

**HEALTH FACILITIES &
EMERGENCY MEDICAL
SERVICES DIVISION
(HFEMSD)**

***OCCURRENCE REPORTING
MANUAL***

Revised November 2009
(Amended August 2011)

www.cohfportal-egov.com

Colorado Department of Public Health and Environment

Portal Technical Support Email:
cdphehfemspportalsupport@cdphe.state.co.us

(Include your name, user name, and the facility/agency name in the email.)

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HFD INTERNET PORTAL

www.cohfportal-egov.com

HFEMSD HOME PAGE

www.HealthFacilities.info

**Reporting Line for Emergencies (i.e., no Internet connection)
303-692-2900**

INTRODUCTION

Please share this occurrence reporting manual with the persons on your staff who are responsible for reporting occurrences to HFEMSD. It contains information about the occurrence reporting requirements.

Contents of this occurrence reporting manual include:

- (1) Excerpts from the revised Chapter II (Licensure), which contain the language on reporting;
- (2) Copies of state statutes which are referred to in the reporting requirements;
- (3) Questions and answers on both general matters and on specific reporting categories **(The questions and answers are only examples and do not cover all situations).**
- (5) The policy concerning deficiencies for late reported occurrences.

Please note that all occurrences are to be reported by our next business day to HFEMSD. **However, long-term care facilities only, must report abuse, neglect, and misappropriation within 24 hours.**

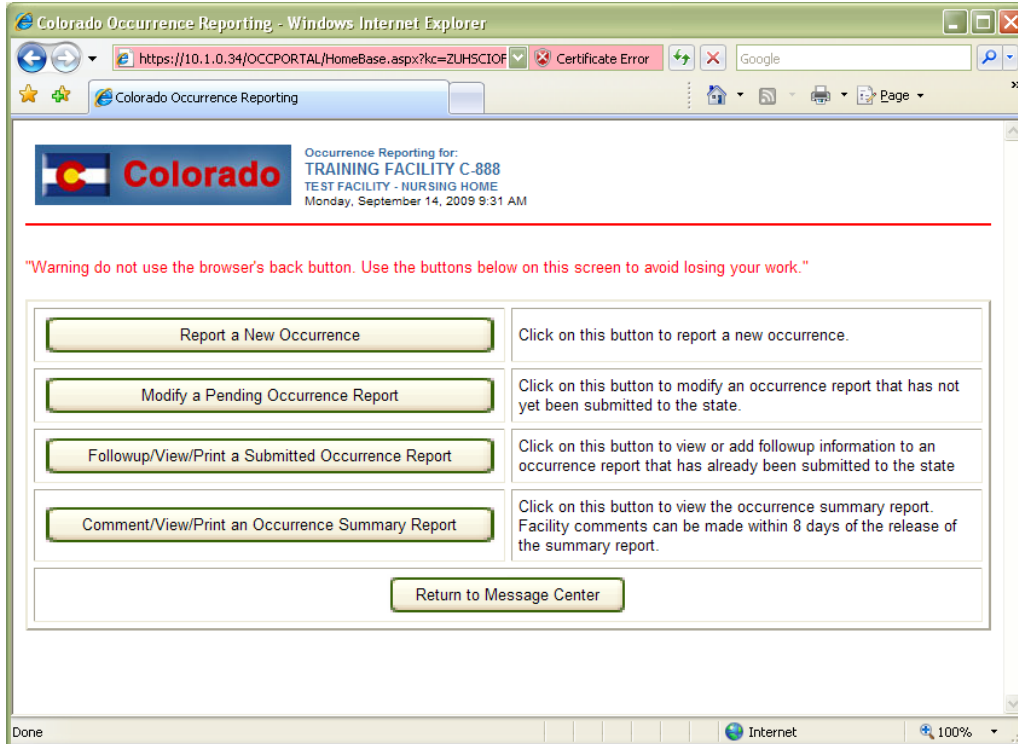
The former Occurrence Reporting Line phone number, 303-692-2900, may be used in case of an emergency such as your Internet or computers are down. Continue attempting to submit your occurrence via the Internet, and when it is submitted, we will use the date and time stamp from the line to backdate your occurrence. Technical support for occurrence reporting can be reached via email at cdpfehemsportalsupport@cdphe.state.co.us. You may also contact Sue Neff, 303-692-2826, or the Division front desk at 303-692-2800 if you continue to have problems submitting your occurrence.

HFEMSD will prepare summaries of **all** reportable occurrences, and these will be made available to the public. You will continue to have an opportunity to comment on the summary prior to public release.

We anticipate that there may be many questions regarding occurrence reporting and we will work with you to help your facility comply with the reporting requirements. Thank you for your cooperation in this effort.

OCCURRENCE REPORTING PROCEDURE

Using your username and password, log onto the HFD Internet Portal, www.cohfportal-egov.com. From the menu on the left of your message center, select "Occurrence Reporting". At this point you will have the options noted on this screen:



The first screen that opens when you select "Report a New Occurrence" is the initial report screen. Submitting the initial report screen is the only thing you have to do to report your occurrence. You still have five days to return to the pending occurrence, finish and submit the final report.

Once your final report is submitted, if the Occurrence investigator has further questions you will be notified via email that you have a message in your message center. The message will indicate that further action may be needed on a specific occurrence. Select the third option, "Followup/Print/View a Submitted Occurrence Report" and you will be able to access the Occurrence investigator's request.

Manuals to assist you in doing the various applications, including occurrence reporting, are available under "Documentation" in the menu on the left of your Message Center.

POLICY FOR NOT TIMELY REPORTING

Effective December 1, 2001, if you report late, you will receive one letter of warning. After that, any late report will result in a deficiency under State Licensure regulation 3.2.

The regulations require that occurrences be reported by the end of CDPHE's next business day. Occurrences can be submitted via the HFD Internet Portal, www.cohfportal-egov.com, any day of the week, or time of day.

In response to a State Performance Audit on Nursing Facility Quality of Care, the Board of Health adopted an amendment requiring all long-term care facilities to report abuse, neglect, and misappropriation with 24 hours. This became effective July 10, 2008.

GENERAL QUESTIONS AND ANSWERS

1. How will confidentiality be maintained?

The statute mandates confidentiality of the occurrence reports. §25-1-124 states, "The information in such reports shall not be made public upon subpoena, search warrant, discovery proceedings or otherwise." The only information that is available for public viewing is the public summary, which never gives identifying information about specific individuals involved in occurrences.

2. Many facilities have multiple reporting requirements. Do these requirements relieve facilities of their obligation to report to HFEMSD?

No, they are still obligated to report to HFEMSD.

3. Many residential clients/patients attend day programs and other services. If an occurrence happens when the client/patient is out and under the supervision of the community agency, is it reportable?

Yes, it is reportable. The facility is responsible for reporting to HFEMSD.

4. If an abuse allegation is investigated and not substantiated, does it have to be reported to HFEMSD?

If the allegation meets the reporting elements, it must be reported by the end of one business day. It is the allegation, not the outcome of the facilities investigation that makes it reportable.

5. When are initial occurrence reports due?

They are due by the end of the next business day after any staff person knows about the occurrence. All facilities must assure that internal reporting systems are in place to meet these requirements. A late occurrence report will result in a deficiency.

6. What is the time frame for a final report after the initial report is made?

Final reports should be completed and submitted within **5 calendar days** of the occurrence.

7. Can HFEMSD remove a reported occurrence from the system if subsequent information reveals it is not reportable?

HFEMSD has the capability to deactivate an occurrence in the system. The facility will be notified of the decision to deactivate and reason for the deactivation. Deactivated occurrences are not available to the public.

8. If HFEMSD refers an occurrence to any of the licensing boards, and later determines the occurrence was not reportable, can the report to the licensing board be withdrawn also?

HFEMSD can notify the board of our decision to withdraw the information from our system. It is at the discretion of the individual board whether they continue their investigation.

9. Will a string of events reported as occurrences trigger a survey?

A string of events reported as occurrences does sometimes trigger a survey. When the occurrences are related to a specific area or standard of care, a survey may be indicated. The critical factors that HFEMSD considers are as follows: whether the facility is doing all that it reasonably can to prevent occurrences, and doing appropriate investigation and follow-up when an occurrence is unavoidable.

10. Are we required to report abuse to the police?

Abuse reporting requirements are taken from the felony statutes (see pages 116--126). If an abuse allegation meets the occurrence reporting elements, it meets the definition of felony abuse and **must** be reported to law enforcement (see page 127, §18-8-115, and page 115, §24-1-124 (6)(III)(8)).

11. What does *verbal abuse* include?

The verbal abuse requirement is based on the felony “menacing” statute. This includes any action that creates fear in a patient/resident. This could include a threatening tone of voice, angry gesture, or any other action that creates fear or intimidation.

12. How can a facility be sure that they are doing an acceptable investigation?

HFEMSD would expect, at a minimum, that all of the questions on the reporting form be thoroughly completed. Individual circumstances may require additional investigation.

13. Assessment is done, but there is no injury. If the resident was involved in a physical altercation, and indicates by action or interview that he or she experiences pain, is this injury?

Yes. Pain is considered injury. Even if a demented resident can’t express pain, any action that would normally be considered painful by a reasonable person should be considered an injury. For example, a slap that leaves no mark would normally be painful and should be considered reportable as an injury even if the resident can’t tell you it hurts.

14. How can I find out if a staff person has been excluded from working in a facility that receives Medicaid funding?

The Office of the Inspector General (Health and Human Services) has a website that contains this information:

<http://exclusions.oig.hhs.gov>

PHYSICAL ABUSE - STATUTE AND EXAMPLES

"Any occurrence involving physical... abuse of a patient or resident, as described in section 18-3-202, 18-3-203, and 18-3-204... C.R.S., by another patient or resident, an employee of the facility, or a visitor to the facility."

25-1-124 (2)(d), C.R.S.

2 Elements Needed:

- ✓ **Intent OR knowingly OR recklessly**
- ✓ **Bodily injury and/or serious bodily injury, and/or Unreasonable confinement or restraint (26-3.1-101 (4)(a)(II) C.R.S.)**

Note: "Bodily injury means physical pain, illness, or any impairment of physical or mental condition" 18-1-901 (3)(c) C.R.S.

Note: Serious bodily injury is defined as "bodily injury, which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body." 18-1-901 (3)(p), C.R.S.

1. If a patient/resident with Alzheimer's hits another resident and causes an injury (bruise, skin tear etc.) or pain, is it reportable?

If there is an injury, the facility must consider the resident's ability to form intent or to act knowingly. If a resident has Alzheimer's or another form of dementia, it does not necessarily rule out an ability to form intent or act knowingly. The facility needs to determine if the resident still has the ability to understand the possible outcome of his/her actions. Does the resident understand that if he/she hits, bites, pushes etc. another person, that person could possibly be hurt. If the resident is not able to understand that kind of cause and effect, it is not reportable.

THE FACILITY MUST STILL CONDUCT A THOROUGH INVESTIGATION AND DOCUMENT THE INVESTIGATION AND THE RATIONALE FOR NOT REPORTING.

2. How do you assess intent for patients/residents who have diagnoses of Alzheimer's or some other form of dementia?

HFEMSD does not mandate a specific evaluation tool or method. Facilities use a variety of assessments in determining a resident's/patient's mental status. Questioning the resident about his/her understanding of the consequences of his/her actions is important. If the resident cannot understand cause and effect, it would not be reportable, as "knowingly" would not be present.

Recommendation: Interviewing the resident is critical. The interview should take place immediately after the occurrence, whenever possible. If the assailant resident is unable to answer any question about the occurrence and does not seem to even remember or understand what you are referring to, it would not meet the level of intent or knowingly. If the resident remembers the occurrence and knows that his/her actions could have harmed the other resident, it is reportable.

THE FACILITY MUST STILL CONDUCT A THOROUGH INVESTIGATION AND DOCUMENT THE INVESTIGATION AND THE RATIONALE FOR NOT REPORTING.

3. Two residents, each with a diagnosis of dementia, residing in a nursing home are involved in an altercation. Staff heard the residents yelling and found resident A standing over resident B. Resident A was shouting and shaking his fist. Resident B was lying on the floor of resident A's room. He had sustained a 1-centimeter laceration to his left arm. Neither resident was able to tell staff what had happened. Resident B has a history of wandering and resident A has a history of

being very territorial. Staff believes what probably happened was that resident B came into resident A's room and was attacked. Is this reportable?

The **element of injury is present**. The **element of intent** is less clear. The issue is whether the client intended to harm the roommate. Staff needs to make an assessment of whether the clients are able to understand that their actions could result in harm. Facility needs to review assessments of clients' cognitive abilities, previous history and what clients were able to tell them about this specific episode and make the best determination of "intent" that they can. If staff determines that **intent** is present, it would be reportable. It is the facility's responsibility to determine if the assailant is capable of intent.

4. **Two residents, each with a diagnosis of dementia and residing in a nursing home are involved in an altercation. Staff heard the residents yelling and found resident A standing over resident B. Resident A was shouting, "I told you to stay out of my room". Resident B was lying on the floor of resident A's room. He had sustained a 1 cm laceration to his left arm. When questioned, resident B was unable to relate what had happened. Resident A stated that he had struck resident B when he failed to leave the room. Resident B has a history of wandering and resident A has a history of being very territorial. Is this reportable?**

Yes, this would be reportable. Both **elements of injury** and **intent** are present. Resident A was able to state that he had hit resident B and gave the reason for striking him. This would indicate an ability to form intent. The resident had an injury, a laceration of his right arm.

5. **A patient is brought into the emergency room by ambulance. He is intoxicated and combative and staff is unable to examine him. Staff attempts to restrain him and he resists. The patient sustains bruising to both lower arms. The patient alleges that staff intentionally hurt him. Is this reportable?**

Yes, it would be reportable. It meets the **elements of an injury** and **intent** because the patient is alleging intent and did sustain an injury (bruising to lower arms). Facility needs to report it to HFEMSD and investigate and determine if possible whether staff intentionally or accidentally caused the bruising.

6. **Two developmentally disabled clients share a room in a group home. Staff heard client A crying and entered the room. Client B is standing over client A, striking her with her fist on the back and shoulders. The clients were separated and assessed for injuries. Client B had no injury. Client A had red marks on her back and right shoulder. When interviewed both clients stated they were fighting over an article of clothing. Client B stated that she didn't mean to hurt client A, she just wanted her sweater back. Is this reportable?**

The **element of injury is present**. The **element of intent** is less clear. The issue is whether the client intended to harm the roommate. Staff needs to make an assessment of whether the clients are able to understand that their actions could result in harm. Facility needs to review assessments of clients' cognitive abilities, previous history and what clients were able to tell them about this specific episode and make the best determination of "intent" that they can. If staff determines that **intent** is present, it would be reportable. It is the facility's responsibility to determine if the assailant is capable of intent.

