investigator;
 - b. Date and approximate time of the occurrence;
 - c. A statement that the aide has a right to a hearing and must request a hearing in writing within thirty (30) days from the date of the notice;
 - d. A statement that the "Request for Hearing Form" accompanying the notice may be used to request a hearing;
 - e. A statement that if the aide fails to request a hearing in writing or the time to request a hearing has expired, it will be interpreted as a waiver of his/her right to a hearing and the Licensing Agency's findings will be reported to the Nurse Aide Registry;
 - f. A statement of the Licensing Agency's intent to place substantiated findings by an Administrative Hearing Officer on the Nurse Aide Registry;
 - g. A statement advising the aide of the consequences of waiving the right to a hearing and/or the consequences of a finding by the hearing officer that the resident abuse or resident neglect or misappropriation of resident property did occur (e.g., findings must be included and remain in the registry permanently, unless the finding was made in error, the individual was found not guilty in a court of law, or the State is notified of the individual's death);

- h. A statement that any prospective employer, or others, checking the aide's status on the Nurse Aide Registry will be advised of any pending hearing and/or final decision;
- i. A statement that whether or not a hearing is requested, the aide has the right to submit a written statement disputing the allegations if he/she chooses to do so; and
- j. Right of the accused aide to be represented by an attorney at the individual's own expense.

103.03 If a hearing is requested, the same shall be held within sixty (60) days of the request. A "Notice of Administrative Hearing" shall be sent stating the date, time, and place of the hearing.

1. The notice will be sent to the following individuals:
 - a. Aide(s) implicated in the investigation;
 - b. The current administrator of the facility in which the incident occurred; and
 - c. Attorney for the aide (if applicable).
2. The notice will include the following information:
 - a. A statement that the aide may appear with or without counsel, shall have the right to cross-examine all witnesses, present evidence/testimony, either written or oral, on his or her own behalf, and to refute any testimony or evidence presented;
 - b. A statement that formal rules of evidence and procedure will not apply, but a record of said hearing shall be made. The licensing agency shall present its case, and the aide will then present his/her case; and
 - c. A statement that if the aide requests a hearing but fails to appear for the scheduled hearing, this will be interpreted by the Licensing Agency as a waiver of the aide's right to a hearing and findings against the aide will be placed on the Nurse Aide Registry.
3. The notice will be sent via United States Postal Service regular and Certified Mail, Return Receipt Requested. A copy of the "Regulations Regarding Placement of Findings of Resident Abuse, Resident Neglect, and/or Misappropriation of Resident Property Against a Nurse Aide Registry" will be included with the notice.

104 CONDUCT OF HEARING

- 104.01 A Hearing Officer will be appointed by the Director.
- 104.02 The State must hold a hearing and complete the hearing record within 120 days from the date of receipt of the hearing request.
- 104.03 The State must hold the hearing in a manner consistent with State practice, at a time and place established by the licensing agency.
- 104.04 Formal rules of evidence and procedure will not apply, but a record of said hearing shall be made. The licensing agency shall present its case, and the aide will then present his/her case. In order for the licensing agency's decision to be upheld, the facts constituting the violation must be proved by substantial evidence.
- 104.05 At the close of the hearing, the Administrative Hearing Officer shall, within sixty (60) days, prepare written findings and conclusions, and an order. This order will be the final agency decision.
1. If the Administrative Hearing Officer finds that the aide neglected or abused a resident or misappropriated a resident's property, the substantiated findings must be reported in writing within ten (10) days to:
 - a. Aide;
 - b. Attorney for aide (if applicable);
 - c. Current administrator of the facility in which the incident occurred;
 - d. The administrator of the facility that currently employs the individual, if it is not the same facility in which the incident occurred;
 - e. The Division of Medicaid; and
 - f. The Nurse Aide Registry.
 2. The notification sent to the aide will be mailed via United States Postal Service regular and Certified Mail, Return Receipt Requested. A copy of the Administrative Hearing Officer's decision will be attached to the notice. The notification will include the following:
 - a. A statement that the Administrative Hearing Officer found that the aide did abuse a resident, neglect a resident, and/or misappropriated a resident's property;
 - b. A statement that the aide is not eligible to work in a long-term care facility in Mississippi;

- c. A statement that if an aide is aggrieved of the final decision, the aide may appeal on the record to the appropriate chancery court; and
- d. A statement that the aide will bear the cost of transcription of the earlier proceedings, and preparation of the record, should an appeal be taken.

105 **REPORTING FINDINGS TO THE NURSE AIDE REGISTRY.**

- 105.01 The licensing agency must notify the Nurse Aide Registry of the findings.
- 105.02 The Administrative Hearing Officer's findings of resident abuse, resident neglect or misappropriation of resident property must be included in the Nurse Aide Registry within ten (10) working days of the Administrative Hearing Officer's decision.
- 105.03 The following information must be included and remain in the registry permanently, unless the findings was made in error, the individual was found not guilty in a court of law, or the State is notified of the individual's death:
1. Documentation of the investigation, including the nature of the allegation and the evidence that led to the conclusion that the allegation was valid;
 2. The date of the hearing, if such request was made, and its outcome;
 3. The date of the court decision (i.e., review of Hearing Officer's decision by a court or criminal conviction by a court), and its outcome; and
 4. A statement by the individual disputing the allegation if the individual chose to make one.
- 105.04 If an aide is found guilty by a court of law or pleads nolo contendere for abusing or neglecting a resident or misappropriating a resident's property, it is not necessary to offer an administrative hearing concerning the same incident before making a notation in the registry. The trial and court order satisfy the Social Security Act's requirements for a hearing. In this case, the findings of the court will be placed on the Nurse Aide Registry.
- 105.05 If the Administrative Hearing Officer finds that the aide did not neglect or abuse a resident or misappropriate a resident's property, the disciplinary flag will be removed and the aide's name restored to full capacity on the Nurse Aide Registry.

106 **CONFIDENTIALITY OF RECORDS**

- 106.01 Information relating to complaints/allegations that are found to be invalid shall not be disclosed.

106.02 Prior to a hearing or the opportunity for hearing, information relating to complaints/allegations that are found to be valid will be disclosed as set forth in paragraph 103.02 above. Along with the fact that adverse findings against a nurse aide have been placed on the Nurse Aide Registry, other information shall be released pursuant to Title 42 of the Code of Federal Regulations, Section 483.156 (d), Disclosure of Information. The records and documentation concerning the investigation and findings will be permanently maintained by the licensing agency. These records shall include, where applicable, documentation of the investigation, including the nature of the allegation and evidence that led the licensing agency to conclude that the allegation was valid; any statements made by the aide in writing, disputing the allegation; and the date and outcome of the hearing.

CERTIFICATION OF REGULATION

This is to certify that the above **PUT REGULATION NAME HERE** was adopted by the Mississippi State Board of Health on Put Date Here to become effective Put Date Here.

Brian W. Amy, MD, MHA, MPH
Secretary and Executive Officer