

ELIZABETH SETON CHILDREN’S CENTER

POLICY AND PROCEDURE

MANUAL: ADMINISTRATION CORPORATE COMPLIANCE	SUBJECT: SUMMARY OF POLICIES REGARDING THE REPORTING, INVESTIGATION AND PROHIBITION/ PREVENTION OF RESIDENT ABUSE, NEGLECT, EXPLOITATION, MISTREATMENT AND MISAPPROPRIATION OF RESIDENT PROPERTY
Effective Date: 1/18/2023	Revision Date(s): 12/11/2023

A. Introduction

Elizabeth Seton Children’s Center (“ESCC”) has created this summary for our contractors that describes ESCC’s Resident Abuse Prohibition Program and the reporting requirements that our contractors must follow if they become aware of any acts of abuse, neglect, exploitation, mistreatment, misappropriation of resident property, injuries of unknown source, quality of care issues, physical environment issues or the reasonable suspicion of a crime against a resident.

Definitions of terms used in this Policy or which otherwise relate to prohibited abuse and other inappropriate actions are provided in an Appendix at the end of this document.

B. Policy

It is ESCC’s policy to honor all resident rights and treat each resident with respect and compassion in full recognition of the person’s dignity and individuality. ESCC provides on-going oversight and monitoring to ensure residents receive care in a safe environment and to ensure that each resident’s right to be free from abuse, neglect, exploitation, mistreatment and misappropriation of property is maintained. This includes, but is not limited to freedom from: corporal punishment, involuntary seclusion and any physical or chemical restraint imposed for purposes of discipline or convenience and not required to treat the resident’s medical symptoms.

ESCC does not tolerate any abusive behavior or other inappropriate actions toward our residents by anyone, including, but not limited to: contractors, staff, other residents, family members or legal guardians, friends or other individuals.

C. Policy Regarding Resident Privacy: Photography and Video/Audio Recordings

Each resident has the right to privacy and confidentiality for all aspects of care and services. Taking unauthorized photographs or recordings of residents in any state of dress or undress using any type of equipment (e.g., cameras, smart phones, and other electronic devices) and/or keeping or distributing them through multimedia messages or on social media networks is a violation of a resident’s right to privacy and confidentiality.

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Contractors are prohibited from taking or using photographs or recordings in any manner that would demean or humiliate a resident.

D. Reporting

ESCC contractors are required to *immediately* report incidents or allegations of abuse, neglect, exploitation, mistreatment, or misappropriation of resident property, to the Vice President of Operations/Administrator. Contractors are also required to report injuries of unknown source, quality of care issues (e.g., reportable or qualifying medication errors, drug diversion, elopement, burns, choking, etc.) and physical environment issues (e.g., malfunction or misuse of equipment, physical plant issues, etc.).

In addition, in accordance with federal law (the Elder Justice Act) contractors are required to report the reasonable suspicion of a crime against a resident of a long-term care facility to the State Survey Agency and to local law enforcement. Contractors may satisfy this obligation by reporting the reasonable suspicion of a crime to the Vice President of Operations/Administrator, who will coordinate timely reporting to the DOH and to local law enforcement.

Time Periods for Reporting the Reasonable Suspicion of a Crime:

1. **Allegations of Abuse/Serious Bodily Injury – 2 Hour Limit.** If the alleged violation involves an incident or allegation of abuse or results in serious bodily injury to a resident, the report must be made immediately, but not later than two (2) hours after forming the suspicion.
2. **All Others – Within 24 Hours.** If the events that cause the reasonable suspicion do not involve abuse or result in serious bodily injury to a resident, the report must be filed no later than 24 hours after forming the suspicion.

E. No Retaliation for Reporting

ESCC promotes a culture of safety and open communication in the work environment. We require all contractors to follow our abuse prohibition-related policies and reporting requirements. ESCC will not take any retaliatory action against any contractor for reporting abuse, neglect, exploitation, mistreatment or misappropriation of resident property or the reasonable suspicion of a crime against a resident. ESCC provides contractors with an annual notice regarding the right to file a complaint against ESCC if the contractor perceives that ESCC has taken retaliatory action in relation to reporting the reasonable suspicion of a crime.