7. **A resident is found with bruising to both upper extremities. The resident is not interviewable. Is this reportable?**

The facility must conduct a preliminary investigation to determine if the elements of abuse are present. If the injury could be the result of abuse, and the facility is unable to rule-out abuse, the incident must be reported.

**PLEASE NOTE:
REPORTING OCCURRENCES TO HFEMSD DOES NOT RELIEVE THE FACILITY/AGENCY FROM REPORTING REQUIREMENTS OF OTHER AGENCIES. IF A DETERMINATION IS MADE THAT AN EVENT IS NOT REPORTABLE TO HFEMSD, THIS DOES NOT RELIEVE THE FACILITY/AGENCY OF ITS RESPONSIBILITY TO INVESTIGATE AND TAKE APPROPRIATE ACTION.**

**PHYSICAL ABUSE
(HOME BASED EXAMPLES)**

1. **A CNA from ABC Agency was providing non-skilled services to a client. While she was in the home, a staff member from XYZ Agency came to provide care not provided by ABC. The CNA witnessed the XYZ staff person being rough with the client, and yelling at the client, “Shut up,” when the client complained that the staff member was hurting her. The CNA reported it to her own agency, and ABC Agency reported the incident to XYZ Agency, the police, and Adult Protective Services.
Is this reportable by ABC Agency?
Is this reportable by XYZ Agency?**

Because the staff member is employed by XYZ agency and that agency was informed of the occurrence, they are obligated to report it. It would be good practice for ABC agency to check and verify that it was reported given the seriousness of the occurrence.

2. **A caregiver arrived at a client’s home and found that the house was a “disaster” with items thrown all around. The client reported that her spouse had beaten her up and trashed the house. The client refused to contact the police. The agency notified Adult Protective Services.
Is this reportable by the agency?**

This would not be reportable as an occurrence as the agency staff was not the alleged assailant. The agency reported to Adult Protective Services but should also report to police. (See the Occurrence Reporting Manual – Duty To Report Statutes).

3. **A client reported to the agency that her caregiver yells at her, and hits her. The client was assigned to a different caregiver. The client has severe and persistent mental illness and is symptomatic with delusions. The caregiver was sent home on administrative leave.
Is this reportable by the agency?**

Yes, it is reportable. Even though the client has a mental health diagnosis and can be delusional, that does not rule out the possibility of abuse. The facility needs to report the occurrence to police and conduct a thorough investigation.

4. **A PCA (personal care giver) went to a client’s home and noticed bruises on the client’s arms. The client told the PCA that her daughter had caused the bruises when she was trying to take the client’s car keys away from her. The daughter does not believe that the client should drive her car with her medical condition. The agency notified the police and Adult Protective Services.
Is this reportable by the agency?**

No, it is not reportable as an occurrence. The agency staff member was not the alleged assailant, therefore not reportable. The agency did report to police and Adult Protective Services, which they did need to do.

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SEXUAL ABUSE – STATUTE AND EXAMPLES

"Any occurrence involving sexual ...abuse of a patient or resident, as described in section ...18-3-402, 18-3-403, 18-3-404, or 18-3-405 C.R.S., by another patient or resident, an employee of the facility, or a visitor to the facility." 25-1-124 (2)(d) C.R.S.

3 Elements Needed:

- ✓ **Knowingly**
- ✓ **Consent not given**
- ✓ **Sexual intrusion or penetration or, touching intimate parts or the clothing covering the intimate parts or, examines or treats resident/patient for other than bona fide medical purposes or, observes or photographs another person's intimate parts or, physical force/threat.**

1. **A staff member observed a male resident fondling the breasts of a female resident. The female resident was interviewed but has severe dementia and could not relate what happened. The male resident has a psychiatric diagnosis but was able to be interviewed. He denied fondling the resident. Is this reportable?**

Yes this would be reportable. The necessary **elements** of “**knowingly**” and “**unable to give consent**”, and “**touching intimate parts**” are present. The female was unable to give consent due to her dementia. The female exhibited no behaviors that indicated consent. Although the male resident has a psychiatric diagnosis, the facility was able to interview him and did think he acted “knowingly”.

2. **A certified nursing assistant (CNA) stated that she had observed a male nurse fondling a female resident (his hand was between the resident's legs). This occurred on the Alzheimer's Unit, during the night shift. No other staff was present. The male nurse denied the allegation. He stated that he had spoken with the CNA earlier on the shift regarding her unsatisfactory job performance and believed she was accusing him in retaliation. The female resident was not interviewable, nor were any other residents on the unit, due to their dementia levels.**

This would be reportable. An allegation was made that contained the necessary **elements** to make it a reportable occurrence. The elements present were “**knowingly**”, “**consent not given**” and “**touching intimate parts**”.

3. **A staff member reported finding a male patient in a female patient's room. He was stroking her breast and leg. When questioned, the female patient voiced no complaint. Several days later the female patient reported that she considered this to have been inappropriate behavior by the male patient. The male patient was interviewed and stated that the female had encouraged his behavior. Is this reportable?**

No, this is not reportable. The necessary **element** of “**consent not given**” was not present. Both residents were able to give consent. At the time of the occurrence, the female resident did not voice any complaint to staff when questioned which would indicate that it was consensual. Both residents had been on friendly terms with each other and continued to be for the next several days when the female stated she considered the behavior inappropriate. The male patient denied the allegation and said the female had encouraged the behavior. There was no evidence that at the time of the occurrence the female was not consenting. Although this was not reportable to HFEMSD, the facility needed to investigate and develop a treatment plan to address the issues.

Had the female resident alleged sexual abuse and said that she had not come forward earlier because the male resident had threatened her and she was afraid to complain, it would have had the elements necessary to make it reportable. Those **elements** are “**knowingly**”, “**consent not given**” and “**touching intimate parts**”.

4. **A staff member reported that another staff member had been observed with his arms around a female resident, kissing her on the cheek. The resident was interviewed and stated that the staff member had hugged and kissed her but she did not perceive his actions as inappropriate or sexual in nature. The male staff member was interviewed and acknowledged hugging and kissing the resident. He stated that she seemed to be having a bad day and he gave her a hug and kiss as a supportive gesture. Is this reportable?**

No, this is not reportable. The **elements** missing are “**consent not given**” and neither resident nor staff member perceived it as being sexual in nature, i.e., “**touching intimate parts**”. Before determining that it was not reportable, the facility needed to assure that the resident was comfortable with the staff member’s action. Although not reportable to HFEMSD, the facility may have internal policies related to physical contact between staff and patients/residents.

5. **A female patient in a hospital told a staff member that while she was in the recovery room, a male staff member had touched her breast.**

This would be reportable. The **elements** of “**consent not given**” and “**touching intimate parts**” are present. What the facility needs to determine is if the staff person was providing legitimate medical assessment or care, as opposed to inappropriate touching.

6. **A female resident of a group home for the developmentally disabled told a staff member that a relative had touched her in a sexual manner and exposed himself to her when she was visiting in his home. She stated that she had not consented to the contact.**

This would be reportable. The **elements** of “**knowingly**”, “**consent not given**” and “**touching intimate parts**” are present.

7. **Two demented residents, a male and a female, are sitting on a couch in the lounge. The male resident has a hand on the female resident’s breast. Neither resident seems fearful or distressed, and it appears that that the residents enjoy each other’s company and have some kind of relationship. Is this reportable?**

The facility must determine if both residents are consenting in this situation. If facility determines that the residents are consenting, this would not be reportable, as all the sexual abuse elements are not met.

8. **The situation is the same as in #7, except the male resident appears to be the aggressor, and the female appears to be uncomfortable and unable to protect herself. Is this reportable?**

This would be reportable. The **elements** of “**knowingly**”, “**consent not given**” and “**touching intimate parts**” are present.

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**SEXUAL ABUSE
(HOME BASED EXAMPLES)**

1. **A client reported to her agency nurse that her grandson had molested her. The nurse reported this to the agency case manager. The agency notified the police and Adult Protective Services. Is this reportable by the agency?**

No, this is not reportable because the alleged assailant is not a staff person.

2. **An agency staff person was notified by a client that she had been sexually assaulted by her boyfriend. When the client was interviewed, she changed her story and denied the allegation. Is this reportable by the agency?**

No, it is not reportable as an occurrence because staff was not the alleged assailant. Even though the client changed her story, the agency should still contact police.

3. **A client contacted the agency and made an allegation that during a shower her caregiver had touched her inappropriately. Is this reportable by the agency?**

Yes, it is reportable. The allegation was made against the agency staff member. The agency needs to report it to the Occurrence Program, and to the police. The alleged assailant should not be allowed to provide client patient care during the investigation unless they are being directly supervised.

4. **An agency learned that a female CNA was having sexual relations with a male client. When the client was interviewed, he stated that the relationship was consensual. The CNA was terminated. Is this reportable by the agency?**

Whether it is reportable would be dependent on the client's ability to give consent. If he is cognitively intact and able to consent, it would not be reportable as an occurrence.

5. **A client reported to her agency that a former employee of the agency had made contact with her and during a visit to her home, had touched her inappropriately. At the time of the alleged abuse, the alleged assailant was still an employee of the agency. The client did not report until after he had resigned. Is this reportable by the agency?**

Yes, it is reportable because the alleged assailant was employed by the agency at the time of the alleged abuse. The agency needed to contact police and to conduct an investigation. The investigation should include interviewing other clients the former staff member was assigned to, to rule out other possible abuse.

6. **A client contacted the agency to report that while providing assistance in helping her dress, her caregiver had touched her breast. An investigation was begun, and when the client was interviewed by the agency and the police, her stories changed and were inconsistent. When this was brought to the client's attention, she admitted that she was angry at the caregiver and trying to get him in trouble. The client has a history of making false accusations. Is this reportable by the agency?**

Yes, it is reportable unless the client retracted her allegation prior to the timeline for reporting as an occurrence. (Occurrences must be reported by the end of the Division's next business day).

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VERBAL ABUSE (Menacing) - STATUTE AND EXAMPLES

“Any occurrence involving ...verbal abuse of a patient or resident, as described in section ...18-3-206...C.R.S., by another patient or resident, an employee of the facility, or a visitor to the facility.”25-1-124 (2)(d), C.R.S.

*"A person commits the crime of menacing if, by any threat or physical action, he knowingly places or attempts to place another person in fear of imminent, serious bodily injury."
18-3-206, C.R.S.*

Note: "Serious Bodily Injury" is defined as "bodily injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body." 18-1-901(3)(p), C.R.S.

3 Elements needed:

- ✓ **Knowingly**
- ✓ **Threat OR Physical Action (includes threatening gesture)**
- ✓ **Fear of imminent, serious bodily injury**

1. **Staff overheard the husband of resident #1 yelling at his wife and her roommate, resident #2. (Both residents reside on an Alzheimer’s Unit) The husband was angry that his wife had called him and then could not remember why she had called. He was angry with resident #2 because he thought she had damaged an item that belonged to his wife. He was shouting and shaking his finger in resident #2’s face. Staff entered the room and told him he would have to leave if he didn’t calm down. His wife was upset but not afraid of him. Resident #2 did express fear of the husband. Is this reportable as verbal abuse?**

Yes, it is reportable. Shaking his finger in resident #2’s face meets the element of a **“physical action”** that causes **fear**. The **knowingly** element was met, and the element of causing **fear** was met because resident #2 stated that she was afraid of the individual.

If resident #1 had been the only resident in the room; this would not have been reportable because she stated she was not afraid of her husband. Therefore one of the necessary elements, **“causing fear”** would not have been present.

2. **Staff overheard resident #1, who is alert and oriented, shout at his roommate, resident #2, “Shut the hell up. You moan all the time. Shut up or I’ll shut you up.” Staff intervened immediately. Resident #2 is developmentally disabled. Immediately following this occurrence resident #2 stopped talking which staff thought might be related to the incident. Is this reportable?**

Yes, because it met all the elements for verbal abuse. Resident #1 directly **threatened** resident #2, and did so **knowingly**. Although resident #2 could not verbalize that he was afraid, his behavior indicated that he was **fearful**. The staff did a good job of noting the non-verbal reaction of the resident which is very important in determining whether an occurrence is reportable when it involves residents who are not able to tell you how they feel or residents who have short term memory loss.

3. **Staff member A overheard staff member B talking to a resident in a harsh tone of voice. Staff member B was in the resident’s room responding to a call light. She was heard to say in a loud, rough voice, “I’m getting tired of having to come in here all the time to clean you up”. Staff member A reported the occurrence to the charge nurse who attempted to assess the resident. The resident, who has some dementia, was unable to tell staff what had happened. Later, staff member A was assisting staff member B in caring for the same resident. When staff member B attempted to assist the resident with dressing, the resident kept pulling back as though she was afraid. She became somewhat agitated. Staff member A asked staff member B to leave the room.**

As soon as staff member B left, the resident became calm and staff member A was able to finish dressing the resident. Was this reportable as verbal abuse?

This would be reportable. It meets the elements of **threat** (by the rough tone of voice and the nature of the remarks – “I’m tired of having to take care of you”) and of **fear** (following the occurrence, the resident appeared fearful of the staff member.) Staff members knew that this behavior is inappropriate so the element of **knowingly** was met. Staff knew the resident and did a good job of identifying a change in her behavior that indicated she was fearful of the staff member.

4. **A staff member was showering an alert and oriented 75-year-old female resident, in a nursing home. The resident shouted that the water was too cold and stated, “God damn it, warm it up.” The staff member replied, “Shut the hell up and let’s get this over with.” Another staff member cleaning the floor in the hall heard the exchange. Is this reportable?**

No, this is not reportable because it did not contain the necessary elements. The resident did not appear fearful at the time, and when interviewed denied being **fearful**. There was no **threat made** which would cause the resident to **fear imminent, serious bodily injury**.

If the resident had reacted in a fearful manner or expressed fear it would have then met the elements of **fear** and **threat** and therefore would be reportable.

Staff behavior was very inappropriate, and needed to be dealt with by the facility.

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APPROPRIATE ACTION.**

**VERBAL ABUSE
(HOME BASED EXAMPLES)**

1. **An Occupational Therapist (OT) arrived at a patient's front door and heard the patient and her agency caregiver yelling loudly at each other. The OT called 911, and the agency manager. The police arrived and removed the caregiver. The agency manager interviewed the patient who expressed fear of the caregiver. The caregiver was terminated. Is this reportable by the agency?**

Yes, it is reportable. The caregiver was yelling, which could be considered threatening. The patient stated that she was afraid, therefore she felt threatened, making it a reportable occurrence.

