

Caregiver Misconduct – Federal and State Definitions

<p style="text-align: center;">Federal Language 42 C.F.R. §488.301 & WI Caregiver Law CH. HFS 13</p>	<p style="text-align: center;">Examples</p>
<p style="text-align: center;">ABUSE (Federal)</p> <p>The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.</p> <p style="text-align: center;">ABUSE (State)</p> <ol style="list-style-type: none"> 1. An act or repeated acts by a caregiver or nonclient resident, that is contrary to the entity’s policies and procedures, not a part of the client’s treatment plan and done intentionally to cause harm, which causes or could cause pain, injury or death to a client, substantially disregards clients rights or a caregivers duties. 2. An act or acts of sexual intercourse or sexual contact by a caregiver and involving a client. 3. The forcible administration of medication or the performance of psychosurgery, electroconvulsive therapy or experimental research. 4. A course of conduct or repeated acts by a caregiver which serve no legitimate purpose and which, when done with intent to harass, intimidate, humiliate, threaten or frighten a client, causes or could be reasonably expected to cause the client to be harassed, intimidated, humiliated, threatened or frightened. <p>Abuse does not include an act or acts of mere inefficiency, unsatisfactory conduct or failure in good performance as the result of inability, incapacity, inadvertency, or ordinary negligence in isolated instances, or good faith errors in judgment or discretion.</p>	<p><i>Act done to cause harm:</i></p> <ul style="list-style-type: none"> • A caregiver repeatedly hits a resident on the back with a ladle and pushes the resident causing her to fall. • A caregiver kicks a resident in the groin. <p><i>Sexual contact:</i></p> <ul style="list-style-type: none"> • A caregiver has sexual intercourse with a resident. <p><i>Course of conduct which serves no legitimate purpose:</i></p> <ul style="list-style-type: none"> • A caregiver frightens residents by holding a hammer and threatening to hit them with the hammer. • A caregiver takes a resident’s doll away from her, shakes it in front of her and throws the doll on the floor and steps on it. • A caregiver nudges, pokes at or pushes a resident and verbally taunts him. The caregiver admits to engaging in this conduct for his own enjoyment in seeing the reactions of the residents.

<p style="text-align: center;">NEGLECT (Federal)</p> <p>Failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness.</p> <p style="text-align: center;">NEGLECT (State)</p> <p>An intentional omission or intentional course of conduct by a caregiver that is contrary to the entity’s policies and procedures, is not part of the client’s treatment plan and, through substantial carelessness or negligence, does any of the following:</p> <ol style="list-style-type: none"> a. Causes or could reasonably be expected to cause pain or injury to a client or the death of a client. b. Substantially disregards a client’s rights under either ch. 50 or 51, Stats., or a caregiver’s duties and obligations to a client. <p>Neglect is the intentional carelessness, negligence, or disregard of policy, or care plan, which causes, or could be reasonably expected to cause pain, injury, or death.</p> <p>Neglect does not include an act or acts of mere inefficiency, unsatisfactory conduct or failure in good performance as the result of inability, incapacity, inadvertency or ordinary negligence in isolated instances, or good faith errors in judgment or discretion.</p>	<p><i>Intentional omission:</i></p> <ul style="list-style-type: none"> • A caregiver transfers a resident without using a gait belt or the Marissa lift. During the transfer, the client starts to slip and the caregiver lowers the resident to the floor. The caregiver then retrieves a gait belt and again transfers the resident without using the Marissa lift, first back to her bed, and then to her chair. • A caregiver fails to secure the resident’s wheelchair in the van. The wheelchair rolls forward causing the resident to hit her head on the dashboard. • A caregiver fails to perform cares for an incontinent client and allows the client to lie incontinent for more than 1 1/2 hours until the next shift arrives and changes her, even though the client had asked the caregiver twice to care for her. <p><i>Intentional course of conduct:</i></p> <ul style="list-style-type: none"> • A caregiver leaves a client unsupervised and alone in an assisted living facility for approximately 50 minutes. • A caregiver leaves 4 clients with mental retardation alone in a van for approx an hour while in the grocery store. The caregiver left the keys in the ignition and the heater running. • A caregiver ties a resident to a chair in the dining room to prevent the resident from getting up out of the chair. • A caregiver pushes a resident onto the toilet to change the resident’s pants and sits on the resident when she tries to stand up. • A caregiver leaves a resident outside for approx 2 hours without sun protection. The resident suffers first and second degree burns.
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<p style="text-align: center;">MISAPPROPRIATION OF PROPERTY (Federal)</p> <p>The deliberate misplacement, exploitation or wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent.</p> <p style="text-align: center;">MISAPPROPRIATION OF PROPERTY (State)</p> <ol style="list-style-type: none"> 1. The intentional taking, carrying away, using, transferring, concealing or retaining possession of a client’s movable property without the client’s consent and with the intent to deprive the client of possession of the property. 2. Obtaining property of a client by intentionally deceiving the client with a false representation which is known to be false, made with the intent to defraud, and which does defraud the person to whom it is made. 3. By virtue of his or her office, business or employment, or as trustee or bailee, having possession or custody of money or of a negotiable security, instrument, paper or other negotiable writing of a client, intentionally using, transferring, concealing, or retaining possession of money, security, instrument, paper or writing without the client’s consent 4. Intentionally using or attempting to use personal identifying information to obtain credit, money, goods, services or anything else of value without the authorization or consent of the client 5. Violating s. 943.38, Stats., involving the property of a client, or s. 943.41, Stats., involving fraudulent use of a client’s financial transaction card. 	<p><i>Movable Property:</i></p> <ul style="list-style-type: none"> • A caregiver takes a comforter from one client and personal effects and clothing from another. • A caregiver takes prescription pain medication belonging to client. <p><i>False representation:</i></p> <ul style="list-style-type: none"> • A caregiver borrows \$5,000.00 from client but fails to repay the money or make any arrangements to do so. <p><i>Virtue of office:</i></p> <ul style="list-style-type: none"> • A caregiver in charge of client accounts cashes checks from the accounts of the clients and does not use the proceeds of the checks for the clients’ benefit. • A caregiver cashes 2 checks on behalf of a client but keeps the cash. The caregiver alters the client’s financial account records at the facility concerning the transaction. <p><i>Personal ID:</i></p> <ul style="list-style-type: none"> • A caregiver uses a client’s identification to establish phone service and makes \$800 of long-distance calls that are charged to the client. <p><i>Transaction card:</i></p> <ul style="list-style-type: none"> • A caregiver uses a client’s credit card to pay for her personal car insurance bill. The caregiver also used the client’s financial transaction card for her own use.
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<p>INJURY OF UNKNOWN SOURCE (Federal)</p> <p>An injury should be classified as an “injury of unknown source” when both of the following conditions are met:</p> <ul style="list-style-type: none"> the source of the injury was not observed by any person or the source of the injury could not be explained by the resident; <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> 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. <p>INJURY OF UNKNOWN SOURCE (State)</p> <p>Refer to Federal definition.</p>	<p><i>Injury of Unknown Source:</i></p> <ul style="list-style-type: none"> A CBRF resident appears at breakfast with a bruise on his shin. No notes appear in the resident’s log regarding any incident, and no staff recall observing anything that could have led to the bruise. When asked, the client doesn’t remember how he got the bruise. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> A physical assessment conducted by the RN discovers other fresh bruises to the resident’s abdomen and upper back. The nurse checks the resident’s records and finds a note about an unexplained bruise to the resident’s abdomen 4 weeks earlier.
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