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## Patient Matters

### CHAPTER 16 – AGED CARE FACILITIES (NURSING HOMES)

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## COMPULSORY REPORTING PROTOCOL FOR RESIDENTIAL AGED CARE SERVICES (PD2019\_049)

**PD2019\_049 rescinds PD2017\_024**

### PURPOSE

Local health districts operating State Government Residential Aged Care Facilities (SGRACFs), Residential Transitional Aged Care Program (TACP) Services, and Multipurpose Services (MPSs) must comply with the compulsory reporting requirements under the Aged Care Act 1997.

A reportable assault, as defined under the act, is unlawful sexual contact, assault, unreasonable use of force, or an assault that constitutes an offence against a law of the Commonwealth or a State or Territory, that is inflicted on a person receiving residential aged care. Compulsory reporting also includes the absence of a resident without explanation (known as a missing resident).

### MANDATORY REQUIREMENTS

NSW Health is required to comply with the compulsory reporting requirements under the Aged Care Act 1997, as part of its commitment to providing residential aged care in SGRACFs, Residential TACP Services, and MPSs. The Australian Government can sanction facilities if they fail to appropriately report reportable assaults.

The key requirements under the Aged Care Act 1997 are:

*Section 63.1AA(2): If the approved provider receives an allegation of, or starts to suspect on reasonable grounds, a reportable assault, the approved provider is responsible for reporting the allegation or suspicion as soon as reasonably practicable, and in any case within 24 hours, to:*

- *a police officer with responsibility relating to an area including the place where the assault is alleged or suspected to have occurred; and*
- *the Secretary (Department of Health).*

According to the Department of Health's [reportable assault form](#):

*Approved providers do not have to report an alleged or suspected assault if:*

- *within 24 hours after the receipt of the allegation, or the start of the suspicion, the approved provider forms an opinion that the assault was committed by a care recipient to whom the approved provider provides residential care; and*
- *before the receipt of the allegation or the start of the suspicion, the care recipient had been assessed by an appropriate health professional as suffering from a cognitive or mental impairment; and*
- *within 24 hours after the receipt of the allegation or the start of the suspicion, the approved provider puts in place arrangements for management of the care recipient's behaviour; and*
- *the approved provider has:*
  - *a copy of the assessment or other documents showing the care recipient's cognitive or mental impairment; and*
  - *a record of the arrangements put in place for management of the care recipient's behaviour.*

## IMPLEMENTATION

Staff in SGRACFs, Residential TACP Services, and MPSs are responsible for reporting reportable assaults to the police and Australian Government Department of Health within 24 hours, and sending a copy of the report to the NSW Ministry of Health.

Each local health district with a SGRACF, Residential TACP Service, or MPS must maintain a local compulsory reporting protocol outlining internal processes and details of key personnel. Protocols must include that staff are required to send a copy of the compulsory reports made to the Department of Health, to the Ministry of Health.

The Ministry of Health is responsible for overseeing compulsory reporting by (including, but not limited to) maintaining a central register for compulsory reporting incidents reported by staff in SGRACFs, Residential TACP Services and MPSs to ensure appropriate and timely action is taken.

### Compulsory Reporting Protocol for Residential Aged Care Services: Procedures

## 1 BACKGROUND

### 1.1 About this document

NSW Health is the approved provider for many aged care services funded by the Australian Government, including State Government Residential Aged Care Services (SGRACFs), Residential Transitional Aged Care Program (TACP) Services, and Multipurpose Services (MPSs). The Australian Government has legal, regulatory and funding responsibility for these aged care services.

To help protect aged care residents, the law (the *Aged Care Act 1997*) has compulsory reporting provisions. This means that approved providers of residential aged care services are responsible for ensuring that suspicions or allegations of reportable assaults occurring at their services are reported within 24 hours to the local police and the Australian Government Department of Health. The law also requires service providers to report that a resident is absent without explanation (also known as a missing resident).

These requirements ensure that those affected receive timely help and support, and that operational and organisational strategies are put in place to prevent the situation from occurring again. Such strategies help maintain a safe and secure environment for residents.

Each local health district operating a SGRACF, Residential TACP service, and/or an MPS is required to comply with these compulsory reporting requirements.

