

# EXHIBIT 358

(Rev. 208; 10-21-22)

## Sample Form for Facility Reported Incidents

This sample form can be used to ensure the reporting of reasonable suspicion of crimes against a resident or individual receiving care from the facility within prescribed timeframes to the appropriate entities, consistent with Section 1150B of the Act; and all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property. The information collected is critical in determining what may be occurring in a facility and the effect(s) that it may have on residents.

### **Section 1150B(b) of the Social Security Act –**

- (1) Each covered individual shall report to the Secretary and 1 or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime (as defined by the law of the applicable political subdivision) against any individual who is a resident of, or is receiving care from, the facility.
- (2) Timing —If the events that cause the suspicion—
  - (A) Result in serious bodily injury, the individual shall report the suspicion immediately, but not later than 2 hours after forming the suspicion; and
  - (B) Do not result in serious bodily injury, the individual shall report the suspicion not later than 24 hours after forming the suspicion.

**42 C.F.R. 483.12(c)(1) (F609)** - In response to allegations of abuse, neglect, exploitation, or mistreatment, the facility must: (1) 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.

**483.12(c)(4)** - Report the results of all investigations to the administrator or his or her designated representative and to other officials in accordance with State law, including to the State Survey Agency, within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

“**Abuse,**” is defined at §483.5 as “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.”

“**Alleged violation**” is a situation or occurrence that is observed or reported by staff, resident, relative, visitor or others but has not yet been investigated and, if verified, could be noncompliance with the Federal requirements related to mistreatment, exploitation, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property.

“**Crime**”: Section 1150B(b)(1) of the Act provides that a “crime” is defined by law of the applicable political subdivision where the facility is located. A political subdivision would be a city, county, township or village, or any local unit of government created by or pursuant to State law.

“**Criminal sexual abuse**”: In the case of “criminal sexual abuse” which is defined in section 2011(19)(B) of the Act (as added by section 6703(a)(1)(C) of the Affordable Care Act), serious bodily injury/harm shall be considered to have occurred if the conduct causing the injury is conduct described in section 2241 (relating to aggravated sexual abuse) or section 2242 (relating to sexual abuse) of Title 18, United States Code, or any similar offense under State law. In other words, serious bodily injury includes sexual intercourse with a resident by force or incapacitation or through threats of harm to the resident or others or any sexual act involving a child. Serious bodily injury also includes sexual intercourse with a resident who is incapable of declining to participate in the sexual act or lacks the ability to understand the nature of the sexual act.

“**Exploitation**,” as defined at §483.5, means “taking advantage of a resident for personal gain, through the use of manipulation, intimidation, threats, or coercion.”

“**Injuries of unknown source**” – An injury should be classified as an “injury of unknown source” when all of the following criteria are met:

- The source of the injury was not observed by any person; and
- The source of the injury could 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) or the number of injuries observed at one particular point in time or the incidence of injuries over time.

“**Misappropriation of resident property**,” as defined at §483.5, means “the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident’s belongings or money without the resident’s consent.”

“**Mistreatment**,” as defined at §483.5, is “inappropriate treatment or exploitation of a resident.”

“**Neglect**,” as defined at §483.5, means “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.”

“**Serious bodily injury**” means an injury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ,

or mental faculty; requiring medical intervention such as surgery, hospitalization, or physical rehabilitation; or an injury resulting from criminal sexual abuse (See section 2011(19)(A) of the Act).

“**Sexual abuse,**” is defined at §483.5 as “non-consensual sexual contact of any type with a resident.”

“**Willful,**” is defined at §483.5 in the definition of “abuse,” and “means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.”

## **Initial Report**

**It is important that the facility provide as much information as possible, to the best of its knowledge, at the time of submission of the report.**

### **1. Facility Information**

Facility Name:
CMS Certification Number (CCN):
Address:
Phone number:
Email address

### **2. Allegation Type**

Select all that apply to the reporting incident.

Abuse specify whether:	Physical	Sexual	Mental/Verbal
Deprivation of Goods and Services by Staff			
Neglect		Misappropriation of Resident Property/Exploitation	
Injury of Unknown Source		Suspected Crime	

### **3. Information about when the Facility became aware of the incident**

Date/Time/Name of when staff became aware of the incident
Date/Time administrator was notified of the incident and by whom

### **4. Alleged Victim(s)**

Please be sure to input the current location of alleged victim at time of filling out this form.

Full Name:	Date of Birth:
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Current location of alleged victim:

**5. Alleged Perpetrator(s)**

If not a staff member, please insert as much accurate information as possible.

Full Name
Position (if staff)
Contact information, if known
Relationship to the alleged victim

**6. Allegation Details**

Provide a brief description of the specific allegation, including but not limited to, identifying:

Who made the allegation (unless it was reported anonymously), and their relationship to the alleged victim
What was reported and to whom or which agency/entity
Date and time when the alleged incident occurred
Where the alleged incident occurred

Provide details of any physical harm, pain, or mental anguish to the alleged victim(s), including but not limited to:

Whether serious bodily injury occurred, if known
Describe any type of injury such as a bruise, scratch, laceration, puncture wound, fracture, bleeding, redness on the skin, etc.

Describe any changes in the resident's behavior that indicate something different from the resident's normal baseline such as crying, expressions or displays of fear, cowering, anger, withdrawal, difficulty sleeping, etc.

Provide all steps taken immediately to ensure resident(s) are protected. Such steps could include:

- Immediate assessment of the alleged victim and provision of medical treatment as necessary;
- Evaluation of whether the alleged victim feels safe and if he/she does not feel safe, taking immediate steps to protect the resident, such as a room relocation and/or increased supervision;
- Immediate notification to the alleged perpetrator's (if a resident) and/or the alleged victim's physician and the resident representative when there is injury, a significant change in condition or status, and/or a need to alter treatment significantly;
- If the alleged perpetrator is facility staff, removal of the alleged perpetrator's access to the alleged victim and other residents and assurance that ongoing safety and protection is provided for the alleged victim and other residents;
- If the alleged perpetrator is a resident or visitor, removal of the alleged perpetrator's access to the alleged victim and, as appropriate, other residents and assurance that ongoing safety and protection is provided for the alleged victim and other residents;
- Other measures the facility is taking to prevent further potential abuse, neglect, exploitation, and misappropriation of resident property.

**7. Witness(es)**

Full Name:	Position (if staff):
Relationship to alleged victim:	Contact information, if known:

**8. Notification to Law Enforcement, if applicable**

Was the incident reported to a law enforcement agency? (Yes/No)
If yes, name of the law enforcement agency notified and contact person
Name of reporting individual(s) and position(s)
Date and time (including am/pm) the report was made, report number if available:

**9. Notification to Other Agencies**

Were other agencies notified? (Yes/No)
If YES, which other agency and who at that agency was notified of the allegation (ex: Adult Protective Services, Ombudsman)
Date and Time (include am/pm) the report was made:

**10. Submission Report**

Name/title of person submitting report
Date/time (am/pm) report was submitted
Contact number and E-mail address of person submitting report for follow up