Q: I have a question regarding abuse regulations and the notifying of law enforcement. Does this apply to all resident allegations regardless of cognitive level or only certain instances? Also under which specific regulation does this need to be completed? Are law enforcement officials aware that facilities will be completing this and do facilities need something to show they have contacted officials?

A: Surveyors would be expected to review the issue on an individual basis. Guidance under several tags needs to be taken into account, including F609 Reporting Alleged Violations, F689 Accidents/Supervision and the Behavioral Health tags F740-745.

F609 states that the facility must “ensure that all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property, are reported immediately...” Abuse is defined at 483.5 as “the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, paint or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology.”

Guidance under F689 addresses Resident-Resident Altercations noting that “a resident to resident altercation should be reviewed as a potential situation of abuse which should be investigated under the guidance of 42 CFR 483.12 (F600). The surveyor should not automatically assume that abuse did not occur for a resident identified as having cognitive impairment or mental disorder, as it does not preclude the resident from deliberate (willful) or non-accidental actions. “Willful” as defined at 483.5 and as used in the definition of “abuse,” means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.” Even though a resident may have a cognitive impairment, he/she could still commit a willful act. If during the investigation of an allegation of abuse, it is determined that the action was not willful, the surveyor must investigate whether the facility is in compliance with the requirement to maintain an environment as free of accident hazards as possible, and that each resident receives adequate supervision using guidance at this tag, F689, Accidents.”

Facilities should review the guidance related to assessment, care planning and implementation of individualized interventions at these tags.

Also, from the state perspective, Section 300.695 (click here) details what the facility must follow with regard to reporting to law enforcement. Documentation is always key.