



Jim Doyle
Governor

Helene Nelson
Secretary

State of Wisconsin

Department of Health and Family Services

Telephone: 608-266-8481
FAX: 608-267-0352
TTY: 608-266-7376
dhfs.wisconsin.gov

Date: November 22, 2004

BQA Memo 04-028
Supersedes BQA 99-064, BQA 00-071

To:	Certified Mental Health and AODA Programs	CMHA - 08
	Community Based Residential Facilities	CBRF - 14
	Facilities for the Developmentally Disabled	FDD - 12
	Home Health Agencies	HHA - 09
	Hospices	HSPC - 09
	Hospitals	HOSP - 15
	Licensed Adult Family Homes	AFH - 11
	Nurse Aide Training Programs	NATP - 08
	Nursing Homes	NH - 14
	Residential Care Apartment Complexes	RCAC - 11
	Rural Health Clinics	RHC - 05

From: Jane Walters, Interim Director
Office of Caregiver Quality

Via: Criselda Ros-Dukler, Director
Bureau of Quality Assurance

**UPDATE: Revised Caregiver Misconduct Reporting Requirements
For Entities Regulated by the Bureau of Quality Assurance**

BQA established consistent requirements that apply to all entities covered under the Caregiver Law to conduct thorough internal investigations and report allegations of caregiver misconduct and injuries of unknown source. These requirements are fully outlined in the Wisconsin Caregiver Program Manual found at <http://dhfs.wisconsin.gov/caregiver/publications/CgvrProgMan.htm>. Entities should refer to the Caregiver Program Manual for all Caregiver Law questions, including background checks and reporting requirements.

To respond to current concerns and ensure entities understand their responsibility to report allegations of caregiver misconduct, this memo reviews and clarifies the requirements outlined in BQA Memo 99-064 and reviewed in BQA Memo 00-071. This memo is issued to supersede these prior memos and to direct you to reference Chapter 6 of the Wisconsin Caregiver Program Manual for the detailed reporting requirements information.

This memo contains important clarification regarding:

- Review of the Caregiver Misconduct Reporting Requirements
- Updated Incident Report of Caregiver Misconduct (DDE-2447)
- BQA's Response to Incident Reports

Review of the Caregiver Misconduct Reporting Requirements

REFERENCE: [Wisconsin Caregiver Program Manual, Chapter 6](http://dhfs.wisconsin.gov/caregiver/publications/CgvrProgMan.htm)
<http://dhfs.wisconsin.gov/caregiver/publications/CgvrProgMan.htm>.

Entities are required to develop **written procedures** specifying:

- How and to whom staff are to report incidents;
- How internal investigations will be completed;
- How staff will be trained on the procedures related to allegations of caregiver misconduct; and
- How residents will be informed of those procedures.

You must ensure that your employees, contractors, volunteers, clients and nonclient residents are knowledgeable about your entity's misconduct reporting procedures and requirements. Your staff must be trained to **immediately report to the appropriate person** all allegations of misconduct, including abuse or neglect of a client or misappropriation of a client's property.

Note: FDDs should refer to BQA Memo 04-002 regarding reporting allegations to the Administrator.

Immediately upon learning of an incident, you must take the necessary steps to **protect clients** from possible subsequent incidents of misconduct or injury. In addition to BQA reporting requirements, you are encouraged to **notify local law enforcement** authorities of any situation where there is a potential criminal offense.

As an entity regulated by BQA, you must immediately conduct a thorough **internal investigation** of all allegations or incidents and document the findings for each allegation or incident. A thorough internal investigation may include:

- Collecting and preserving physical and documentary evidence;
- Interviewing alleged victims and witnesses;
- Collecting other corroborating/disproving evidence;
- Involving other regulatory authorities who can assist (e.g., local law enforcement, elder abuse agency, Adult Protective Service agency);
- Documenting each step taken during the internal investigation.

Your entity should take these steps as part of your initial attempt to determine what, if anything, happened, and to determine the complete factual circumstances surrounding the alleged incident. Your entity's internal investigation will assist in determining if you must report an incident to BQA. If you report the incident to BQA, your entity's internal investigation becomes part of the BQA caregiver misconduct investigation.