F. Resident Abuse Prohibition Program

The Resident Abuse Prohibition Program includes the following components:

- **Screening** – e.g., ESCC checks licensing and other databases to ensure we do not employ or contract with individuals who have had prior findings of abuse or disciplinary actions taken against their license.

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- **Training and education** – e.g., ESCC requires contractors/staff to participate in training related to abuse, neglect, mistreatment and exploitation on the first day of service, annually thereafter and as necessary.
- **Prevention** – e.g., ESCC monitors cameras (which are placed throughout the facility), conducts on-going assessments and regularly monitors care planning to ensure resident safety.
- **Identification** – e.g., ESCC has written procedures to assist contractors/staff in identifying the different types of abuse, i.e., mental/verbal abuse, sexual abuse, physical abuse and the deprivation of goods and services and instructs contractors/staff regarding possible indicators of abuse.
- **Investigation** – e.g., ESCC has written procedures for investigating instances or alleged instances of abuse, neglect, exploitation, mistreatment and misappropriation of resident property. All such occurrences are investigated by the VP of Operations/Administrator or her designee, including the Department Director or Director of Nursing, immediately, regardless of time of day or day of the week.
- **Protection** – e.g., ESCC staff are assigned on each shift in sufficient numbers to meet the needs of the residents and are supervised 24 hours a day, 7 days per week. ESCC provides information to guardians and parents of residents on how to and to whom (i.e., social worker, nurse manager, physician) they can report concerns without fear of retribution.
- **Reporting/Response** – e.g., ESCC contractors/staff are required to immediately report incidents or allegations of abuse, neglect, exploitation, mistreatment, misappropriation of resident property, injuries of unknown source, quality of care issues and physical environment issues to the Vice President of Operations/Administrator. ESCC's VP of Operations/Administrator (or designee) is responsible for reporting all alleged violations and all substantiated incidents to the NYS DOH and to all other agencies as required in accordance with mandatory timelines.

Depending on the result of the investigation, appropriate corrective actions may include one or all of the items below:

- Discipline, including termination of contract or affiliation
- Development/revision of Policy and Procedure
- Performance improvement study
- Training or re-education

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- **Coordination With QAPI** – e.g., ESCC has developed a written Quality Assurance and Performance Improvement Plan that includes tracking cases of abuse; monitoring corrective action: and reporting to ESCC’s Quality Council.

G. Disciplinary Action

Any Contractor found to have engaged in any prohibited activity described in this Policy, including the taking of inappropriate pictures and/or video or audio recordings of residents, or that does not immediately report abuse, neglect, exploitation, mistreatment or misappropriation of resident property or the reasonable suspicion of a crime against a resident will be subject to termination of contract or affiliation with ESCC. Under federal law, contractors are also subject to civil monetary penalties of up to \$200,000 for failing to report the reasonable suspicion of a crime. If the contractor fails to report a reasonable suspicion that a crime has been committed and that failure exacerbates the harm to the victim of the crime or results in harm to another individual, the penalty can rise up to \$300,000.¹

Reviewed Date(s):	Reviewer Name:	Title:
1/18/2023	Lisa Poskanzer	Corporate Compliance Officer
12/11/2023	Lisa Poskanzer	Corporate Compliance Officer

¹ These maximum penalty amounts are adjusted annually for inflation and have risen to \$272,514 and \$408,769, respectively, as of October 6, 2023.

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APPENDIX

DEFINITIONS:²

Abuse:	The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. It includes deprivation by an individual of goods or services necessary to attain or maintain physical, mental, and psychosocial well-being. It also involves verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through use of technology.
Adverse event:	Untoward, undesirable, and unusually unanticipated event that causes death or serious injury, or risk thereof.
Alleged Violation:	A situation or occurrence that is observed or reported by staff, residents, relatives, visitors, health care workers, or others but has not yet been investigated and, if verified, could be in noncompliance with the Federal requirements related to mistreatment, exploitation, neglect, or abuse, including injuries of unknown source and misappropriation of resident property.
Chemical Restraint:	Any drug that is used for discipline or staff convenience and not required to treat a resident's medical symptoms.
Exploitation:	Taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats, or coercion.
Involuntary Seclusion	A separation of a resident from other residents or from their room (with or without roommates) or confinement to a room (with or without roommates) against the resident's will, or the will of the resident's legal representative.
Mental Abuse:	The use of verbal or nonverbal conduct which causes or has the potential to cause the resident to experience humiliation, intimidation, fear, shame, agitation, or degradation. Examples of verbal abuse include, but are not limited to: threatening

² Both the Federal Centers for Medicare and Medicaid Services (CMS) and the New York State Department of Health (DOH) have adopted definitions relevant to this policy. Where appropriate, both the CMS and DOH definitions are included in this Appendix.