2. **A PCP (personal care provider) asked a client for money. The client refused and the PCP became angry and starting yelling at the client. The client is blind and felt uncomfortable in the situation. The client asked the PCP to leave, and the PCP did leave. The client notified the agency and the client was re-staffed with a different PCP. Is this reportable by the agency?**

Whether this is reportable would depend on if the client was fearful. If so, it would be reportable as an occurrence, and should also be reported to the police. If the client was not fearful, it is not reportable as an occurrence, however, the facility needs to investigate and take appropriate personnel action.

3. **The father of a patient was verbally threatening staff. There is a history of violence in this home between family members, and towards staff members. The father threatened to stab the nurse if she left. There is a long line of nurses who have asked to be reassigned from this patient due to feeling unsafe. The agency decided not to provide care for this patient any longer and discharged the patient. Is this reportable by the agency?**

No, this is not reportable as an occurrence because the victim was a staff member not a client. The situation was serious and the agency took action to protect staff. Police should have been notified.

4. **The manager of an agency received a phone call from a client who wanted to file a complaint against her caregiver. She stated she sent the caregiver to the store with a list of items to purchase, and the caregiver did not obtain the items specified. An argument ensued. The client stated she wasn't frightened of the caregiver, just very angry and didn't want this caregiver to provide her care any longer. Is this reportable by the agency?**

No, it is not reportable because the client was not fearful.

5. **An RN witnessed the spouse of a patient yell at the patient. The spouse was frustrated with the client's inability to follow the directions the RN was providing. The patient was crying. Is this reportable by the agency?**

No, it is not reportable because the alleged assailant was not a staff member. However, because staff witnessed the abuse, police needed to be contacted.

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BRAIN INJURY – STATUTE AND EXAMPLES

"Any occurrence that results in any of the following serious injuries to a patient or resident: (I) Brain ...Injuries...". 25-1-124 (2)(b)(I) C.R.S

2 Elements needed:

✓ **Result of occurrence**

AND

✓ **Change in level of consciousness and/or loss of bodily function**

OR

Diagnostic test which shows brain injury

1. **A resident in a facility suffers a stroke resulting in changes to both level of consciousness and level of bodily function. Is this reportable?**

No, this is not reportable because there was no facility event that caused the brain injury, such as a fall, or oxygen deprivation.

2. **A 23-year-old patient with a diagnosis of vertigo was admitted to the hospital. On the third hospital day while preparing to go home, the patient slipped in the shower and hit his head on the wall. The patient was unconscious for about 10 minutes. When he regained consciousness the patient had no neurological deficits. There were no open areas on the patient's head. Three hours later the patient became unresponsive and his right pupil was dilated. Is this reportable?**

This is reportable because immediately after the fall, the patient had a change in level of consciousness.

3. **A 76-year-old resident was found on the floor of his bathroom. The resident was groggy, but could answer questions. The resident had a half dollar size hematoma on his forehead, and some blood was noted from a cut above the right eye. His cognitive status did not change. His neurological checks were performed every 15 minutes for two hours and no changes were noted. Is this reportable?**

This is not reportable at this point because the resident had no change of consciousness.

4. **This same resident is noted by the night nurse to have become more lethargic and confused. He was difficult to arouse for neurological checks. The physician was notified and she ordered the resident to be transported to the hospital for evaluation. The ER physician admitted the resident with a subdural hematoma.**

This is now reportable because the level of consciousness has changed.

5. **A client from a group home was on a picnic when she fell to the ground and had a seizure. She had no history of seizures. After the seizure, she was very drowsy but aroused with prodding by voice, and was oriented to person, place and thing. She said she wanted to sleep. The assessment showed a bruised arm and a bump on the back of the head. Is this reportable?**

No, this is not reportable. Most people are sleepy after a seizure. There is no evidence of reportable brain injury at this point. Observation for changes should continue. If the client were to experience a change in level of consciousness or a loss of body function, it would become reportable at that point.

6. **A 70-year-old male resident was out on pass with his daughter. When the resident returned at 3:00 PM, the daughter reported that the resident slipped on a rug and fell to the floor. She said, "There was no bump or anything and Dad has been fine." On the initial assessment by the nurse, the resident had no neurological deficits, and no bruises or bumps were noted. At 5:00 PM, when dinner was served the resident said he was nauseated and asked for a soda. The resident drank half of his soda and had projectile vomiting. The resident was returned to bed and on hourly rounds appeared to be asleep. At 8:00 p.m. the CNA tried to get the resident up to go to the bathroom. The resident seemed very drowsy and was allowed to sleep. The night CNA went in to take the resident to the bathroom at midnight and found him non-responsive. The physician was notified and the resident was transported to the hospital. The hospital found a small subdural hematoma and elected to return the resident to the nursing home. The resident is awake, and oriented upon his return. Is this reportable?**

This is reportable because the resident had an episode of unconsciousness that was the result of an event. The event became a reportable incident when the CNA found him unconscious at midnight.

7. **A 72-year-old female hospice resident in a nursing home had a fall in her room. She hit her head on the nightstand and had a huge bruise. The resident was receiving comfort measures only. She became difficult to arouse the next morning, developed lapses of consciousness and had difficulty with speaking clearly. Is this reportable?**

This is reportable because the resident had a change in the level of consciousness. It became a reportable incident in the morning when the level of consciousness changed.

8. **A 70-year-old male who had been up and around using a walker, was very difficult to arouse in the morning. His speech was garbled. Is this reportable?**

No, this is not reportable as there was no evidence of any event that caused the change in condition.

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**BRAIN INJURY
(HOME BASED EXAMPLES)**

1. **An agency was notified by a client's family that the client had fallen and had been transported to the hospital with a brain injury. The agency staff was not involved. Is this reportable by the agency?**

No, this is not reportable. It would only be reportable if the brain injury happened while staff were providing the care.

2. **While staff was helping a client shower, the client slipped and fell. The client hit his head and had a loss of consciousness. The caregiver called 911 and the client was transported to the local emergency room. The agency learned that the client did sustain a subdural hematoma. Is this reportable by the agency?**

Yes, because the injury occurred while staff was assisting the client.

3. **While transporting a client to the grocery store to do her shopping, the caregiver was involved in a motor vehicle accident. The client hit his head and sustained a concussion. Is this reportable by the agency?**

Yes, the injury occurred while the client was under the care/supervision of the staff member. The Division considers a concussion to be a brain injury.

4. **An agency caregiver arrived at a client's home and found the client unresponsive. The caregiver called 911 and the client was transported to the hospital. The client left a suicide note, and there was an empty bottle of pain pills. The client did survive the suicide attempt, but had an anoxic brain injury. Is this reportable by the agency?**

No, because the brain injury was a result of the medication overdose and did not involve the staff member.

5. **A caregiver was accompanying a client on the bus to a doctor's appointment. As they were disembarking from the bus, the client fell down the steps of the bus and hit his head on the curb. He suffered a laceration to his forehead and was unconscious for a couple of minutes. The caregiver assisted the client into the clinic, which was a few steps away, where the client's wound was sutured. The client was then sent to the hospital for further evaluation. Is this reportable?**

Yes, this is reportable because the staff member was accompanying him and he had a loss of consciousness.

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BURNS – STATUTE AND EXAMPLES

" Any occurrence that results in any of the following serious injuries to a patient or resident: ..Second- or third-degree burns involving twenty percent or more of the body surface area of an adult patient/resident, or fifteen percent or more of the body surface area of a child patient/resident." 25-124-(2)(b)(III) C.R.S.

2 Elements Needed:

- ✓ **Second or third degree burns**
- ✓ **20% or more of body surface in an adult or 15% or more of body surface in a child**

1. **An 80-year-old male resident was outside smoking. He had his oxygen on per cannula. When staff returned they discover the resident was red and blistered around the mouth and nose. The resident's beard was burned off his chin. Is this reportable?**

This is not reportable because the resident has not burned 20% of the body surface. The blisters are third degree burns, but both elements must be met in order to qualify as reportable. **However, the facility should review this event as a possible neglect occurrence.**

2. **An aide put a 30-year-old female patient with MS in the tub. The patient added hot water to the tub when the aide left the room. The aide discovered that the patient was red and had blisters from the waist down, when she took the patient out of the tub. Is this reportable?**

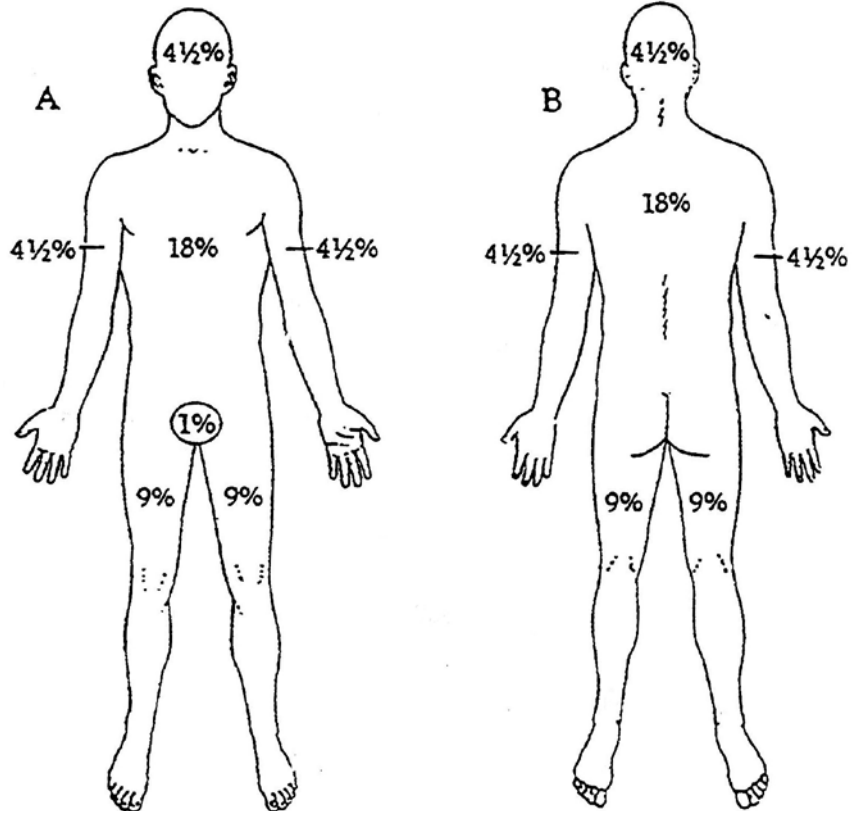
This is reportable because there is more than 20 % of the body surface involved, and there is evidence of second and third degree burns.

(NO HOME BASED EXAMPLES PROVIDED)

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ADULT BURN CHART

Estimation of adult burn injury: Rule of Nines.

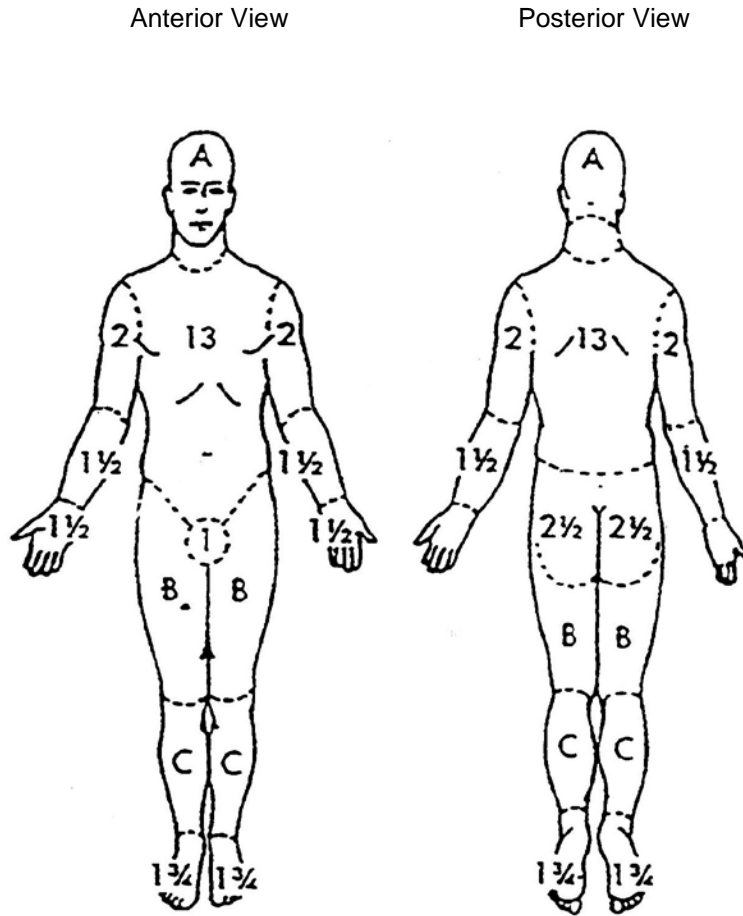


Anterior View

Posterior View

CHILD BURN CHART

Estimation of burn injury: Areas designated by letters (A, B, and C) represent percentages of body surface area that vary according to age. The accompanying table indicates the relative percentage of these areas at various stages in life.



Lund-Browder Chart

Relative percentages of areas affected by growth (in years)

AGE IN YEARS	0	1	5	10	15	Adult
A: Head (back or front)	9.5	8.5	6.5	5.5	4.5	3.5
B: 1 Thigh (back or front)	2.75	3.25	4.0	4.25	4.5	4.75
C: 1 leg (back or front)	2.5	2.5	2.75	3.0	3.25	3.5

Second degree _____ and
 Third degree _____ =
Total percent burned _____

DEATH – STATUTE AND EXAMPLES

"Any occurrence that results in the death of a patient or resident of the facility and is required to be reported to the Coroner pursuant to Section 30-10-606, C.R.S., as arising from an unexplained cause or under suspicious circumstances."
25-1-124(2)(a), C.R.S.

2 Elements Needed:

- ✓ **Occurrence resulting in death**
- ✓ **Reportable to the coroner as unexplained or suspicious**

1. Are unexpected deaths reportable?

They are reportable if they result from an occurrence (event). Examples include, but are not limited to; choking, surgical errors, medication errors, falls, allergic reactions, and suicides, etc.

2. Are all DOAs (Death On Arrival) in an emergency department reportable?

No, only those deaths that happen in the facility as a result of an occurrence, and are reportable to the Coroner **because** of suspicious or unexplained circumstances are reportable.

3. Coroners vary in what they require facilities to report. What criteria are used by Colorado Department of Public Health and Environment, HFEMSD?

The Occurrence reporting requirement is defined by Colorado Revised Statute 30-10-606 C.R.S. HFEMSD providers are required to report under those standards. However this does not relieve facilities from the reporting requirements of their local county Coroner, which may vary from State standards.

4. Are deaths reportable, when despite the physician listing the cause of death, the family demands an autopsy?

No, deaths are reportable only if the death meets HFEMSD reporting criteria.

