



# Rolf

## Reporting to ODH – Assisted Living

Many licensed Residential Care Facilities (RCFs) (assisted living) are confused regarding their responsibility to report abuse, neglect and misappropriation of resident property to the Ohio Department of Health (ODH). Some mistakenly believe that the laws for reporting to ODH are the same for RCFs as they are for nursing facilities (NFs). Others believe that they need to report more to ODH than they are legally required to because they use an everyday understanding of the terms “abuse” and “neglect” rather than how those terms are legally defined. Others find the form created by ODH for reporting incidents to be confusing because it is based on NF requirements, not those for RCFs.

This document is intended to assist licensed RCFs with understanding their duty to report to ODH regarding resident abuse, neglect, exploitation and misappropriation of property.

*Please note that this document is intended to be informational only, and is not intended to be nor should it be relied upon as legal advice. Rolf Goffman Martin Lang LLP will not be responsible for any actions taken or arrangements structured based upon this document. The receipt or review of this post by an organization that is not a current client of Rolf Goffman Martin Lang LLP does not create an attorney-client relationship between the recipient and the law firm.*

*©2018. Rolf Goffman Martin Lang LLP. All Rights Reserved. May only be copied with attribution.*

A Long Term Commitment to Long Term Care

 866.495.560  [www.RolfLaw.com](http://www.RolfLaw.com)  [info@RolfLaw.com](mailto:info@RolfLaw.com)



# Rolf

## The Duty to Report

Ohio law provides that no person (further defined as specific licensed health professionals) who knows or suspects that a resident has been abused, neglected or exploited or that a resident's property has been misappropriated, by an individual used by a residential care facility to provide services to residents, shall fail to report that knowledge or suspicion to the facility. Accordingly, individuals in the following categories are required to report knowledge or suspicion to the facility Administrator: licensed therapists (OT, PT, SLP) and therapy assistants, physicians, physician assistants, registered nurses, licensed practical nurses, social workers, dentists, optometrists, pharmacists, psychologists and licensed counselors.<sup>1</sup>

An Administrator of residential care facility (RCF) who knows or suspects that a resident has been abused, neglected or exploited or that a resident's property has been misappropriated by any individual used by the facility to provide services to residents, must report to the Director of Health.

---

<sup>1</sup> O.R.C. §§ 3721.21 and 3721.22. Note that prior to July 1, 2017, licensed persons had the obligation to report knowledge or suspicions directly to the Director of Health.



# Rolf

## Key Elements to Understand

**Resident:** Resident includes a resident, former resident or deceased resident. Therefore, licensed health professionals and the administrator would still be required to report the knowledge or suspicion involving a resident, even if the person became aware of the knowledge or suspicion after the resident was discharged or deceased.

**Abuse:** Abuse is defined as physical abuse, psychological abuse and sexual abuse.<sup>2</sup>

- **Physical Abuse** is defined as “knowingly causing physical harm or recklessly causing serious physical harm to a resident by physical contact with the resident or by use of physical or chemical restraint, medication, or isolation as punishment, for staff convenience, excessively, as a substitute for treatment, or in amounts that preclude habilitation and treatment.”<sup>3</sup>
- **Psychological Abuse** is defined as knowingly or recklessly causing psychological harm to a resident whether verbally or by action.
- **Sexual Abuse** is defined as sexual conduct or contact with a resident.<sup>4</sup>
  - **Sexual Conduct** is defined as vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another.<sup>5</sup>

---

<sup>2</sup> O.R.C. §3721.21(C).

<sup>3</sup> O.R.C. § 3721.21(H).

<sup>4</sup> O.R.C. §3721.21(J).

<sup>5</sup> O.R.C. §2907.01.



# Rolf

- o Sexual Contact is defined any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

With the exception of incidents involving Sexual Abuse, RCFs are only required to report Abuse that results in physical or psychological harm to the resident. Thus, it is important to focus on the result of the act and not the act itself. For example, if a staff member yells at a resident, it may be inappropriate behavior that should subject the employee to discipline, but it is not likely to be "Abuse" under the definition above if the resident suffers no psychological harm from the incident. Additionally, when evaluating sexual acts, it is important to determine whether there was consent, and when evaluating sexual contact, it is important to determine the intent of the individual.

**Neglect**: Neglect is defined as "recklessly failing to provide a resident with any treatment, care, goods, or service necessary to maintain the health or safety of the resident when the failure results in serious physical harm to the resident."<sup>6</sup>

As with abuse, RCFs are only required to report to ODH when the incident results in physical harm to the resident. Additionally, if the cause of the incident is recklessly failing to provide a resident with services, then the resulting physical harm must be serious.

**Exploitation**: Exploitation is defined as taking advantage of a resident, regardless of whether the action was for personal gain, whether the resident knew of the action or whether the resident was harmed.<sup>7</sup> Unfortunately, the law does not define or provide examples as to what is meant by "taking advantage of a resident." However, accepting anything

---

<sup>6</sup> O.R.C. § 3721.21(D).

<sup>7</sup> O.R.C. §3721.21(E).



# Rolf

of monetary value from a resident in excess of what he/she is required to pay for services or using manipulation to control a resident's behavior could be considered "taking advantage" of the resident. Therefore, facilities should have policies addressing these issues.

**Knows or suspects:** RCFs are not required to immediately report all allegations of abuse, neglect or misappropriation as is the case with NFs. RCFs are required to report to ODH when they know or suspect that abuse, neglect or misappropriation of resident property has occurred. Thus, RCFs should first conduct an investigation of all alleged incidents of abuse, neglect, exploitation and misappropriation of resident property. If, at the end of the investigation, an RCF does not know or suspect that the allegation is true, then it does not need to report the alleged incident to ODH. This is different than the practice for NFs, where all allegations must be reported to ODH, even if the facility does not believe the allegation to be true.