Reporting Decision Tools

The attached documents can help you determine if an incident must be reported to BQA:

- Caregiver Misconduct Reporting Requirements Worksheet
- Flowchart for Investigating and Reporting Caregiver Misconduct or Injuries of Unknown Source – Updated

Incidents must be reported to BQA when:

1. You have reasonable cause to believe you have sufficient information or evidence or another agency could obtain the evidence, to show the alleged incident occurred, and
2. You have reasonable cause to believe the incident meets, or could meet, the definition of abuse, neglect or misappropriation.

Caregiver Misconduct Definitions

See these references for the complete definitions of abuse, neglect and misappropriation.

REFERENCES: [Wisconsin Caregiver Program Manual](#), Chapter 6
<http://dhfs.wisconsin.gov/caregiver/publications/CgvrProgMan.htm>
Chapter HFS 13, Wisconsin Administrative Code
<http://dhfs.wisconsin.gov/caregiver/StatutesINDEX.HTM>

Injury of Unknown Source

The definition of injury of unknown source has been revised to the following federal definition:

- The source of the injury was not observed by any person or the source of the injury can not be explained by the resident; and,
- 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).

Refer to Chapter 6 of the Manual for case examples and investigation strategies.

Updated Incident Report of Caregiver Misconduct (DDE-2447)

REFERENCES: [Wisconsin Caregiver Program Manual](#), Chapter 6
<http://dhfs.wisconsin.gov/caregiver/publications/CgvrProgMan.htm>
DDE-2447 (Rev. 10/04)
<http://dhs.wisconsin.gov/forms1/F6/F62447.pdf>

If you conclude that you must report the incident to BQA, complete the *Incident Report of Caregiver Misconduct* form, DDE-2447 (previously DSL-2447). The Incident Report form has been revised to include more detailed instructions to assist you in completing the report. Please discard previous versions of the form, use the revised 10/04 version and follow these steps to report an incident to BQA:

1. Thoroughly complete the *Incident Report of Caregiver Misconduct* form (DDE-2447) and attach relevant internal investigation documents.
2. Ensure the completed Incident Report is submitted according to the appropriate timeframe.
 - Nursing homes and intermediate care facilities for persons with mental retardation (ICFs/MR) certified to receive Medicare and Medicaid funds, must submit reports of alleged caregiver misconduct to BQA within five (5) working days of the incident or the date the entity became aware of the incident.
 - All other entities must submit reports of alleged caregiver misconduct to BQA within seven (7) calendar days of the incident or the date the entity knew of the incident.
3. For allegations involving all staff (noncredentialed and credentialed), submit the Incident Report to BQA at:

**Department of Health & Family Services
Division of Quality Assurance
Office of Caregiver Quality
P. O. Box 2969
Madison, WI 53701-2969**

Note: In the past, you were required to submit the report either to BQA or to DRL. This process has been streamlined to eliminate reporting to two different agencies. All caregiver misconduct reports are submitted to BQA, who will forward reports involving credentialed staff (Doctors, RNs, LPNs, Social Workers, etc.) to the Department of Regulation & Licensing (DRL) for review.

Entity Reporting Requirement Sanctions

An entity may be sanctioned for failing to meet caregiver misconduct reporting requirements if the entity fails to take the following actions:

- Maintain written policies and procedures regarding caregiver misconduct, including internal reporting requirements;
- Train all staff on those written policies and procedures;
- Immediately takes steps to protect the client(s);
- Begin its internal investigation immediately upon learning of an incident;
- Conduct a thorough internal investigation and documents the results; and
- Make good-faith decisions in determining whether or not to report an incident.

Entities must maintain the results of the 30 most recent internal investigations that were not forwarded to BQA. Upon reviewing the results of unreported incidents, BQA survey staff may still refer the allegations to the Office of Caregiver Quality (OCQ) for possible investigation.

BQA's Response to Incident Reports

REFERENCE: [Wisconsin Caregiver Program Manual](http://dhfs.wisconsin.gov/caregiver/publications/CgvrProgMan.htm), Chapter 6
<http://dhfs.wisconsin.gov/caregiver/publications/CgvrProgMan.htm>

BQA responds to two types of health care complaints:

1. Complaints regarding entity activity (inappropriate or inadequate activity by an entity).
2. Complaints of caregiver misconduct (inappropriate activity by a caregiver, e.g., abuse, neglect or misappropriation).