5. If a suicide occurs off the premises of a residential facility is it reportable?

If the death occurred while the client is under the supervision of the facility, it is reportable regardless of where or when the death occurred.

6. If a suicide occurs while the client is off the premises of a day treatment program, is it reportable?

If the death occurs during the time the client is under the supervision of the program, it is reportable, regardless of where it occurs.

7. A resident is transported to the hospital and subsequently dies in the hospital. Is this reportable?

If the death is the result of an event that happened while under supervision of the facility, the death is reportable, and the facility is obliged to report the occurrence to HFEMSD.

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**DEATH
(HOME BASED EXAMPLES)**

1. **An RN was scheduled for a home visit and tried unsuccessfully to reach the patient by phone. The RN placed a phone call to the patient's physician's office and was advised that the patient had expired, but no information was available to the agency concerning the cause of death. Is this reportable by the agency?**

No, because there is no information that would suggest that the death was related to the care being provided by staff. If later information reveals a possible relationship between care being provided and the death, it would be reportable at that point.

2. **The agency was notified by a client's daughter that the client had passed away. The coroner was not involved as it was an anticipated death. Is this reportable by the agency?**

No, because there is nothing to suggest the death was related to the agency's care. The death was anticipated.

3. **An agency was notified by Long Term Care Options that their patient had expired, but no circumstances concerning the death were known. The agency contacted the Coroner's Office and learned that the patient had been found by his son, with empty pill bottles around him. Is this reportable by the agency?**

Yes, suicides are reportable. We would want to know if the patient had been receiving mental health services and if so, how recently? Had the patient been identified as depressed? Had the patient exhibited recent signs of depression and if so, were they being addressed?

4. **A patient did not answer the door for a scheduled CNA visit. The CNA asked the apartment maintenance person to do a welfare check on the patient, and when the maintenance man opened the apartment door, the patient was found expired. Is this reportable by the agency?**

No, there was no staff present at the time of death and no information to suggest the death was related to staff care.

5. **A medication error occurred during an LPN visit to a patient. The patient's physician was contacted and his instructions followed. There did not appear to be any negative outcome to the patient. A few days later, the agency learned that the patient had been hospitalized and had died. Is this reportable by the agency?**

Yes, because there is a possible connection between the death and the medication error. The agency should report as a death occurrence and the autopsy and/or death certificate would determine if it is reportable.

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DIVERTED DRUGS - STATUTE AND EXAMPLES

"Any occurrence in which drugs intended for use by patients or residents are diverted to use by other persons"
25-1-124 (2) (g) C.R.S.

1 Element needed:

✓ **Deliberate**

1. **A Class III drug (one dose) was missing at the shift count. There was no evidence that the patient did not receive the medication. Is this reportable?**

No, this is not reportable. At this point, this could have been a counting or documentation error. There was no evidence that the medication was deliberately diverted. The facility needs further investigation which includes patient interview, and nursing documentation.

2. **A resident complained to staff that she was not always receiving the two Vicodin tablets as ordered. However, two Vicodin were always signed out as given on the medication administration sheet. Is this reportable?**

At this point in time it is not reportable. More information is required. The investigation should include, but not be limited to: a pain assessment; verifying the patient order for Vicodin; and interviews with the reporting resident, other residents, and staff. The interview may include questions such as; is there a particular day, a shift, or staff members(s) when the Vicodin is not administered as ordered? The investigation may lead to a decision that the Vicodin was likely diverted and would be a reportable occurrence.

3. **A discharged resident's medications were locked in a file cabinet until the pharmacist visited the facility to dispose of them. There were numerous medications, although none were narcotics. When the file cabinet was unlocked, all the medications were missing. Only a few staff had a key and when interviewed, all denied removing the medications. Is this reportable?**

Yes, this is reportable. Intent to divert was probable because the medications were secured, and access was limited to staff.

4. **A resident, who self-medicated, kept her medications at her bedside. She reported that a bottle of antibiotics containing a six-day supply of Cipro was missing. The facility conducted a search and found the medications on a staff member. Is this reportable?**

Yes, this is reportable. There is evidence of deliberate diversion.

5. **What classification of drugs needs to be reported?**

The statute does not exclude any classification of drugs. The critical element is the deliberate diversion, not the classification of the drug.

6. **Should reports be made upon discovery of diversion or at the conclusion of the facility's investigation?**

The occurrence becomes reportable when the facility has enough information to think that a diversion is likely to have happened.

7. **How broadly/narrowly will HFEMSD define when medication errors are reportable?**

Medication errors, as such, are not reportable unless they result in a death, brain injury, or neglect.

8. **Staff gives patient “A” medication which belongs to patient “B”, because the medication for patient “A” is not available. Is this reportable?**

Yes, it is reportable. It was deliberate, and a diversion.

9. **A nurse leaves medication for patient “A” on top of the medication cart. Patient “B” grabs them, and swallows them. Patient “B” is not alert or oriented. Is this reportable?**

No, it is not reportable. Because patient “B” is not alert and oriented, it is not deliberate. However, the facility needs to address the issue of staff negligence.

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**DIVERTED DRUGS
(HOME BASED EXAMPLES)**

1. **A client reported to the agency that she was letting an acquaintance stay in her home, and that she thinks the visitor stole her Lorazepam. The agency advised the client to lock her door and not let the acquaintance back in her home. The agency contacted Adult Protective Services with concerns about the client's ability to make safe decisions. Is this reportable by the agency?**

No, it is not reportable. There was no allegation against staff and no suggestion that staff were involved.

2. **A staff member was filling a patient's med minder from a new bottle of Vicodin that had just been picked up from the pharmacy. The staff member stated that the prescription bottle was missing 5 tablets. The patient witnessed the staff member counting out the tablets, and verified that the medication was missing. Is this reportable by the agency?**

Yes, because there is a possibility the pharmacy had diverted the medication. The agency needs to explore with the pharmacy why there were missing tablets of Vicodin.

3. **An agency received a note from a PCP that she was apologizing for "borrowing" a tablet of pain killer from her client. She stated that she had a migraine headache and needed to take something for the pain so that she could continue with her visit. Is this reportable by the agency?**

Yes it is reportable. "Borrowing" medications is considered drug diversion regardless of whether the client had knowingly allowed the staff member to "borrow" the medication.

4. **A patient reported that she was missing a bottle of Ambien. She wasn't sure of the date, but it was sometime within the last two weeks. She stated that she thought her PCP took it. The client has many people in and out of her home. Is this reportable by the agency?**

Yes, it is reportable because the client is alleging the staff member diverted the medication. Although the client was unsure of when it went missing and other could have taken it, the agency still needs to investigate to determine if their staff did divert. The agency should contact other clients for whom the staff member provides care to determine if they have had any issues with their medications.

5. **An agency received a call from a patient who reported that her nurse had taken "a whole bunch" of her pain pills. She wasn't sure how many. She stated that the bottle was nearly full when she took one in the early morning, and that after her wound care was done, there were hardly any left. The patient stated that she was in the bathroom when the wound care nurse arrived, and that the nurse had waited for her in the bedroom, where the bag containing the bottle of pills was lying on the bed. When asked why she waited until late in the day to report this, she stated that she wanted to see if the nurse would bring them back after she called and told him that she knew he took them. Is this reportable by the agency?**

Yes, it is reportable because the client made a specific allegation against a staff member.

6. **A client reported to the agency that her grandson had stolen her bottle of Vicodin. Is this reportable by the agency?**

No, this is not reportable because there is no allegation against staff and nothing to suggest staff involvement.

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LIFE-THREATENING COMPLICATIONS OF ANESTHESIA – STATUTE AND EXAMPLES

"Any occurrence that results in any of the following serious injuries to a patient or resident: Life-threatening complications of anesthesia..." 25-124-(2)(b)(II) C.R.S.

2 Elements Needed:

- ✓ **Occurrence as a result of Anesthesia**
- ✓ **Life-threatening complication/reaction**

1. **A 74-year-old male resident was sent from the nursing home to the oral surgeon's office for teeth extractions. The oral surgeon's office called to say the resident had an anaphylactic reaction to the anesthesia and was sent to the hospital. Is this reportable?**

This is reportable because it's a life-threatening result of anesthesia. This should be reported by the facility where the resident resides.

2. **A 59-year-old female patient was returned from the recovery room following a mastectomy. She complained of nausea and vomited four times. When the nurse checked her dressing she found the patient had huge welts all over her body. The patient was crying and said, "Please get me some help, I itch all over." Is this reportable?**

This is not reportable at this time because vomiting and hives do not constitute a life-threatening situation, even if it was from anesthesia.

(NO HOME BASED EXAMPLES PROVIDED)

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**LIFE-THREATENING TRANSFUSION ERRORS OR REACTION
STATUTE AND EXAMPLES**

"Any occurrence that results in any of the following serious injuries to a patient or resident: ...life-threatening transfusion errors or reactions" 25-1-124 (2)(b)(II) C.R.S.

2 Elements Needed:

- ✓ **Errors or reaction from transfusion of blood or blood products**
- ✓ **Life-threatening**

1. **A 34-year-old female was receiving the second unit of blood following delivery of a 10-pound boy. She was shivering, and upon examination had a fine red rash on her chest and arms. Her temperature was 102.8 degrees F. Is this reportable?**

This is not reportable because it is not life threatening.

2. **A 70-year-old male was receiving his second unit of blood when the nurse noticed the patient was coughing up frothy sputum. He was very pale and nervous. His blood pressure was dropping and his pulse was rapid and thready. The patient told the nurse that he's sure something is wrong, he feels "awful", but could not give specific complaints. The physician examined the patient and diagnosed pulmonary edema. The transfusion was stopped. Is this reportable?**

This is reportable. Pulmonary edema is life threatening.

(NO HOME BASED EXAMPLES PROVIDED)

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MALFUNCTION OR MISUSE OF EQUIPMENT - STATUTE AND EXAMPLES

"Any occurrence involving the malfunction or intentional or accidental misuse of patient or resident care equipment that occurs during treatment or diagnosis of a patient or resident and that significantly adversely affects or if not averted would have significantly adversely affected a patient or resident of the facility." 25-1-124 (2) (h), C.R.S.

3 Elements Needed:

- ✓ **Malfunction or intentional or unintentional misuse**
- ✓ **Adverse affects or potentially-adverse affects**
- ✓ **Occurring during treatment or diagnosis**

1. **A patient was undergoing a laparoscopy when the bladed trocar being used lacerated an artery. The bleed was immediately found and repaired. The patient required a blood transfusion. The surgeon removed the trocar and indicated it was not functioning properly. In addition, the surgeon had not insufflated the abdominal cavity with gas prior to the use of the bladed trocar. The manufacturer recommends the abdomen be sufficiently insufflated when a trocar is to be used. The surgeon reported that no one in his/her surgical group insufflate the abdomen. The manufacturer's representative examined the trocar, and no malfunction was noted. Is this reportable?**

Yes, this is reportable. The surgeon did not follow the manufacturer's recommendations while using the device. In addition, the facility's Policies and Procedures for laparoscopic surgery includes insufflation. The occurrence is one of misuse of equipment.

2. **A nursing home resident was being removed from an Apollo bathtub by a portable chair. The chair stand failed to lock in place and the resident sustained a laceration to the right ear lobe and an abrasion to the right shoulder. The chair armrest had warped causing the locking mechanism to fail. Is this reportable?**

Yes, this is reportable. The equipment clearly malfunctioned and although staff was able to intervene in this instance, there was an injury.

3. **In the hospital Intensive Care Unit, the wall oxygen delivery system failed and an alarm sounded. The nurses immediately attached the patients to the portable oxygen tanks. Is this reportable?**

No, this is not reportable. The backup system functioned appropriately; thus there was not the potential for serious injury. If the alarm failed, it would be reportable.

4. **Is malfunction or misuse of one-time-use disposable equipment reportable?**

Yes. The elements do not differentiate between reusable or one-time-use equipment.

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**MALFUNCTION/MISUSE OF EQUIPMENT
(HOME BASED EXAMPLES)**

1. **A friend of a client reported that when she went to visit her friend, there was no response when she knocked on the door. The fire department was contacted and when they entered the home, the client was found on the floor unconscious. The friend stated that the client had a Lifeline button, and she pushed it and it didn't work. The firemen tested it, and it did work. The friend or client had not operated the button correctly.
Is this reportable by the agency?**

No, it is not reportable. The equipment did not malfunction. It was not a staff member who misused the equipment. Therefore, it is not reportable.

2. **A caregiver was assisting a client, who is in a wheelchair, onto a platform to use his electrical lift that allows him to get into his home. The lift is in the garage. As the caregiver was operating the lift, the client's left foot got caught between the lift and the door frame. There is a two to three inch gap between the lift and the door frame. The client alerted the caregiver and she lowered the lift. The care giver assessed the foot and noted bleeding. She applied pressure to the wound, but the bleeding would not stop. The client is on Coumadin. The caregiver called the agency and was instructed to call 911. The client was transported to the ER.
Is this reportable by the agency?**

Yes, it is reportable. The caregiver did not use the lift appropriately. The lift was in the garage and the agency was not aware the client had the lift. Therefore, staff had not been trained on use of the lift.

3. **A caregiver was doing a fill-in visit. She arrived at the client's home and was helping with housekeeping when the client stated that she wanted to get on her treadmill. The caregiver asked the client if she got on the treadmill often, and the client answered that she did. The client got on the treadmill and when she started to lose her balance, she turned the speed up instead of turning the treadmill off. She fell backward off the treadmill. The caregiver stated she was standing by the treadmill watching the client, but was unable to do anything.
Is this reportable by the agency?**

No, it is not reportable. The client chose to use her treadmill and did so independently. The treadmill did not malfunction. The client lost her balance and hit the wrong button.

4. **A caregiver was helping a client shower. A leg on the shower chair broke, and the caregiver had to lower the client to the floor of the shower. The client sustained a bruise. The shower chair belonged to the client.
Is this reportable by the agency?**

Yes, it is reportable. The equipment broke during care being provided by the staff member.

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MISAPPROPRIATION OF PATIENT/RESIDENT PROPERTY-- STATUTE AND EXAMPLES

"Any occurrence involving misappropriation of a patient's or resident's property. For purposes of this paragraph (f), "Misappropriation of a patient's or resident's property" means a pattern of or deliberately misplacing, exploiting, or wrongfully using, either temporarily or permanently, a patient's or resident's belongings or money without the patient's or resident's consent" 25-1-124 (2)(f), C.R.S.

2 Elements Needed:

- ✓ **Deliberate misplacing, exploiting, or wrongful use of a patient's or resident's property**
OR
A pattern of misplacing, exploiting, or wrongful use of a patient's or resident's property
AND
- ✓ **Patient/Resident consent not given**

1. **The resident's daughter reported that her mother's ruby ring, which she last saw two days ago, was missing. The resident has mild dementia, but the daughter insisted the resident did not misplace it. The daughter implied a staff member was responsible. Is this reportable?**

At this point this is not reportable because the facility has no evidence of deliberate misplacing or wrongful use of the ring. The facility needs to conduct a search. The ring could be lost.