**By an individual used by an RCF to provide services to residents:** Only abuse, neglect, exploitation or misappropriation by an employee, contractor, or volunteer must be reported to ODH. RCFs are not required to report incidents that are caused by residents or visitors. Therefore, if the allegation is substantiated but the perpetrator is another resident, family member or visitor, the RCF is not required to report the knowledge or suspicion to ODH.

A Long Term Commitment to Long Term Care

 866.495.560  [www.RolfLaw.com](http://www.RolfLaw.com)  [info@RolfLaw.com](mailto:info@RolfLaw.com)



# Rolf

## How to Report

Ohio law contains no reference to a particular form or format that must be used for reporting to the Director of Health. However, ODH prefers that RCFs use the online Self-Reported Incident Form available through the Enhanced Information Dissemination & Collection (“EIDC”) system. In the event of an internet outage or similar failure, ODH instructs RCFs that they may temporarily report to the ODH District Office via alternative method (e.g., phone), but must then submit the Self-Reported Incident online once service is restored.

The online form is designed to comply with the federal reporting requirements that apply to NFs. Consequently, there are parts of the form that do not apply to RCFs. Therefore, if an RCFs chooses to use the online Self-Reported Incident Form, the facility should note the following differences:

- Facility type will be “RCF”, not SNF/NF.
- RCF’s do not need to report “Injuries of Unknown Source”, so that box should not be checked.
- The alleged perpetrator will always be a staff member. If it is a visitor or another resident, the RCF is not required to report.
- The RCF will either be checking the “substantiated box” or the “unsubstantiated - evidence is inconclusive - abuse, neglect or misappropriation is suspected boxes”, because RCFs are only required to report actual or suspected abuse, neglect, exploitation or misappropriation. If the investigation reveals no evidence of abuse, neglect, exploitation or misappropriation, then the RCF is not required to report.

A Long Term Commitment to Long Term Care



# Rolf

## When to Report

When the RCF receives an allegation, it should immediately begin to investigate to determine if the allegation of abuse, neglect, misappropriation or exploitation is substantiated. Note, there is no requirement that RCFs issue an immediate report to ODH when the allegation is received even prior to investigation. There is also no requirement that the RCF complete the investigation and issue a final report within five (5) working days as is the case with NFs. However, the RCF should make an effort to complete an investigation as soon as possible, in order to ensure residents are protected.

Once the RCF concludes or suspects that a resident was exploited, abused, neglected or had property misappropriated by an individual used or employed by the RCF, it must be reported to ODH. Again, Ohio law contains no specific timeframe for reporting the knowledge or suspicion to ODH. However, RCFs should report confirmed incidents or suspected incidents of abuse, neglect, exploitation or misappropriation of resident property upon completion of their investigation of the incident. If using the on-line ODH report form, which is set-up to comply with the federal requirements for NFs, the RCF will be completing what is referred to as the "immediate" report and the "final report" at the same time.

## Important Note

*While RCFs may not be required to report certain incidents, this does not mean that incidents which do not meet the above definitions are not serious or that they are not a violation of resident's right and applicable licensure laws. RCFs should take appropriate action when incidents occur, regardless of whether they are required to be reported to ODH. Such action may include, but is not limited to, contacting local law enforcement, contacting the ombudsman, disciplining an employee, or discharging an aggressive resident.*

*In addition, while RCFs may not be required to report certain incidents to ODH, they certainly can report whatever they like to ODH. Indeed, as a courtesy, RCFs may wish to notify ODH when notifying other entities outside of the facility of an incident.*

A Long Term Commitment to Long Term Care

 866.495.560  [www.RolfLaw.com](http://www.RolfLaw.com)  [info@RolfLaw.com](mailto:info@RolfLaw.com)



# Rolf

ABUSE REPORTING REFERENCE GUIDE		
	RCF	NF
<b>What to Report</b>	Knowledge or suspicion that a person used by the facility (e.g., staff, contracted person, etc.): abused or neglected a resident resulting in serious physical harm, sexually abused a resident, or misappropriated a resident's property.	All allegations or instances of abuse, neglect, exploitation or misappropriation of resident property by anyone (staff, visitor, family and other resident).
<b>When to Report Internally</b>	No time frame identified in the law. Staff should report knowledge, suspicions and allegations to the Administrator immediately for further investigation.	Staff is required to report all incidents and allegations to the Administrator <b>immediately</b> .
<b>Who Must Report to ODH</b>	Administrator/designee	Administrator/designee
<b>When to Report to ODH</b>	<p>The Administrator is required to report to ODH once he/she knows or suspects that a resident has been abused, neglected, exploited or whose property has been misappropriated by staff, which will usually be after the investigation is complete.</p> <p>There is no required time frame for completing the investigation, but it is recommended that it be completed as soon as possible.</p> <p>There is no required time frame for reporting the knowledge or suspicion to ODH, but it is recommended that it be reported as soon as the conclusion is reached.</p>	<p><b>Initial Report</b> - All allegations of abuse and any other reportable incidents that involve "serious bodily injury" (e.g., injury of unknown source) must be reported to ODH Immediately, but not later than 2 hours after discovery.</p> <p>All other incidents and allegations must be reported immediately, but not later than 24 hours after discovery.</p> <p><b>Final report.</b> A final report must be submitted within 5 working days of the incident.</p>

A Long Term Commitment to Long Term Care