### 1.2 Key definitions

**Reportable assault**, as defined under the Act, is unlawful sexual contact, assault, unreasonable use of force, or an assault that constitutes an offence against a law of the Commonwealth or a State or Territory, that is inflicted on a person receiving residential aged care.

- **unreasonable use of force or assault** on a care recipient ranges from deliberate and violent physical attacks on care recipients to the use of unwarranted physical force
- **unlawful sexual contact** on a care recipient means any sexual contact with a care recipient where consent has not been given.

**Staff member** of an approved provider means an individual who is employed, hired, retained or contracted by the approved provider (whether directly or through an employment or recruiting agency) to provide care or other services.

### 1.3 Legal and legislative framework

*Aged Care Act 1997* (63-1AA).

## 2 COMPULSORY REPORTING REQUIREMENTS

NSW Health is required to comply with the compulsory reporting requirements under the *Aged Care Act 1997*, as part of its commitment to providing residential aged care in SGRACFs, Residential TACP services, and MPSs. The Australian Government can sanction facilities if they fail to appropriately report reportable assaults. Sanctions significantly impact individual facilities and NSW Health as a provider of residential aged care services.

The key requirements under the *Aged Care Act 1997* are:

*Section 63.1AA(2): If the approved provider receives an allegation of, or starts to suspect on reasonable grounds, a reportable assault, the approved provider is responsible for reporting the allegation or suspicion as soon as reasonably practicable, and in any case within 24 hours, to:*

- *a police officer with responsibility relating to an area including the place where the assault is alleged or suspected to have occurred; and*
- *the Secretary of the Department of Health*

According to the Department of Health's [reportable assault form](#):

*Approved providers do not have to report an alleged or suspected assault if:*

- *within 24 hours after the receipt of the allegation, or the start of the suspicion, the approved provider forms an opinion that the assault was committed by a care recipient to whom the approved provider provides residential care; and*
- *before the receipt of the allegation or the start of the suspicion, the care recipient had been assessed by an appropriate health professional as suffering from a cognitive or mental impairment; and*
- *within 24 hours after the receipt of the allegation or the start of the suspicion, the approved provider puts in place arrangements for management of the care recipient's behaviour; and*
- *the approved provider has:*
  - *a copy of the assessment or other documents showing the care recipient's cognitive or mental impairment; and*
  - *a record of the arrangements put in place for management of the care recipient's behaviour.*

### 2.1 What is a reportable assault?

A reportable assault, as defined under the Act, is unlawful sexual contact, unreasonable use of force, or an assault that constitutes an offence against a law of the Commonwealth or a State or Territory, that is inflicted on a person receiving residential aged care.

- Unreasonable use of force or assault on a care recipient ranges from deliberate and violent physical attacks on care recipients to the use of unwarranted physical force.
- Unlawful sexual contact on a care recipient means any sexual contact with a care recipient where consent has not been given.

### 2.2 What services are in-scope?

The following services are in-scope for compulsory reporting requirements:

- State Government Residential Aged Care Facilities funded by the Australian Government

- Transitional Aged Care Program services that are provided in a residential setting (including where NSW Health has brokered Residential TACP services from the non-government sector)
- NSW Health Multipurpose Services.

### **3 CENTRAL REGISTER OF COMPULSORY REPORTING INCIDENTS**

The Ministry of Health recognises the seriousness of reportable assaults and aims to ensure timely action is taken. The Ministry maintains a central register for compulsory reporting incidents that occur in SGRACFs, Residential TACP Services, and MPSs.

If a staff member of a SGRACF, Residential TACP Service, or MPS makes a compulsory report to the Department of Health, they must also inform the Ministry. This enables the Ministry to put in place additional actions if required, including at a state-wide level if there are systemic issues raised.

### **4 ROLES AND RESPONSIBILITIES**

- The Ministry of Health is responsible for overseeing compulsory reporting by (including, but not limited to) maintaining a central register for compulsory reporting incidents reported by staff in SGRACFs, Residential TACP services or MPSs to ensure appropriate and timely action is taken.
- Each local health district with a SGRACF, Residential TACP service, and/or MPS must maintain a local compulsory reporting protocol outlining internal processes and details of key personnel. Protocols must include the requirement of staff to send a copy of the compulsory reports made to the Department of Health, to the Ministry of Health.
- Staff in SGRACFs, Residential TACP Services, and MPSs are responsible for reporting reportable assaults to the Australian Government Department of Health and the local police within 24 hours, and send a copy of the report to the NSW Ministry of Health.