When BQA receives a complaint of caregiver misconduct from an entity or another source, the report is screened by BQA's Office of Caregiver Quality (OCQ) to determine whether further investigation is warranted. Investigation screening decisions are made on a case-by-case basis. OCQ notifies the accused person, entity, staffing agency (if applicable) and complainant by letter whether an investigation will be conducted by OCQ.

BQA may conduct a caregiver misconduct investigation by conducting on-site visits, in-person interviews or telephone interviews. Both state investigators and contracted private investigators complete caregiver misconduct investigations. Not all reported incidents are investigated by BQA. However, BQA does track and monitor all incident reports. When BQA observes a pattern of reported incidents involving a caregiver, an investigation may be opened at a later date.

In order for the Department to substantiate a finding of misconduct against a caregiver, the incident must meet the definition of caregiver abuse, neglect or misappropriation. After completing a caregiver misconduct investigation, BQA determines whether there is sufficient evidence to substantiate the complaint. An incident may violate the work rules or procedures of a facility but at the same time, not meet the definitions or the evidentiary standards of HFS ch. 13. Therefore, it is possible an employer may appropriately discipline or terminate a caregiver for a particular incident, but BQA may determine the incident does not constitute caregiver misconduct.

The entity's BQA regulatory program (Assisted Living Section, Health Services Section or Resident Care Review Section) may also conduct a parallel investigation regarding the incident, to determine if the entity's program requirements were met and if the entity bears culpability regarding the incident.

Wisconsin Caregiver Misconduct Registry

The Wisconsin Caregiver Misconduct Registry is a record of the names of nurse aides and other noncredentialed caregivers with a substantiated finding of caregiver misconduct. BQA discontinued the routine issuance of monthly paper reports effective May 2001.

Entities should review on a monthly basis the caregivers whose names who have been most recently added to the Wisconsin Caregiver Misconduct Registry due to a substantiated finding. Some individuals who upon hire did not have a finding, may receive one while employed but failed to report the finding to the employing entity. Accordingly, the only way to know such findings is to check the updated Misconduct Registry each month.

These monthly additions of caregivers with a finding of misconduct on the Wisconsin Caregiver Misconduct Registry are posted by the 15th of the month and may be viewed on the Internet at:

<http://dhfs.wisconsin.gov/caregiver/misconduct.HTM>

Federal regulations require that nurse aides with a finding of caregiver misconduct be permanently barred from working in any capacity in federally regulated nursing homes and intermediate care facilities for persons with mental retardation (ICFs/MR). The Caregiver Misconduct Registry identifies each caregiver by name, date of birth and type of caregiver.

More detailed information is available at Wisconsin's Internet-based Nurse Aide Registry at **www.promissor.com**. Click on "Registry Services," then on "Wisconsin Nurse Aides" and "Search the Nurse Aide Registry."

- For a nurse aide (NA): Information will be provided regarding the aide's employment eligibility and whether a finding of misconduct has been placed under the aide's name.
- For any other noncredentialed caregiver (CGE): Due to Wisconsin state regulations, an individual, such as a personal care worker, maintenance worker, laundry aide, etc., is identified as a caregiver (CGE) with a finding on the Caregiver Misconduct Registry and may not be employed as a caregiver as that term is defined in s. 50.065 or 48.685, Wisconsin Stats., in any entity regulated by the Wisconsin DHFS unless approved through the Rehabilitation Review process.

Questions

BQA has issued numerous memos since 1998 regarding the Wisconsin Caregiver Law. Rather than referring to previous memos, please reference the Wisconsin Caregiver Program Manual at <http://dhfs.wisconsin.gov/caregiver/publications/CgvrProgMan.htm> for complete information regarding the Caregiver Law. The Manual provides detailed information about the Caregiver Law, including background checks and reporting requirements for Bureau of Quality Assurance (BQA) regulated entities, and is updated annually.

You may also contact the Office of Caregiver Quality (OCQ) at **Caregiver_Intake@dhfs.state.wi.us** or (608) 243-2019 with questions.

Attachments