



Oklahoma Attorney General John O'Connor

Medicaid Fraud Control Unit

ABUSE & NEGLECT PREVENTION - 101

Presented by:

Medicaid Fraud Control Unit

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Mission Statement:

To protect patients and safeguard taxpayer funds by investigating and prosecuting health care providers who misappropriate Oklahoma Medicaid Program funds or who abuse residents/patients in Oklahoma Medicaid-funded health care facilities.

Referrals for Investigations

- Hot Line & Online Complaint Form
- Family Members of the Residents
- Current or Former Employees of the Facility – Whistleblowers
- Local police department or sheriff
- Oklahoma Department of Human Services (OKDHS) – Adult Protective Services
- Oklahoma Department of Health (OKDH)
- Local Prosecutor's offices
- Other Medicaid Fraud Control Units

Types of Investigations

- Physical abuse
- Sexual abuse
- Verbal abuse
- Financial exploitation
- Neglect
- Drug diversion (Larceny of CDS)
- False billing – Cost Report Fraud

Who?

Who are we talking about?



Who is a Vulnerable Adult

- An individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of himself or herself, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.

43 O.S. § 10-103

Simply: Any resident/patient in the nursing facility.

Who are the Caretakers

Caretaker" means a person who has:

- the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship,
- assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship, or
- been appointed a guardian, limited guardian, or conservator pursuant to the Oklahoma Guardianship and Conservatorship Act.

43 O.S. § 10-103

Caretakers are:

- RN
- LPN
- CNA
- CMA
- Administrator
- Dietary Manager
- Any Direct Care Staff



WHAT DOES THE LAW SAY ABOUT ABUSE, NEGLECT AND EXPLOITATION

What is Abuse

"Abuse" means causing or *permitting*:

- the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish, or
- the deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult;

43 O.S. § 10-103

- "Abuse" also means the willful infliction of injury, unreasonable confinement, intimidation or punishment, with resulting physical harm, impairment or mental anguish;

63 O.S. 1-1902 (Nursing Home Care Act)

What is Verbal Abuse

The repeated use of words, sounds or other forms of communication by a caretaker that are calculated to humiliate or intimidate or cause fear, embarrassment, shame or degradation to the person entrusted to the care of the caretaker.

- Language
- Gestures
- Actions
- Behaviors

Signs of Abuse

Do you know the signs of abuse?



- Bruises, cuts, burns
- Dehydration or malnutrition
- Overly medicated or sedated
- Lack of normal grooming
- Personality changes
- Shame, fear, embarrassment

What is Neglect

- "Neglect" means:
- the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest,
- the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing, or
- negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services;

43A O.S. § 10-103(11)

- "Neglect" means failure to provide goods and/or services necessary to avoid physical harm, mental anguish, or mental illness;

63 O.S. § 1-1902(Nursing Home Care Act)

Financial Neglect

- Repeated instances by a caretaker, or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including, but not limited to:
 - Squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult,
 - Refusing to pay for necessities or utilities in a timely manner, or
 - Providing substandard care to a vulnerable adult despite the availability of adequate financial resources

Financial Exploitation



What is Exploitation



"Exploitation" or "exploit" means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense

(43A O.S. § 10-103)

Exploitation is not just money!



Solicitation by Caregiver/Caretaker

Can you as a caregiver accept gifts from residents?

It shall be unlawful for a caregiver to solicit or accept anything of **value greater than One Dollar (\$1.00)** from any person in the caregiver's care.

Can a Family Member Give Gifts?

Short answer: Yes

- a group of individuals, including family members and friends of residents, can establish an employee recognition program consisting of voluntary, anonymous and confidential donations to care providers;
- However no care provider shall be included in the group making decisions regarding the disbursement.
- And such donations may be disbursed pursuant to procedures established by the group.



Larceny of a Controlled Dangerous Substance

Obtaining a Controlled Dangerous Substance by Fraud

DRUG DIVERSION

Definition of Drug Diversion



Drug Diversion is the act of diverting, rerouting, redirecting, appropriating, a licit drug from its original course or purpose.



Diversion

- Drug Diversion is a very dangerous crime.
- Theft of the narcotics negatively impacts the lives of the resident/patient and the life of the diverter.
- The term drug diversion is a technical term. Anyone caught in the act of diversion will be charged with the crime of; Larceny, Burglary, or theft of a Controlled Dangerous Substance.
- A common misunderstanding is the belief the drugs have to be stolen by an individual. This is true but, diversion also occurs when “sharing” narcotics prescribed to a specific patient with another.

Q. Who is capable of diverting drugs?

Answer: Anyone



Inventory Control and Oversight

- Accuracy of Documentation
 - Eight hour verification log – **two signatures**
 - Individual Narcotic count sheets – **signatures and accurate counts**
 - Medication Administration Record – **signatures or initials and notes**
 - Discontinued and Destruction forms – **signatures and witnesses**
- Medication Cart Security
 - Keep the cart locked at all times
 - Maintain control of the cart keys



Impact of Drug Diversion in Nursing Centers

- The diversion of a resident's medication impacts not only the victims, but the healthcare system in general.
- Diversion can physically and mentally harm residents, through the act of diluting, substituting pain medication, or non-dispensing of necessary pain medication.
- Diversion harms residents, if the caretaker is under the influence of diverted medications at work.
- Fraud is committed against the Medicaid program when the diverted medications were paid for through the federal/state Medicaid program.



WHAT CAN YOU DO TO HELP?

Report any of these incidents:

Abuse of any type
Neglect
Financial exploitation
Drug diversion

Title 43A O.S. § 10-104

FAILURE TO REPORT IS A CRIME!

Any person having reasonable cause to believe that a vulnerable adult is suffering from abuse, neglect, or exploitation shall make a report as soon as the person is aware of the situation to:

- Department of Human Services (DHS)
- Local police department or sheriff's office

“SILENCE IS A KILLER”

Any person who knowingly and willfully fails to promptly report any abuse, neglect, or exploitation, upon conviction, shall be guilty of a misdemeanor punishable by imprisonment in the county jail for a term not exceeding one (1) year or by a fine of not more than One Thousand Dollars (\$1000.00), or by both such fine and imprisonment.

43A O.S. § 10-104 E (OSCN 2015), Protective Services for the Elderly and for Incapacitated Adults Act

Any person who willfully or recklessly makes a false report shall be civilly liable for any actual damages suffered by the person being reported and for any punitive damages set by the court or jury which may be allowed in the discretion of the court or jury. (43A O.S. § 10-104 G)

Contact Information



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