### **5 PROCEDURE**

If a staff member receives an allegation of a reportable assault or starts to suspect on reasonable grounds that a reportable assault has occurred, the staff member must (also following local district protocols):

#### **5.1 Step 1 - Report to the police and Department of Health**

Report the allegation or suspicion within 24 hours to:

- a police officer with responsibility relating to an area including the place where the assault is alleged or suspected to have occurred; and
- the Secretary (Department of Health) by:
  - completing a [reportable assault form](#) or an [unexplained absence form](#) and email it to [compulsoryreports@health.gov.au](mailto:compulsoryreports@health.gov.au), or
  - call the compulsory reporting line on 1800 081 549 (please note that the Department of Health prefers to receive reports electronically).

#### **5.2 Step 2 – Inform the Ministry of Health**

Notify the NSW Ministry of Health that a compulsory report was made to the Department of Health by sending a copy of the reportable assault form to [MOH-AgedCareMandatoryReporting@health.nsw.gov.au](mailto:MOH-AgedCareMandatoryReporting@health.nsw.gov.au).

**5.3 Step 3 – Investigate the incident**

Investigate the incident and identify what action, if any, is needed. This includes any action that the NSW Police Force and Department of Health directed or requested. NSW Health requires that the focus must be on the safety of the residents.

Local health districts must update the Ministry of Health about decisions, actions or reforms and responses that the Department of Health advises.

- *Unlawful sexual contact on a care recipient means any sexual contact with a care recipient where consent has not been given.*

**5.4 Services in scope**

The following services are in scope for mandatory reporting requirements:

- all Commonwealth funded State Government Residential Aged Care facilities
- Transitional Aged Care Program services that are provided in a residential setting (including where NSW Health has brokered residential TACP services from the non-government sector)

**5.5 Services out of scope**

- NSW Health Multi Purpose Services (MPS)

**WELLNESS AND REABLEMENT IN AGED CARE (GL2021\_002)****GUIDELINE SUMMARY**

This Guideline outlines what wellness and reablement is, the contractual requirements, and roles and responsibilities of NSW Health organisations for implementing a wellness and reablement approach.

Wellness and reablement ensures older people in NSW live as active, purposeful, healthy, and independent lives as they can and, where possible, remain living in their own homes.

NSW Health is contracted by the Commonwealth Department of Health to provide a range of assessment and support services for older people wishing to live independently at home. NSW Health is contractually obliged to provide these services with a consistent wellness and reablement approach.

**KEY PRINCIPLES**

Wellness and reablement practice with older people within NSW Health is based on the following set of principles:

- supporting older people living at home to live as independently as possible for as long as possible.
- treating each older person as a unique individual with their own strengths, abilities, life experiences, preferences, choices, and needs.
- assessing an older person in a holistic, strength-based way, promoting wellness, considering dignity of risk and encouraging active participation in the development of appropriate support plans.
- ensuring an older person's aspirations and needs are best met when assessment, support planning, and service provision is a partnership between the older person, their informal support network, the assessor and service providers.

NSW Health is in a unique position to maximise use of wellness and reablement programs in and across the aged services it delivers. NSW Health embraces the wellness and reablement approach and ensures that assessments by Regional Assessment Services (RAS) and Aged Care Assessment Services (ACAT) and service provision from the Transitional Aged Care Program (TACP) and the Commonwealth Home Support Programme (CHSP) funded services are aligned.

Contracted Aged Care Services are provided throughout NSW Health (Local Health Districts and Specialty Health Networks). ACAT and RAS assess eligibility for aged care services, while the Transitional Aged Care Program and Commonwealth Home Support Programme provide care and support in the community. All aged care services provided by NSW Health are required to ensure wellness and reablement practices are implemented as a core part of the aged care services we deliver.

**To view guideline GL2021\_002 Wellness and Reablement in Aged Care go to [https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=GL2021\\_002](https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=GL2021_002)**