Following the search, the ring had not been found. The daughter observed a staff member wearing what she believes to be her mother's ring. The daughter notified the police. Is this reportable?

This is reportable because there is reason to believe a staff member may have taken the ring.

2. **The facility was given \$21.00 by three different families on Wednesday, so their family members could go to the zoo outing on Friday. The person at the desk took the money and gave it to the nurse, who locked it in the medicine drawer. On Friday morning, the Social Worker asked the nurse for the money for the three residents to go to the zoo. There was no money in the medicine drawer. Is this reportable?**

This is reportable. The staff was questioned and denied knowledge of the missing money. Deliberateness was implied because the money was in a locked drawer and only the staff had a key to the drawer.

3. **A resident reported that the night shift was using her personal cell phone for other residents without her permission. Is this reportable?**

This is reportable because the resident had not given permission for the use of her personal property by others in the facility.

4. **A staff member was seen using a wheelchair belonging to resident "B" to transport resident "A" to the beauty shop. Resident "B" is mildly confused. Is this reportable?**

This is not reportable at this point because resident "B" could have given permission to use the wheelchair. There isn't enough information to make a determination of consent or misappropriation at this time.

5. Resident "A" alleged that resident "B" took his billfold containing \$20. Staff searched the room of resident "B" and found the billfold and money. Is this reportable?

This is reportable because resident 'A' did not give permission for resident "B" to take the billfold and money.

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**MISAPPROPRIATION OF PROPERTY
(HOME BASED EXAMPLES)**

1. **A client called with a complaint that approximately \$1000.00 was taken out of her debit card account. She suspected a PCP that had been working in her home. The PCP is no longer employed with this agency.
Is this reportable by the agency?**

Yes, it is reportable. The staff member was an employee at the time that the money was alleged to have been misappropriated. Also, the client specifically alleged the former staff was the perpetrator.

2. **The son of a former client contacted an agency with an allegation that some of his mother's checks had gone missing and approximately \$900.00 was taken from her account over a 3 month period about 6 months ago. He suspected the care provider that worked for her during this time.
Is this reportable by the agency?**

Yes, because an allegation was made against an employee and the alleged misappropriation happened while a client of the agency.

3. **A detective arrived at an agency and asked if a certain person was their employee. This was verified, and the employee was called to the office. When she arrived, and was questioned by the detective, she admitted to taking checks from her clients and cashing them. She was terminated immediately.
Is this reportable by the agency?**

Yes, it is reportable. She admitted to the misappropriation.

4. **A client reported to an agency that she suspected that her caregiver had stolen a ring and a pair of earrings. She did not see the caregiver take them. The client has a history of making false accusations. The caregiver denied taking the items.
Is this reportable by the agency?**

Yes, it is reportable. The client made an allegation against a specific staff member and the agency needs to investigate, regardless of the client's history of false allegations.

5. **A client reported that \$200.00 was missing from his home. He just wanted the agency to know this, but wasn't making an allegation against the staff. There were many individuals who had been in and out of the home.
Is this reportable by the agency?**

Yes, this would be reportable. Although the client did not make an allegation against a specific staff person, he reported it to the agency. There is clearly an implication that a staff member may have taken the money.

6. **An agency was notified by the police that a client had reported that her wallet had been stolen. She wasn't sure when, but thought maybe her caregiver had taken it. A few days later, the agency learned that the client's wallet had been turned in at a local Walmart where she remembered she had been shopping.
Is this reportable by the agency?**

Yes, it is reportable because the client alleged a staff person may have taken her wallet. Later in the investigation, it was learned the wallet had been found at Walmart. The client had been shopping at the store and lost the wallet. **AT THIS POINT, WE WOULD DEACTIVATE THE OCCURRENCE BECAUSE THERE WAS NO MISAPPROPRIATION.**

7. **An agency learned that a family member, who is a POA (power of attorney) for a patient, has been embezzling the patient's funds for his own use. Is this reportable by the agency?**

No, it is not reportable. However, the agency should assure that the client knows who to inform about the embezzlement (police, Adult Protection etc.).

NOTE: Allegations of misappropriation by a staff person are reportable as an occurrence even if the agency or facility reimburses the patient/client.

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MISSING PERSONS - STATUTE AND EXAMPLES

"Any time that a resident or patient of the facility cannot be located following a search of the facility, the facility grounds, and the area surrounding the facility and there are circumstances that place the resident's health, safety or welfare at risk or, regardless of whether such circumstances exist, the patient or resident has been missing for eight hours." 25-1-124 (2)(c), C.R.S.

1 Element Needed:

- ✓ **At risk and missing after search conducted**
- OR**
- ✓ **Missing more than eight hours, regardless of risk**

1. **A facility receives a call from the local hospital, informing the facility that one of their residents was brought to the hospital after being found by the police. The facility did not know the at-risk resident was missing, so did not initiate a search. The resident was found within 8 hours. Is this reportable?**

Yes, this is reportable. The fact that the facility did not search because they did not know the resident was missing does not exclude the facility from reporting. If an at-risk resident is missing from the building, it is reportable.

2. **A physician admitted a patient to the hospital. The patient had a history of chronic colitis and had recent nausea and vomiting. He was admitted for elective colon surgery, and was receiving IV antibiotics and hydration in preparation for the surgery. The night nurse discovered the patient missing. A search was unsuccessful. No family was listed. He had been missing approximately two hours. Is this reportable?**

No, this is not reportable. He had only been missing two hours. He was not at high risk as his surgery was elective.

3. **A patient was admitted to the hospital for elective colon surgery. He was a poorly controlled diabetic. He had been NPO (nothing by mouth) for two days, and was receiving IV fluids. He was found missing by the night nurse. A search of the facility was conducted but the patient was not found. He had been missing for three hours. Is this reportable?**

Yes, this is reportable. A search had been conducted. The patient was at high risk due to his diagnosis of poorly controlled diabetes, his NPO status, and his need for IV fluids and nourishment, and sugar monitoring. His mental status might have been compromised by the hypoglycemia. This would be reportable at the conclusion of the search.

4. **A resident was sent to the physician's office via a mobility van. His daughter planned to meet him at the physician's office. The appointment date was miscommunicated and the office was closed. The resident did not return at the expected time. The facility called the physician's office and discovered that the office was closed. The resident is mildly confused. He had been missing for four hours. Is this reportable?**

No, this is not reportable. No search had been made. He was not at high risk based on known information and had not been missing 8 hours.

5. **Same scenario as in #4, however, this was an 88-year-old male resident with congestive heart failure and dementia, who was unable to make his needs known. After discovering the mix-up on the appointment date, the daughter was contacted. She did not know his whereabouts. Staff went to the physician's office and conducted a search. They were unable to locate the resident and the police were contacted. He had been missing for four hours. Is this reportable?**

Yes, this is reportable. A search had been conducted and the resident was missing. He was at high risk due to his mental status and inability to make his needs known, his age and medical condition. This became reportable at the conclusion of the search.

6. If a patient leaves the hospital AMA (against medical advice), is this a reportable occurrence?

No, the person has announced his intention to leave and is therefore, not a missing person.

7. Are all patients who leave a Hospital Emergency Department reportable as missing persons?

There have been numerous questions concerning persons who leave the emergency department after triage, but prior to being seen by a physician. For purposes of occurrence reporting, a patient will be considered a "missing person" from the emergency department *only if a physician has assessed them and a decision has been made to admit the individual to a hospital or other treatment facility*. People who leave the emergency department prior to being seen by a physician are not reportable to the HFEMSD as "missing persons".

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**MISSING PERSON
(HOME BASED EXAMPLES)**

1. **A caregiver was accompanying a client on a shopping trip. The caregiver went outside the store to take a cell phone call and when she returned could not locate the client. She contacted the agency and another person from the agency came to pick her up and they drove around the area searching. They discovered that the client's car was gone from the parking lot and when they returned to the home, they found the client at home.
Is this reportable by the agency?**

In order to determine if this meets the elements for reporting, you would need to determine if the client was at risk. If the client is independent and not in need of staff supervision, it would not be reportable. If the client is at risk it would be reportable as she was not located during the search of the store and parking area.

2. **An employee of an agency saw a television story that an elderly person had wandered away from their home and was missing. It was one of their clients. The facility staff was not in the home or involved when this happened.
Is this reportable by the agency?**

No, it would only be reportable if the staff person was providing necessary supervision to the client.

3. **A family member who is employed as the client's caregiver, and who lives with the client called the agency and reported that the client had left and had been gone for 2 days. He reported that this is a common occurrence and that the client always shows up in a couple of days.
Is this reportable by the agency?**

Yes, because the family member is also a staff member (and lives with the client 24/7) and the client has been missing longer than 8 hours.

4. **The agency tried to do a discharge visit with a client who was no longer homebound. The RN made several phone calls during the week and left voice messages when there was no answer. They left messages with the emergency contact people which were never returned. They went to the client's home and knocked on the door and windows. The blinds were pulled. They contacted the police and were informed that when the police went to do a welfare check, they found the apartment empty. They tried to reach the client by phone the next week and got a message that the phone had been disconnected.
Is this reportable by the agency?**

No, it would not be reportable because the client was not under the supervision of any staff member when the client went missing.

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NEGLECT - STATUTE AND EXAMPLES

"Any occurrence involving neglect of a patient or resident as described in Section 26-3.1-101 (4)(b), C.R.S."; [25-1-124(e) C.R.S.]

*Caretaker neglect which occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision is not secured for the patient or resident (**at-risk adult**) or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise; except that the withholding of artificial nourishment in accordance with the 'Colorado Medical Treatment Decision Act', Article 18 of Title 15, C.R.S., shall not be considered as abuse.*

1 Element Needed:

- ✓ **Failure to provide any care or services as provided above resulting in actual harm**
OR
- ✓ **Staff member has a history in the past 12 months of similar neglect and had been counseled and/or re-educated**
OR
- ✓ **Staff member intentionally failed to follow standard of practice and/or facility policy with significant potential for harm**

1. **A resident requires a Hoyer lift for transfers. Two staff members transfer the resident without the lift. The resident falls and sustains a fracture. The Hoyer lift was available but the staff members were in a hurry and chose not to use it. Is this reportable as neglect?**

Yes. The staff members knew they were supposed to use the Hoyer lift and the lift was available. There was actual harm to the resident caused by intentional failure to follow a standard of practice and/or facility policy.

2. **A resident is being transported in the facility van. The driver failed to secure the resident's wheelchair per facility protocol. The van stopped suddenly causing the residents wheelchair to tip over. The resident received minor abrasions. Is this reportable as neglect?**

Yes, the resident was injured and the staff member intentionally failed to follow facility policy.

3. **Night staff failed to assure that a resident's bed alarm was working properly. The resident attempted to get out of bed and fell, fracturing her hip. The staff had looked at the light near the resident's bed that was "red". This usually indicated the alarm was functioning, however, this resident had a different type of alarm than any other resident in the facility. In order to be sure it was on, staff needed to check a switch in addition to looking at the light. The night staff had not been inserviced on this particular alarm. Is this neglect and reportable.**

No, not reportable as neglect. The staff had not been trained; therefore they thought they were following proper procedure. However, this could be deficient practice for the facility as they failed to provide all staff caring for this resident with necessary training.

4. **A resident was on a 2-hour toileting schedule. A staff person failed to toilet the resident once during that shift. The resident was incontinent but did not suffer any skin breakdown. The resident did not have a history of skin breakdown. Is this reportable as neglect? The staff person had no history of failure to provide care.**

No. There was no pattern of poor care and there was no injury to the resident. However, it is deficient practice and the facility needs to address it. If this resident was high risk for pressure sores it could be considered neglect due to the potential for harm. If the same staff person had a similar issue after being retrained then it would be considered neglect.

5. **Morning staff discovered a resident's call light unplugged. Interview with the resident and other staff determined that a CNA unplugged the call light because the resident had been using it frequently during the night. The resident was not harmed. Is this reportable as neglect?**

If the staff member had a similar instance of not providing resident care within the previous 12 months, then it would be considered neglect.

6. **A resident falls on the evening shift. Staff witnessed the fall. The resident is assessed and no injury noted. The resident does not complain of pain. Staff does not document the fall and does not pass the information on to the next shift, which is contrary to facility policy. No increased monitoring is performed, as other staff members are unaware of the fall. For the next two days the resident complains of pain. After two days, the physician is notified and x-rays taken which confirm a fracture. Is this reportable as neglect?**

Yes. Staff was aware of the fall and potential for injury. By not following the fall protocol and passing on the information to the next shift, the resident suffered pain for 2 days. This might have been avoided had the pain been assessed and addressed earlier.

7. **A nurse administers insulin to the wrong patient. The nurse failed to verify the resident's identity prior to giving the medication. The resident was lethargic for the next 24 hours. Is this reportable as neglect?**

The facility needs to assess the potential for harm to the resident. In this scenario, the resident was not seriously harmed, but the insulin had the potential to cause more than minimal harm. It would not have to be reported as neglect but staff training needs to occur. If the same staff member made the same type of error following re-training, it would be reportable even if the resident was not harmed.

8. **Staff put a hot pack on a resident's back. The hot pack was placed on the resident without sufficient padding between the hot pack and the skin. Staff was aware of what amount of padding should be used to prevent a burn. The resident had fragile skin due to her age. She sustained a partial thickness burn. Is this reportable as neglect?**

Yes. The staff members were trained and aware of the protocol for skin protection when using a hot pack. They failed to follow the protocol and the resident was harmed.

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**NEGLECT
(HOME BASED EXAMPLES)**

1. **A PCP left a client unattended in a shower chair with hot water running. The client's right foot was in the water, and the client could not determine if the water was too hot or not. The PCP returned, adjusted the water and continued bathing the client. After the shower was over, the PCP was drying the client off when the client's son came into the room and noticed a burn on the client's foot. The client was sent to the emergency room. The PCP was counseled to never leave a client unattended in a shower.
Is this reportable by the agency?**

Yes, because it was neglectful and the client was harmed.

2. **The sister of a client, who is employed by the agency as his caregiver, took the client to a friend's house. The client is a ventilator dependent quadriplegic. The caregiver/sister decided to stay the night and not return the client back to their home. She plugged his backup ventilator, which is located on the back of his power wheelchair, into an outlet that was later determined not to have power. At 8:00 AM the next morning, the ventilator alarm went off as both the battery and the backup battery had run out of juice. The caregiver sent the friend out to the van to get the client's ambu bag, which should be by the client's side at all times, so he could be manually ventilated. The friend found the van locked and had to come back in and hunt for the keys. The keys were found and the ambu bag retrieved, and the caregiver/sister began manually ventilating the client. 911 had been called and the paramedics arrived and began CPR as they said that the client had no heartbeat. The client was transported to the hospital, and did survive.
Is this reportable by the agency?**

Yes, the sister was also a staff member and was neglectful by not having his ambu bag available and not checking the power source. The client was harmed and required hospitalization.

