

F606

(Rev. 208; Issued:10-21-22; Effective: 10-21-22; Implementation:10-24-22)

§483.12(a) The facility must—

§483.12(a)(3) Not employ or otherwise engage individuals who—

- (i) Have been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law;**
- (ii) Have had a finding entered into the State nurse aide registry concerning abuse, neglect, exploitation, mistreatment of residents or misappropriation of their property; or**
- (iii) Have a disciplinary action in effect against his or her professional license by a state licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property.**

§483.12(a) (4) Report to the State nurse aide registry or licensing authorities any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff.

INTENT

The facility must not hire an employee or engage an individual who was found guilty of abuse, neglect, exploitation, or mistreatment or misappropriation of property by a court of law; or who has a finding in the State nurse aide registry concerning abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property, or has a disciplinary action in effect taken against his/her professional license. The facility must report knowledge of actions by a court of law against an employee that indicates the employee is unfit for duty.

DEFINITIONS

“Found guilty ... by a court of law” applies to situations where the defendant pleads guilty, is found guilty, or pleads no contest to charges of abuse, neglect, exploitation, misappropriation of property, or mistreatment.

“Finding” is defined as a determination made by the State that validates allegations of abuse, neglect, exploitation, mistreatment of residents, or misappropriation of their property.

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

GUIDANCE

Employment

NOTE: For purposes of this guidance, “staff” includes employees, the medical director, consultants, contractors, volunteers. Staff would also include caregivers who provide care and services to residents on behalf of the facility, students in the facility’s nurse aide training program, and students from affiliated academic institutions, including therapy, social, and activity programs.

Facilities must be thorough in their investigations of the histories of prospective staff. In addition to inquiry of the State nurse aide registry or licensing authorities, the facility should

check information from previous and/or current employers and make reasonable efforts to uncover information about any past criminal prosecutions. It has been reported that former nurse aides with a finding of abuse, neglect, misappropriation of resident property, exploitation, or mistreatment may seek employment in other departments of a facility, such as maintenance or laundry services/department, or at another nursing home in a non-nursing capacity.

Some States may have additional requirements for criminal background checks and State law may prohibit persons convicted of certain crimes from working in a long-term care facility. The State Survey Agency may use its own authority for assuring facility compliance such as the use of the National Background Check Program or specific State licensure requirements that may address criminal background checks. In addition, some facilities may have more stringent hiring restrictions than what is required by State or Federal law.

If a facility has not developed and/or implemented policies and procedures related to screening procedures prior to employment, a finding of noncompliance should be considered at F607, not F606. If it is determined that the facility employed or engaged an individual, either directly or under contract, who was found guilty by a court of law of abuse, neglect, misappropriation of property, exploitation or mistreatment, or had a finding entered into the State nurse aide registry or has a disciplinary action in effect against his/her professional license concerning abuse, neglect, mistreatment of residents or misappropriation of resident property, a finding of noncompliance *is* cited at F606.

Reporting to the State Nurse Aide Registry or Licensing Authorities

A nurse aide found guilty of neglect, abuse, mistreatment, misappropriation of property, or exploitation by a court of law, must have his/her name entered into the State nurse aide registry [See 483.12(a)(4)]. A licensed staff member found guilty of the above must be reported to his/her licensing board. Further, if a facility determines that actions by a court of law against an employee are such that they indicate that the individual is unsuited to work in a nursing home, then the facility must report that individual to the State nurse aide registry (if a nurse aide) or to the State licensing authorities (if a licensed staff member). Examples of convictions that may indicate unfitness to work in a nursing home include, but are not limited to, child abuse, sexual assault, theft, and assault with a deadly weapon.

NOTE: In addition, according to 42 CFR 483.156(c)(1)(iv)(A) to (c)(1)(iv)(D), Registry of Nurse Aides, the State must include the following information on any finding of abuse, neglect, or misappropriation of property by the individual:

- Documentation of the State's investigation, including the nature of the allegation and the evidence that led the State to conclude that the allegation was valid;
- The date of the hearing, if the individual chose to have one, and its outcome; and
- A statement by the individual disputing the allegation, if he or she chooses to make one.

This information must be included in the registry within 10 working days of the finding and must remain in the registry permanently, unless the finding was made in error, the individual was found not guilty in a court of law, or the State is notified of the individual's death.

Refer to the CE Pathways for Abuse (Form CMS-20059) and Neglect (Form CMS-20130) and the Investigative Protocols for tags F602 and F603.

KEY ELEMENTS OF NONCOMPLIANCE

To cite deficient practice at F606, the surveyor's investigation will generally show that the facility did anyone or more of the following:

- Hire or engage an individual who, unless the individual in question has appealed their disqualification from employment in a nursing home and that appeal has been successful under State or federal law:
 - Has been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law; or
 - Has had a finding entered into the State nurse aide registry concerning abuse, neglect, exploitation, mistreatment of residents, or misappropriation of their property; or
 - Has had a disciplinary action in effect against his/her professional license by a state professional licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents, or misappropriation of resident property; or
- Failed to report to the State nurse aide registry or licensing authorities any knowledge of actions taken by a court of law that would indicate unfitness as a staff member of a nursing home.