

## Virginia OLC Issues New Guidance Regarding Nursing Facility Investigations of Abuse, Neglect, and Misappropriation of Resident Personal Property

After over a year without state-issued guidance, the Virginia Office of Licensure and Certification (“OLC”) has recently released updated guidance regarding nursing facilities (“NFs”) internal investigations of abuse, neglect, and misappropriation of residents’ property, including guidance on reporting such instances to appropriate authorities. The OLC withdrew prior guidance addressing these issues in 2013. The updated guidance includes new measures addressing immediate reporting to the OLC, updated definitions addressing misconduct, and other clarifying measures NFs should follow to ensure its investigations and reporting of misconduct adhere to federal and state law. In many cases, the updated guidance simply incorporates existing requirements from federal regulations that were not included in the OLC’s prior guidance document. However, while including these federal requirements, the OLC stresses that the updated guidance is not a replacement for complying with the laws and regulations regarding misconduct and the guidance cannot be relied upon to avoid a citation for noncompliance. The guidance is available on the OLC’s website at the following link: <http://www.vdh.virginia.gov/OLC/Laws/index.htm>.

While the OLC previously recommended that facilities review and revise their policies on reporting and investigations for compliance, the OLC is now urging that facilities review and revise, where appropriate, their policies and procedures on an annual basis.

The guidance also includes updated definitions, most notably broadening the definition of “misconduct” by amending it from the previous limitation to “staff misconduct.” “Misconduct” is now defined as any mistreatment, abuse, or neglect of a resident; incidences of corporal punishment; involuntary seclusion, or misappropriation of residents’ property by facility staff, other residents, or family and friends visiting a resident. Previously, the guidance only addressed such instances of misconduct by facility staff.

The OLC includes numerous new provisions under its guidance for the general rules a facility should follow for investigating and reporting misconduct. Many of these provisions incorporate existing federal requirements on reporting abuse, neglect, or misappropriation of resident property. First, the OLC now advises facilities to report incidents of possible misconduct to the OLC within 24 hours of learning of the incident. The guidance also indicates that the absence of the facility administrator, or designated alternate, from the facility cannot be used as a reason to delay implementation of the facility’s investigation policies and procedures. The updated guidance incorporates the federal requirement to conduct an investigation and document its findings within 5 days of the incident. Further, the guidance removes the word “internal” regarding the investigation, implying that one investigation and all its described elements should be prepared for submission to the OLC within 5 days of the incident.

Additionally, the OLC guidance now includes a provision addressing the prohibition on NFs employing any individuals who have been convicted of abuse, neglect, or mistreatment of residents or who have had findings of abuse, neglect, mistreatment, or misappropriation of resident property made by the applicable board of the Department of Health Professions. The OLC notes that the facility administrator is required to report any knowledge of such convictions of an employee that indicate an unfitness to serve in a NF to the applicable Board of the Department of Health Professions.

Guidance regarding the reporting of injuries of unknown source or origin has also been updated to match the federal guidance. Previously, the OLC advised facilities to report such injuries when there is reasonable cause to

believe that an injury has been inflicted upon a resident by staff. Now, the OLC has adopted the federal guidance and instructs facilities to report an injury of unknown source when both of the following conditions are met:

- The source of the injury was not observed by any person or the source of the injury could not be explained by the resident; and
- The injury is suspicious because of the extent of the injury, the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma), and the number of injuries observed at one particular point in time or the incidences of injuries over time.

The OLC is also now advising facilities to report occurrences of visitor mistreatment or abuse of residents to the OLC, APS, and local law enforcement.

The primary takeaways of the updated OLC guidance are:

- Alleged misconduct investigations and reporting are on the OLC's radar;
- An annual review of policies is recommended and now is the ideal time to begin; and
- Facilities must have a back-up plan when the administrator is not present – the administrator's absence does not delay investigation and reporting requirements.

If you have questions or need assistance regarding facilities investigation and reporting of misconduct, please contact Mary Malone, Jeannie Adams, Emily Towey, or Clay Landa at (866) 967-9604, or by email at [mmalone@hdjn.com](mailto:mmalone@hdjn.com), [jadams@hdjn.com](mailto:jadams@hdjn.com), [etowey@hdjn.com](mailto:etowey@hdjn.com), or [clanda@hdjn.com](mailto:clanda@hdjn.com). Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm's website at [www.hdjn.com](http://www.hdjn.com).

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