3. **A family member called the agency to file a complaint that a nurse did not make a skilled visit the night before. The nurse was contacted and admitted she did not go to the visit because she was having car problems. She did not contact the agency that she would not be going.
Is this reportable by the agency?**

Yes, because the nurse would be aware that she need to notify the agency of her inability to make the visit. It would be a standard of nursing practice not to abandon a patient.

4. **A nurse reported to her agency that she had concerns about a client's safety and unhealthy living situation. The client lives with his son. The nurse reported that the client was not bathing and was refusing assistance. The son was not completing assistive tasks to ensure proper nutrition and food in the home. She reported that the house was dirty with food crusted dishes on the counter and in the sink. The client has dementia and needs care 24/7. The client did not know where his son was. Meds were missing from the client's medication carousel, and the nurse did not know if the son was taking them. She called to refill a prescription and was told that the prescription had already been refilled and they were waiting for the son to pick it up. Adult Protective Services was contacted.
Is this reportable by the agency?**

No, it is not reportable as an occurrence because it is not a staff member who is being neglectful. The agency does need to contact Adult Protective Services and document what actions they are taking.

5. **The mother of a client called the agency to report that she found the agency CNA sleeping in a chair in her child's room. She had to call out the CNA's name three times before she woke up. The mother states that this put her child in danger, as the staff was to remain awake during her shift.**

Is this reportable by the agency?

Yes, because the mother is alleging neglect. The facility would need to determine if the child was in danger and if the staff member was aware they needed to be awake throughout the shift.

6. **An unlicensed caregiver administered morphine to a hospice client in violation of company policy, and the agency license. The caregiver stated that she administered the morphine during the night because the client had been moaning and screaming in pain, and the CNAs in the assisted living where the client lives had not been given doctor's orders to administer the medication. The caregiver stated that she didn't know that she could not administer meds even though the agency emphasizes during the hiring process and orientation that they can only do medication reminders. In addition, before this incident, the Director had personally spoken with all of this client's caregivers, to remind them that they cannot administer medications.**

Is this reportable by the agency?

Yes, it is reportable. The staff member was aware she was not allowed to administer medications but did so anyway. Administering a medication without physician orders put the client at risk.

7. **A caregiver was walking to a recreation center with the client. Halfway there, the client stated that she wanted to go the rest of the way herself, and stated that she knew the way. The caregiver returned to the home. Shortly after that, the husband of the resident received a phone call that the resident had tripped and fallen and had been transported to the local hospital. The resident sustained a fractured vertebra.**

Is this reportable by the agency?

In order to determine if it meets the elements, the agency needs to determine if the client required staff supervision when out walking. If so, and staff knew they were to accompany the client, it would be reportable. If the client was independent and the staff member was not expected to provide supervision on walks, it would not be reportable.

8. **A caregiver was working a 10:00 PM to 7:00 AM shift with a client with a history of wandering. The caregiver was to be awake throughout the shift due to the wandering behavior. The client had been up 6 times during the shift, and her granddaughter gave her some Tylenol at 3:45 AM, so the client could sleep. The caregiver reported that she went upstairs to sit with the client and that she fell asleep. The caregiver woke up when she heard a loud noise, and found that the client had fallen down the stairs.**

Is this reportable by the agency?

Yes, because the caregiver knew she was to be awake and the client was harmed as a result of the caregiver's failure to supervise.

9. **A caregiver walked out on her shift and has not been heard of since. The agency has been unable to reach her.**

Is this reportable by the agency?

Yes, abandonment would be a violation of standards or practice/facility policy.

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SPINAL CORD INJURY - Questions and Answers

"Any occurrence that results in any of the following serious injuries to a patient or resident: (I) ...or Spinal Cord injuries..". 25-1-124 (2)(b)(I) C.R.S.

Any trauma to the central nervous system within the spinal column, including the cervical spine, thoracic spine, lumbar spine, and sacral nerves which cause: motor or sensory loss which may be permanent or temporary (HFEMSD guideline).

3 Elements needed:

- ✓ **Result of an occurrence**
- ✓ **Functional loss consistent with spinal cord injury**
- ✓ **Permanent or temporary**

1. **A 25-year-old male developmentally disabled client was on a group outing at the community pool. He ran, jumped into the pool, hit his back on the side of the pool, and was lifted out of the pool screaming in pain. He was assessed and found to have pain in his back at the area that was scraped. This area looked like a brush burn and there was no bleeding. He could not move his legs. He was transported to the hospital for evaluation and treatment. Is this reportable?**

This is reportable because the client had an injury that caused motor loss.

2. **An 82-year-old female resident with severe osteoarthritis and osteoporosis fell from her wheelchair, and complained of immediate severe back pain. An x-ray was taken that showed vertebral fractures of T4, T5, and T6. Is this reportable?**

This is not reportable because there was no apparent injury to the spinal cord. The injury was to the vertebrae.

3. **A patient who has undergone a laminectomy comes out of the anesthetic with loss of body function. Is this reportable?**

This is reportable because there is a possibility of a spinal cord injury as a complication of the surgery.

(NO HOME BASED EXAMPLES PROVIDED)

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FAQ Sheet
Home Care
Mental Health Centers
Other Agencies Providing Care in the Home Setting

PHYSICAL ABUSE (2 elements needed)

- Intent or knowingly or recklessly
- Bodily injury and/or serious bodily injury
And/or
Unreasonable confinement or restraint

Any allegation of abuse (that meets the above elements) made against the agency staff member.

Reporting occurrences to CDPHE does not relieve the agency/facility from reporting requirements of other agencies. If a determination is made that an event is not reportable to CDPHE, this does not relieve the agency/facility of its responsibility to investigate and take appropriate action.

SEXUAL ABUSE (3 elements needed)

- Knowingly
- Consent not given or unable to give consent
- Sexual intrusion or penetration or, touching intimate parts or the clothing covering the intimate parts or, examines or treats the consumer for other than bona fide medical purposes or, observes or photographs another person's intimate parts or, physical force/threat.

Any allegation of abuse (that meets the above elements) made against the agency staff member.

Reporting occurrences to CDPHE does not relieve the agency/facility from reporting requirements of other agencies. If a determination is made that an event is not reportable to CDPHE, this does not relieve the agency/facility of its responsibility to investigate and take appropriate action.

VERBAL ABUSE/MENACING (3 elements needed)

- Knowingly
- Threat or physical action (including threatening gesture)
- Fear of imminent serious bodily injury

Any allegation of abuse (that meets the above elements) made against the agency staff member.

Reporting occurrences to CDPHE does not relieve the agency/facility from reporting requirements of other agencies. If a determination is made that an event is not reportable to CDPHE, this does not relieve the agency/facility of its responsibility to investigate and take appropriate action.

BRAIN INJURY (2 elements needed)

- ❑ Result of occurrence
And
- ❑ Change in level or consciousness and/or loss of bodily function
Or
Diagnostic test which shows brain injury

Brain injury that is the result of any occurrence involving the staff member, including the lack of appropriate care planning and implementing appropriate safety measures.

Examples:

An inappropriate transfer that results in the consumer falling and sustaining a brain injury.

While assisting a consumer with consumption of a meal, the consumer chokes, sustaining a loss of consciousness/anoxic injury.

A consumer experiences a fall at home, sustains a head injury, which results in a change in the consumer's level of consciousness.

BURNS (2 elements needed)

- ❑ Second or third degree burns
- ❑ 20% or more of body surface in adult or 15% or more of body surface of child

A burn resulting from care being given by the agency staff member, or lack of implementation of appropriate safety measures by the staff member/agency.

Example:

Consumer is put on a heating pad by staff member and sustains a reportable burn.

Consumer is not educated (with frequent reinforcement) by a staff member on appropriate safety measures related to the use of oxygen and sustains a reportable burn.

DEATHS (2 elements needed)

- ❑ Occurrence resulting in death
- ❑ Reportable to the coroner as unexplained or suspicious

Examples:

Incorrect medication given (need to consider if this is neglect)

A fall during a transfer resulting in death

The patient chokes and expires

Any suicide should be initially reported to the Division

If the death occurred while the consumer is under the supervision of the agency, and the death meets the occurrence elements, it is reportable regardless of where or when the death occurred.

DRUG DIVERSION (1 element needed)

- Deliberate

Any allegation that the agency staff member diverted medications prescribed for the consumer.

An allegation by the consumer that a family member/friend, who is not employed by the agency, took their medication would not be reportable to the Division.

LIFE-THREATENING ANESTHESIA COMPLICATIONS (2 elements needed)

- Occurrence as a result of anesthesia
- Life-threatening complication/reaction

Unlikely to Apply

LIFE-THREATENING TRANSFUSIONS ERRORS OR REACTIONS (2 elements needed)

- Errors or reaction from transfusion of blood or blood products
- Life-threatening

Unlikely to apply

MALFUNCTION OR MISUSE OF EQUIPMENT (3 elements needed)

- Malfunction or intentional or unintentional misuse
- Adversely affects or potentially adversely affects
- Occurring during treatment or diagnosis

Any equipment used for treatment or monitoring by the agency that malfunctions should be reported. This would include one-time use equipment.

Any misuse of equipment by the agency staff when that equipment is being used to treat or monitor a consumer.

If the equipment is provided by the agency and is being used by persons other than the consumer and malfunctions, it should be reported.

MISAPPROPRIATION OF RESIDENT/PATIENT PROPERTY (2 elements needed)

- Deliberate misplacing, exploiting, or wrongful use of a consumer's/resident's property
Or
A pattern of misplacing, exploiting, or wrongful use of a consumer's/resident's property
And
- Consumer/Resident consent not given

If the allegation is made against the agency staff member, then it is reportable.

If the consumer reports misappropriation by a family member to the agency, it would not be reportable to the Division, unless the family member person was an employee of the agency.

MISSING PERSONS (1 element needed)

- At risk and missing after search conducted
Or
- Missing more than eight hours, regardless of risk

If the consumer goes missing while the agency staff member is providing care/treatment, it would be reportable if it meets the elements.

If agency staff member takes a consumer out of the home for any reason and the person goes missing, it would be reportable.

Example:

Staff member takes consumer to a medical appointment and leaves them unattended and they go missing.

NEGLECT (1 element needed)

- Failure to provide any care or services as provided above resulting in actual harm
Or
- Staff member has a history in the past 12 months of similar neglect and had been counseled and/or re-educated
Or
- Staff member intentionally failed to follow standard of practice and/or the agency/facility policy *with significant potential for harm.*

If the neglect involves the agency staff member, it is reportable. See above elements

If the neglect involves a family member/other who is not an employee of the agency, it would not be reportable to the Division.

SPINAL CORD INJURIES (3 elements needed)

- Result of an occurrence
- Functional loss consistent with spinal cord injury
- Permanent or temporary

Spinal cord injury that is the result of any occurrence involving the staff member, including the lack of appropriate care planning and implementing appropriate safety measures.

Example:

A fall during a transfer that results in a spinal cord injury.

REPORTING OCCURRENCES TO CDPHE DOES NOT RELIEVE THE AGENCY/FACILITY FROM REPORTING REQUIREMENTS OF OTHER AGENCIES.

IF A DETERMINATION IS MADE THAT AN EVENT IS NOT REPORTABLE TO CDPHE, THIS DOES NOT RELIEVE THE AGENCY/FACILITY OF ITS RESPONSIBILITY TO INVESTIGATE AND TAKE APPROPRIATE ACTION.

PHYSICAL, VERBAL, AND SEXUAL ABUSE ALLEGATIONS THAT MEET THE ELEMENTS ARE REPORTABLE TO THE POLICE.

COLORADO REVISED STATUTES 2009

OCCURRENCE REPORTING STATUTE

25-1-124. Health care facilities – consumer information – reporting – release. (1) The general assembly hereby finds that an increasing number of people are faced with the difficult task of choosing a health care facility for themselves and their family members. This task may be made less difficult by improved access to reliable, helpful, and unbiased information concerning the quality of care and the safety of the environment offered by each health care facility. The general assembly further finds that it is appropriate that the department, in keeping with its role of protecting and improving the public health, solicit this information from health care facilities and disseminate it to the public in a form that will assist people in making informed choices among health care facilities.

(2) Each health care facility licensed pursuant to section 25-3-101 or certified pursuant to section 25-1.5-103 (1) (a) (II) shall report to the department the following occurrences:

(a) Any occurrence that results in the death of a patient or resident of the facility and is required to be reported to the coroner pursuant to section 30-10-606, C.R.S., as arising from an unexplained cause or under suspicious circumstances;

(b) Any occurrence that results in any of the following serious injuries to a patient or resident:

(I) Brain or spinal cord injuries;

(II) Life-threatening complications of anesthesia or life-threatening transfusion errors or reactions;

(III) Second- or third-degree burns involving twenty percent or more of the body surface area of an adult patient or resident or fifteen percent or more of the body surface area of a child patient or resident;

(c) Any time that a resident or patient of the facility cannot be located following a search of the facility, the facility grounds, and the area surrounding the facility and there are circumstances that place the resident's health, safety, or welfare at risk or, regardless of whether such circumstances exist, the patient or resident has been missing for eight hours;

(d) Any occurrence involving physical, sexual, or verbal abuse of a patient or resident, as described in section 18-3-202, 18-3-203, 18-3-204, 18-3-206, 18-3-402, 18-3-403, as it existed prior to July 1, 2000, 18-3-404, or 18-3-405, C.R.S., by another patient or resident, an employee of the facility, or a visitor to the facility;

(e) Any occurrence involving neglect of a patient or resident, as described in section 26-3.1-101 (4) (b), C.R.S.;

(f) Any occurrence involving misappropriation of a patient's or resident's property. For purposes of this paragraph (f), "misappropriation of a patient's or resident's property" means a pattern of or deliberately misplacing, exploiting, or wrongfully using, either temporarily or permanently, a patient's or resident's belongings or money without the patient's or resident's consent.

(g) Any occurrence in which drugs intended for use by patients or residents are diverted to use by other persons; and

(h) Any occurrence involving the malfunction or intentional or accidental misuse of patient or resident care equipment that occurs during treatment or diagnosis of a patient or resident and that significantly adversely affects or if not averted would have significantly adversely affected a patient or resident of the facility.