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residents, including but not limited to, depriving a resident of care or withholding a resident from contact with family and friends; and isolating a resident from social interaction or activities. Mental abuse also includes abuse that is facilitated or caused by Staff taking or using photographs or recordings in any manner that would demean or humiliate a resident.

Injuries of Unknown Source:

An injury that meets all of the following criteria:

- The source of the injury was not observed by any person
- The source of the injury could not be explained by the resident
- The injury is suspicious because 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 of time or the incidence of injuries over time.

Misappropriation of Resident Property:

The deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent. [NY DOH: The theft, unauthorized use or removal, embezzlement or intentional destruction of the resident's personal property including, but not limited to: money, clothing, furniture, appliances, jewelry, works of art and such other possessions and articles belonging to the resident regardless of monetary value.]

Mistreatment:

The inappropriate treatment or exploitation of a resident. [NY DOH: The inappropriate use of medications, inappropriate isolation or inappropriate use of physical or chemical restraints on a resident while the resident is under the supervision of the facility.]

Neglect:

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. [NY DOH: The failure to provide timely, consistent, safe, adequate and appropriate services, treatment and/or care to a resident of a residential health care facility while the resident is under the supervision of the facility including, but not limited to: nutrition, medication, therapies, sanitary clothing and

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surroundings, and activities of daily living. Neglect may include, but is not limited to:

- Failure to carry out physician orders, medication omission, treatment omission or failure to follow the care plan or provide emergency services.
- Failure to adequately supervise whereabouts and activities of residents.
- Failure to provide adequate hydration and nutrition]

Physical Abuse:

Includes, but is not limited to hitting, slapping, pinching and kicking and controlling behavior through corporal punishment. Corporal punishment includes, but is not limited to, pinching, spanking, slapping of hands, flicking, or hitting with an object. [NY DOH: Inappropriate physical contact includes, but is not limited to, striking, pinching, kicking, shoving, bumping and sexual molestation.]

Physical Restraints:

Any manual method, physical or mechanical device/equipment or material that meets all of the following criteria: (i) is attached or adjacent to a resident's body; (ii) cannot be removed easily by the resident; and (iii) restricts the resident's freedom of movement or normal access to his/her body.

Resident Representative:

An individual chosen by the resident to act on his/her behalf to support decision-making; access medical, social or other personal information; manage financial matters, receive notifications; a person authorized by State or Federal law to act on behalf of the resident in decision-making access medical, social, or other personal information; manage financial matters, receive notifications; a legal representative, or court-appointed guardian or conservator.

Serious Bodily Injury

An injury (i) involving extreme physical pain; (ii) involving substantial risk of death; (iii) involving protracted loss or impairment of the function of a bodily member, organ or mental faculty; or (iv) requiring medical intervention such as surgery, hospitalization, or physical rehabilitation. Serious bodily injury also occurs if the conduct causing the injury is conduct described in federal criminal codes relating to sexual abuse or aggravated

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sexual abuse and similar offenses described in the state criminal code.

Sexual Abuse

Non-consensual sexual contact of any type with a resident. This includes, but is not limited to unwanted intimate touching of any kind especially of breasts or perineal area; all types of sexual assault or battery, such as rape, sodomy, and coerced nudity; forced observation of masturbation and/or pornography; and taking sexually explicit photographs and/or audio/video recordings of a resident(s) and maintaining and/or distributing them (e.g. posting on social media). This would include, but is not limited to, nudity, fondling, and/or intercourse involving a resident.

Verbal Abuse:

The use of oral, written, or gestured language that willfully includes disparaging and derogatory terms to residents or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse Include, but are not limited to: mocking, insulting, ridiculing; yelling or hovering over a resident, with the intent to intimidate and other bullying behavior

Willful:

In the definition of "abuse" means that the individuals must have acted deliberately, not that the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.