(2.5) (a) In addition to the reports required by subsection (2) of this section, if the Colorado Attorney General, the Division for Developmental Disabilities in the Department of Human Services, a community centered board, an adult protection service, or a law enforcement agency makes a report of an occurrence as described in subsection (2) of this section involving a licensed long-term care facility that report shall be provided to the Department and shall be made available for inspection consistent with the provisions of subsection (6) of this section. Any reports concerning adult protection service shall be in compliance with the confidentiality requirements of section 26-3.1-102 (7), C.R.S.

(b) For purposes of this subsection (2.5), a “licensed long-term care facility” means a licensed community residential or group home, a licensed intermediate care facility for the mentally retarded, and a licensed facility for persons with developmental disabilities.

(3) The board by rule shall specify the manner, time period, and form in which the reports required pursuant to subsection (2) of this section shall be made.

(4) Any report submitted pursuant to subsection (2) of this section shall be strictly confidential; except that information in any such report may be transmitted to an appropriate regulatory agency having jurisdiction for disciplinary or license sanctions. The information in such reports shall not be made public upon subpoena, search warrant, discovery proceedings, or otherwise, except as provided in subsection (6) of this section.

(5) The department shall investigate each report submitted pursuant to subsection (2) of this section that it determines was appropriately submitted. For each report investigated, the department shall prepare a summary of its findings, including the department's conclusions and whether there was a violation of licensing standards or a deficiency or whether the facility acted appropriately in response to the occurrence. If the investigation is not conducted on site, the department shall specify in the summary how the investigation was conducted. Any investigation conducted pursuant to this subsection (5) shall be in addition to and not in lieu of any inspection required to be conducted pursuant to section 25-1.5-103 (1) (a) with regard to licensing.

(6) (a) The department shall make the following information available to the public:

(I) Any investigation summaries prepared pursuant to subsection (5) of this section;

(II) Any complaints against a health care facility that have been filed with the department and that the department has investigated, including the conclusions reached by the department and whether there was a violation of licensing standards or a deficiency or whether the facility acted appropriately in response to the subject of the complaint; and

(III) A listing of any deficiency citations issued against each health care facility.

(b) The information released pursuant to this subsection (6) shall not identify the patient or resident or the health care professional involved in the report.

(7) Prior to the completion of an investigation pursuant to this section, the department may respond to any inquiry regarding a report received pursuant to subsection (2) of this section by confirming that it has received such report and that an investigation is pending.

(8) In addition to the report to the department for an occurrence described in paragraph (d) of the subsection (2) of this section, the occurrence shall be reported to a law enforcement agency.

OTHER STATUTES REGARDING OCCURRENCES

26-3.1-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "At-risk adult" means an individual eighteen years of age or older who is susceptible to mistreatment as such term is defined in subsection (4) of this section or self-neglect as such term is defined in subsection (7) of this section because the individual is unable to perform or obtain services necessary for the individual's health, safety, or welfare or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the individual's person or affairs.

(2) "Caretaker" means a person, as such term is defined in subsection (5) of this section, who is responsible for the care of an at-risk adult, as such term is defined in subsection (1) of this section, as a result of a family or legal relationship or who has assumed responsibility for the care of an at-risk adult.

(3) "Least restrictive intervention" means acquiring or providing services, including protective services, for the shortest duration and to the minimum extent necessary to remedy or prevent situations of actual mistreatment or self-neglect.

(4) "Mistreatment" means an act or omission which threatens the health, safety, or welfare of an at-risk adult, as such term is defined in subsection (1) of this section, or which exposes the adult to a situation or condition that poses an imminent risk of death, serious bodily injury, or bodily injury to the adult. "Mistreatment" includes, but is not limited to:

(a) Abuse which occurs:

(I) Where there is infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation;

(II) Where unreasonable confinement or restraint is imposed; or

(III) Where there is subjection to nonconsensual sexual conduct or contact classified as a crime under the "Colorado Criminal Code", title 18, C.R.S.;

(b) Caretaker neglect which occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision is not secured for the at-risk adult or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise; except that the withholding of artificial nourishment in accordance with the "Colorado Medical Treatment Decision Act", article 18 of title 15, C.R.S., shall not be considered as abuse;

(c) Exploitation which is the illegal or improper use of an at-risk adult for another person's advantage.

(5) "Person" means one or more individuals, limited liability companies, partnerships, associations, corporations, legal representatives, trustees, receivers, or the state of Colorado, and all political subdivisions and agencies thereof.

(6) "Protective services" means services provided by the state or political subdivisions or agencies thereof in order to prevent the mistreatment or self-neglect of an at-risk adult. Such services include, but are not limited to: Receiving and investigating reports of mistreatment or self-neglect, the provision of casework and counseling services, arranging for coordinating, delivering where appropriate, and monitoring services, including medical care for physical or mental health needs, protection from mistreatment, and assistance with application for public benefits, referral to community service providers, and initiation of probate proceedings.

(7) "Self-neglect" means an act or failure to act whereby an at-risk adult substantially endangers the adult's health, safety, welfare, or life by not seeking or obtaining services necessary to meet the adult's essential human needs. Choice of lifestyle or living arrangements shall not, by itself, be evidence of self-neglect.

18-3-202. Assault in the first degree. (1) A person commits the crime of assault in the first degree if:

(a) With intent to cause serious bodily injury to another person, he causes serious bodily injury to any person by means of a deadly weapon; or

(b) With intent to disfigure another person seriously and permanently, or to destroy, amputate, or disable permanently a member or organ of his body, he causes such an injury to any person; or

(c) Under circumstances manifesting extreme indifference to the value of human life, he knowingly engages in conduct which creates a grave risk of death to another person, and thereby causes serious bodily injury to any person; or

(d) Repealed.

(e) With intent to cause serious bodily injury upon the person of a peace officer or firefighter, he or she threatens with a deadly weapon a peace officer or firefighter engaged in the performance of his or her duties, and the offender knows or reasonably should know that the victim is a peace officer or firefighter acting in the performance of his or her duties; or

(e.5) With intent to cause serious bodily injury upon the person of a judge of a court of competent jurisdiction or an officer of said court, he threatens with a deadly weapon a judge of a court of competent jurisdiction or an officer of said court, and the offender knows or reasonably should know that the victim is a judge of a court of competent jurisdiction or an officer of said court; or

(f) While lawfully confined or in custody as a result of being charged with or convicted of a crime or as a result of being charged as a delinquent child or adjudicated as a delinquent child and with intent to cause serious bodily injury to a person employed by or under contract with a detention facility, as defined in section 18-8-203 (3), or to a person employed by the division in the department of human

services responsible for youth services and who is a youth services counselor or is in the youth services worker classification series, he or she threatens with a deadly weapon such a person engaged in the performance of his or her duties and the offender knows or reasonably should know that the victim is such a person engaged in the performance of his or her duties while employed by or under contract with a detention facility or while employed by the division in the department of human services responsible for youth services. A sentence imposed pursuant to this paragraph (f) shall be served in the department of corrections and shall run consecutively with any sentences being served by the offender. A person who participates in a work release program, a furlough, or any other similar authorized supervised or unsupervised absence from a detention facility, as defined in section 18-8-203 (3), and who is required to report back to the detention facility at a specified time shall be deemed to be in custody.

(2) (a) If assault in the first degree is committed under circumstances where the act causing the injury is performed upon a sudden heat of passion, caused by a serious and highly provoking act of the intended victim, affecting the person causing the injury sufficiently to excite an irresistible passion in a reasonable person, and without an interval between the provocation and the injury sufficient for the voice of reason and humanity to be heard, it is a class 5 felony.

(b) If assault in the first degree is committed without the circumstances provided in paragraph (a) of this subsection (2), it is a class 3 felony.

(c) If a defendant is convicted of assault in the first degree pursuant to subsection (1) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406.

(d) Repealed.

18-3-203. Assault in the second degree. (1) A person commits the crime of assault in the second degree if:

(a) Repealed.

(b) With intent to cause bodily injury to another person, he or she causes such injury to any person by means of a deadly weapon; or

(c) With intent to prevent one whom he or she knows, or should know, to be a peace officer or firefighter from performing a lawful duty, he or she intentionally causes bodily injury to any person; or

(d) He recklessly causes serious bodily injury to another person by means of a deadly weapon; or

(e) For a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness, or other physical or mental impairment or injury to another person by administering to him, without his consent, a drug, substance, or preparation capable of producing the intended harm; or

(f) While lawfully confined or in custody, he or she knowingly and violently applies physical force against the person of a peace officer or firefighter engaged in the performance of his or her duties, or a

judge of a court of competent jurisdiction, or an officer of said court, or, while lawfully confined or in custody as a result of being charged with or convicted of a crime or as a result of being charged as a delinquent child or adjudicated as a delinquent child, he or she knowingly and violently applies physical force against a person engaged in the performance of his or her duties while employed by or under contract with a detention facility, as defined in section 18-8-203 (3), or while employed by the division in the department of human services responsible for youth services and who is a youth services counselor or is in the youth services worker classification series, and the person committing the offense knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, or a judge of a court of competent jurisdiction, or an officer of said court, or a person engaged in the performance of his or her duties while employed by or under contract with a detention facility or while employed by the division in the department of human services responsible for youth services. A sentence imposed pursuant to this paragraph (f) shall be served in the department of corrections and shall run consecutively with any sentences being served by the offender; except that, if the offense is committed against a person employed by the division in the department of human services responsible for youth services, the court may grant probation or a suspended sentence in whole or in part, and such sentence may run concurrently or consecutively with any sentences being served. A person who participates in a work release program, a furlough, or any other similar authorized supervised or unsupervised absence from a detention facility, as defined in section 18-8-203 (3), and who is required to report back to the detention facility at a specified time shall be deemed to be in custody.

(f.5) (I) While lawfully confined in a detention facility within this state, a person with intent to infect, injure, harm, harass, annoy, threaten, or alarm a person in a detention facility whom the actor knows or reasonably should know to be an employee of a detention facility, causes such employee to come into contact with blood, seminal fluid, urine, feces, saliva, mucus, vomit, or any toxic, caustic, or hazardous material by any means, including but not limited to throwing, tossing, or expelling such fluid or material.

(II) (A) Any adult or juvenile who is bound over for trial for the offense described in subparagraph (I) of this paragraph (f.5) subsequent to a preliminary hearing or after having waived the right to a preliminary hearing, any person who is indicted for or is convicted of any such offense, or any person who is determined to have provided blood, seminal fluid, urine, feces, saliva, mucus, or vomit to a person bound over for trial for, indicted for, or convicted of such an offense shall be ordered by the court to submit to a medical test for communicable diseases and to supply blood, feces, urine, saliva, or other bodily fluid required for the test. The results of such test shall be reported to the court or the court's designee, who shall then disclose the results to any victim of the offense who requests such disclosure. Review and disclosure of medical test results by the court shall be closed and confidential, and any transaction records relating thereto shall also be closed and confidential. If a person subject to a medical test for communicable diseases pursuant this sub-subparagraph (A) voluntarily submits to a medical test for communicable diseases, the fact of such person's voluntary submission shall be admissible in mitigation of sentence if the person is convicted of the charged offense.

(B) In addition to any other penalty provided by law, the court may order any person who is convicted of the offense described in subparagraph (I) of this paragraph (f.5) to meet all or any portion of the financial obligations of medical tests performed on and treatment prescribed for the victim or victims of the offense.

(C) At the time of sentencing, the court may order that an offender described in sub-subparagraph (B) of this subparagraph (II) be put on a period of probation for the purpose of paying the testing and treatment costs of the victim or victims; except that the period of probation, when added to any time served, shall not exceed the maximum sentence that can be imposed for the offense.

(III) (A) As used in this paragraph (f.5), "detention facility" means any building, structure, enclosure, vehicle, institution, or place, whether permanent or temporary, fixed or mobile, where persons are or may be lawfully held in custody or confinement under the authority of the state of Colorado or any political subdivision of the state of Colorado.

(B) As used in this paragraph (f.5), "employee of a detention facility" includes employees of the department of corrections, employees of any agency or person operating a detention facility, law enforcement personnel, and any other persons who are present in or in the vicinity of a detention facility and are performing services for a detention facility. "Employee of a detention facility" does not include a person lawfully confined in a detention facility.

(g) With intent to cause bodily injury to another person, he causes serious bodily injury to that person or another.

(2) (a) If assault in the second degree is committed under circumstances where the act causing the injury is performed upon a sudden heat of passion, caused by a serious and highly provoking act of the intended victim, affecting the person causing the injury sufficiently to excite an irresistible passion in a reasonable person, and without an interval between the provocation and the injury sufficient for the voice of reason and humanity to be heard, it is a class 6 felony.

(b) If assault in the second degree is committed without the circumstances provided in paragraph (a) of this subsection (2), it is a class 4 felony.

(b.5) Assault in the second degree by any person under subsection (1) of this section without the circumstances provided in paragraph (a) of this subsection (2) is a class 3 felony if the person who is assaulted, other than a participant in the crime, suffered serious bodily injury during the commission or attempted commission of or flight from the commission or attempted commission of murder, robbery, arson, burglary, escape, kidnapping in the first degree, sexual assault, sexual assault in the first or second degree as such offenses existed prior to July 1, 2000, or class 3 felony sexual assault on a child.

(c) If a defendant is convicted of assault in the second degree pursuant to paragraph (b), (c), (d), or (g) of subsection (1) of this section or paragraph (b.5) of this subsection (2), except with respect to sexual assault or sexual assault in the first degree as it existed prior to July 1, 2000, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406. A defendant convicted of assault in the second degree pursuant to paragraph (b.5) of this subsection (2) with respect to sexual assault or sexual assault in the first degree as it existed prior to July 1, 2000, shall be sentenced in accordance with section 18-1.3-401 (8) (e) or (8) (e.5).

18-3-204. Assault in the third degree. (1) A person commits the crime of assault in the third degree if:

(a) The person knowingly or recklessly causes bodily injury to another person or with criminal negligence the person causes bodily injury to another person by means of a deadly weapon; or

(b) The person, with intent to infect, injure, harm, harass, annoy, threaten, or alarm another person whom the actor knows or reasonably should know to be a peace officer, a firefighter, or an emergency medical technician, causes such other person to come into contact with blood, seminal fluid, urine, feces, saliva, mucus, vomit, or any toxic, caustic, or hazardous material by any means, including but not limited to throwing, tossing, or expelling such fluid or material.

(2) (a) An adult or juvenile who has had a court find that there is probable cause to believe that he or she has committed an offense pursuant to paragraph (b) of subsection (1) of this section or is convicted of an offense pursuant to paragraph (b) of subsection (1) of this section or any person who is determined to have provided blood, seminal fluid, urine, feces, saliva, mucus, or vomit to a person for whom probable cause has been found or been convicted of such an offense shall be ordered by the court to submit to a medical test for communicable diseases and to supply blood, feces, urine, saliva, or other bodily fluid required for the test. The results of such test shall be reported to the court or the court's designee, who shall then disclose the results to any victim of the offense who requests such disclosure. Review and disclosure of medical tests results by the court shall be closed and confidential, and any transaction records relating thereto shall also be closed and confidential. If a person subject to a medical test for communicable diseases pursuant to this subsection (2) voluntarily submits to a medical test for communicable diseases, the fact of the person's voluntary submission shall be admissible in mitigation of sentence if the person is convicted of the charged offense.

(b) In addition to any other penalty provided by law, the court may order any person who is convicted of the offense described in paragraph (b) of subsection (1) of this section to meet all or any portion of the financial obligations of medical tests performed on and treatment prescribed for the victim or victims of the offense.

(3) Assault in the third degree is a class 1 misdemeanor and is extraordinary risk crime that is subject to the modified sentencing range specified in section 18-1.3-501 (3).

18-3-206. Menacing. (1) A person commits the crime of menacing if, by any threat or physical action, he or she knowingly places or attempts to place another person in fear of imminent serious bodily injury. Menacing is a class 3 misdemeanor, but, it is a class 5 felony if committed:

(a) By the use of a deadly weapon or any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon; or

(b) By the person representing verbally or otherwise that he or she is armed with a deadly weapon.

18-3-402. Sexual Assault. 1) Any actor who knowingly inflicts sexual intrusion or sexual penetration on a victim commits sexual assault if:

(a) The actor causes submission of the victim by means of sufficient consequence reasonably calculated to cause submission against the victim's will; or

(b) The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or

(c) The actor knows that the victim submits erroneously, believing the actor to be the victim's spouse; or

(d) At the time of the commission of the act, the victim is less than fifteen years of age and the actor is at least four years older than the victim and is not the spouse of the victim; or

(e) At the time of the commission of the act, the victim is at least fifteen years of age but less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim; or

(f) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, unless the act is incident to a lawful search; or

(g) The actor, while purporting to offer a medical service, engages in treatment or examination of a victim for other than a bona fide medical purpose or in a manner substantially inconsistent with reasonable medical practices; or

(h) The victim is physically helpless and the actor knows the victim is physically helpless and the victim has not consented.

(2) Sexual assault is a class 4 felony, except as provided in subsections (3), (3.5), (4), and (5) of this section.

(3) If committed under the circumstances of paragraph (e) of subsection (1) of this section, sexual assault is a class 1 misdemeanor and is an extraordinary risk crime that is subject to the modified sentencing range specified in section 18-1.3-501 (3).

(3.5) Sexual assault is a class 3 felony if committed under the circumstances described in paragraph (h) of subsection (1) of this section.

(4) Sexual assault is a class 3 felony if it is attended by any one or more of the following circumstances:

(a) The actor causes submission of the victim through the actual application of physical force or physical violence; or

(b) The actor causes submission of the victim by threat of imminent death, serious bodily injury, extreme pain, or kidnapping, to be inflicted on anyone, and the victim believes that the actor has the present ability to execute these threats; or

(c) The actor causes submission of the victim by threatening to retaliate in the future against the victim, or any other person, and the victim reasonably believes that the actor will execute this threat. As used in this paragraph (c), "to retaliate" includes threats of kidnapping, death, serious bodily injury, or extreme pain; or

(d) The actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission.

(e) (Deleted by amendment, L. 2002, p. 1578, § 2, effective July 1, 2002.)

(5) (a) Sexual assault is a class 2 felony if any one or more of the following circumstances exist:

(I) In the commission of the sexual assault, the actor is physically aided or abetted by one or more other persons; or

(II) The victim suffers serious bodily injury; or

(III) The actor is armed with a deadly weapon or an article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon or represents verbally or otherwise that the actor is armed with a deadly weapon and uses the deadly weapon, article, or representation to cause submission of the victim.

(b) (I) If a defendant is convicted of sexual assault pursuant to this subsection (5), the court shall sentence the defendant in accordance with section 18-1.3-401 (8) (e). A person convicted solely of sexual assault pursuant to this subsection (5) shall not be sentenced under the crime of violence provisions of section 18-1.3-406 (2). Any sentence for a conviction under this subsection (5) shall be consecutive to any sentence for a conviction for a crime of violence under section 18-1.3-406.

(II) The provisions of this paragraph (b) shall apply to offenses committed prior to November 1, 1998.

(6) Any person convicted of felony sexual assault committed on or after November 1, 1998, under any of the circumstances described in this section shall be sentenced in accordance with the provisions of part 10 of article 1.3 of this title.

18-3-403. Sexual assault in the second degree. (Repealed)

18-3-404. Unlawful sexual contact. (1) Any actor who knowingly subjects a victim to any sexual contact commits unlawful sexual contact if:

(a) The actor knows that the victim does not consent; or

(b) The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or

(c) The victim is physically helpless and the actor knows that the victim is physically helpless and the victim has not consented; or

(d) The actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission; or

(e) Repealed.

(f) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority, unless incident to a lawful search, to coerce the victim to submit; or

(g) The actor engages in treatment or examination of a victim for other than bona fide medical purposes or in a manner substantially inconsistent with reasonable medical practices.

(1.5) Any person who knowingly, with or without sexual contact, induces or coerces a child by any of the means set forth in section 18-3-402 to expose intimate parts or to engage in any sexual contact, intrusion, or penetration with another person, for the purpose of the actor's own sexual gratification, commits unlawful sexual contact. For the purposes of this subsection (1.5), the term "child" means any person under the age of eighteen years.

(1.7) Any person who knowingly observes or takes a photograph of another person's intimate parts without that person's consent, in a situation where the person observed has a reasonable expectation of privacy, for the purpose of the observer's own sexual gratification, commits unlawful sexual contact. For purposes of this subsection (1.7), "photograph" includes any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material.

(2) (a) Unlawful sexual contact is a class 1 misdemeanor and is an extraordinary risk crime that is subject to the modified sentencing range specified in section 18-1.3-501 (3).

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), unlawful sexual contact is a class 4 felony if the actor compels the victim to submit by use of such force, intimidation, or threat as specified in section 18-3-402 (4) (a), (4) (b), or (4) (c) or if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section or subsection (1.5) of this section.

(3) If a defendant is convicted of the class 4 felony of unlawful sexual contact pursuant to paragraph (b) of subsection (2) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406; except that this subsection (3) shall not apply if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section.

18-3-405. Sexual Assault on a child. 1) Any actor who knowingly subjects another not his or her spouse to any sexual contact commits sexual assault on a child if the victim is less than fifteen years of age and the actor is at least four years older than the victim.

(2) Sexual assault on a child is a class 4 felony, but it is a class 3 felony if:

(a) The actor applies force against the victim in order to accomplish or facilitate sexual contact; or

(b) The actor, in order to accomplish or facilitate sexual contact, threatens imminent death, serious bodily injury, extreme pain, or kidnapping against the victim or another person, and the victim believes that the actor has the present ability to execute the threat; or

(c) The actor, in order to accomplish or facilitate sexual contact, threatens retaliation by causing in the future the death or serious bodily injury, extreme pain, or kidnapping against the victim or another person, and the victim believes that the actor will execute the threat; or

(d) The actor commits the offense as a part of a pattern of sexual abuse as described in subsection (1) of this section. No specific date or time must be alleged for the pattern of sexual abuse; except that the acts constituting the pattern of sexual abuse, whether charged in the information or indictment or committed prior to or at any time after the offense charged in the information or indictment, shall be subject to the provisions of section 16-5-401 (1) (a), C.R.S., concerning sex offenses against children. The offense charged in the information or indictment shall constitute one of the incidents of sexual contact involving a child necessary to form a pattern of sexual abuse as defined in section 18-3-401 (2.5).

(3) If a defendant is convicted of the class 3 felony of sexual assault on a child pursuant to paragraphs (a) to (d) of subsection (2) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406.

30-10-606. Coroner – inquiry, grounds – postmortem – jury – certificate of death. 1) The coroner shall immediately notify the district attorney, proceed to view the body, and make all proper inquiry respecting the cause and manner of death of any person in his jurisdiction who has died under any of the following circumstances:

(a) From external violence, unexplained cause, or under suspicious circumstances;

(b) Where no physician is in attendance or where, though in attendance, the physician is unable to certify the cause of death;

(c) From thermal, chemical, or radiation injury;

(d) From criminal abortion, including any situation where such abortion may have been self-induced;

(e) From a disease which may be hazardous or contagious or which may constitute a threat to the health of the general public;

- (f) While in the custody of law enforcement officials or while incarcerated in a public institution;
- (g) When the death was sudden and happened to a person who was in good health; or
- (h) From an industrial accident.

(1.1) After consultation with the district attorney, the coroner may request that jurisdiction of any such death be transferred to the coroner of the county in which the event which resulted in the death of the person occurred, with the jurisdiction effective upon the acceptance by the receiving coroner. Such transfer shall be in writing, and a copy thereof shall be maintained in the offices of the transferring and receiving coroners.

(1.2) When a person dies as a result of circumstances specified in subsection (1) of this section or is found dead and the cause of death is unknown, the person who discovers the death shall report it immediately to law enforcement officials or the coroner, and the coroner shall take legal custody of the body. The body of any such person shall not be removed from the place of death except upon the authority of the coroner in consultation with the district attorney or local law enforcement agency, nor shall any article on or immediately surrounding such body be disturbed until authorized by the coroner in consultation with the district attorney or local law enforcement agency.

(2) The coroner shall, if he or the district attorney deems it advisable, cause a post-mortem examination of the body of the deceased to be made by a licensed physician to determine the cause of death.

(3) When the coroner has knowledge that any person has died under any of the circumstances specified in subsection (1) of this section, he may summon forthwith six citizens of the county to appear at a place named to hold an inquest to hear testimony and to make such inquiries as he deems appropriate.

(4) (a) In all cases where the coroner has held an investigation or inquest, the certificate of death shall be issued by the coroner or the coroner's deputy.

(b) Any certificate of death issued by a coroner or a coroner's deputy shall be filed with the registrar and shall state their findings concerning the nature of the disease or the manner of death, and, if from external causes, the certificate shall state whether in their opinion death was accidental, suicidal, or felonious. In addition, the certificate shall include the information described in section 25-2-103 (3) (b), C.R.S., whenever the subject of the investigation or inquest is under one year of age.

(c) A copy of the certificate of death or affidavit of presumed death, including any related documents and statements of fact, shall be retained in the applicable county in a secure location in an appropriate county facility accessible only to the county coroner or the coroner's designee and in a manner that is consistent with the county's record retention policy and federal law.

(5) Nothing in this section shall be construed to require an investigation, autopsy, or inquest in any case where death occurred without medical attendance solely because the deceased was under

treatment by prayer or spiritual means alone in accordance with the tenets and practices of a well-recognized church or religious denomination.

(6) (a) Notwithstanding the provisions of sections 12-43-218 and 13-90-107 (1) (d) or (1) (g), C.R.S., the coroner holding an inquest or investigation pursuant to this section has the authority to request and receive a copy of:

(I) Any autopsy report or medical information from any pathologist, physician, dentist, hospital, or health care provider or institution if such report or information is relevant to the inquest or investigation; and

(II) Any information, record, or report related to treatment, consultation, counseling, or therapy services from any licensed psychologist, professional counselor, marriage and family therapist, social worker, addiction counselor, or unlicensed psychotherapist if such report, record, or information is relevant to the inquest or investigation.

(b) The coroner shall, at the request of the district attorney or attorney general, release to the district attorney or attorney general any autopsy report or medical information described in subparagraph (I) of paragraph (a) of this subsection (6) that the coroner obtains pursuant to paragraph (a) of this subsection (6).

(c) The coroner shall not release to any party any information, record, or report described in subparagraph (II) of paragraph (a) of this subsection (6) that the coroner obtains pursuant to paragraph (a) of this subsection (6).

(d) Any person who complies with a request from a coroner pursuant to paragraph (a) of this subsection (6) shall be immune from any civil or criminal liability that might otherwise be incurred or imposed with respect to the disclosure of confidential patient or client information.

DUTY TO REPORT STATUTES

18-8-115. Duty to report a crime—liability for disclosure.

It is the duty of every corporation or person who has reasonable grounds to believe that a crime has been committed to report promptly the suspected crime to law enforcement authorities. Notwithstanding any other provision of the law to the contrary, a corporation or person may disclose information concerning a suspected crime to other persons or corporations for the purpose of giving notice of the possibility that other such criminal conduct may be attempted which may affect the persons or corporations notified. **When acting in good faith, such corporation or person shall be immune from any civil liability for such reporting or disclosure.** This duty shall exist notwithstanding any other provision of the law to the contrary; except that this section shall not require disclosure of any communication privileged by law.

This section does not require the degree of certainty on the part of a citizen reporting the commission of a crime as does the probable cause standard that police officers are held to in making warrantless arrests. *Lunsford v. Western States Life Ins.*, 919 P.2d 899 (Colo App. 1996).

12-36-135. Injuries to be reported - penalty for failure to report – immunity from liability.

(1) (a) It shall be the duty of every licensee who attends or treats a bullet wound, a gunshot wound, a powder burn, or any other injury arising from the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument that the licensee believes to have been intentionally inflicted upon a person, or an injury arising from a dog bite that the licensee believes was inflicted upon a person by a dangerous dog, as defined in section 18-9-204.5 (2) (b), C.R.S., or any other injury that the licensee has reason to believe involves a criminal act, including injuries resulting from domestic violence, to report such injury at once to the police of the city, town, or city and county or the sheriff of the county in which the licensee is located. Any licensee who fails to make a report as required by this section commits a class 2 petty offense, as defined by section 18-1.3-503, C.R.S., and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(b) When a licensee performs a forensic medical examination that includes the collection of evidence at the request of a victim of sexual assault, not in connection with a referring or requesting law enforcement agency, and the licensee's employing medical facility knows where the crime occurred, the facility shall contact the law enforcement agency in whose jurisdiction the crime occurred regarding preservation of the evidence. If the medical facility does not know where the crime occurred, the facility shall contact its local law enforcement agency regarding preservation of the evidence.

(1.5) As used in subsection (1) of this section, unless the context otherwise requires:

(a) "Domestic violence" means an act of violence upon a person with whom the actor is or has been involved in an intimate relationship. Domestic violence also includes any other crime against a person or any municipal ordinance violation against a person when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

(b) "Intimate relationship" means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

(2) Any licensee who, in good faith, makes a report pursuant to subsection (1) of this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of such report, and shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

(3) Any licensee who makes a report pursuant to subsection (1) of this section shall not be subject to the physician-patient relationship described in section 13-90-107 (1) (d), C.R.S., as to the medical examination and diagnosis. Such licensee may be examined as a witness, but not as to any statements made by the patient that are the subject matter of section 13-90-107 (1) (d), C.R.S.