

OIG Rule 50

Recognizing and Reporting Abuse and Neglect



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WELCOME

The Office of the Inspector General for the Illinois Department of Human Services is the department which investigates abuse and neglect allegations involving individuals who receive mental health and/or developmental disability services in state-operated facilities and community agencies.

Employees who commit acts of abuse or neglect are held accountable for such acts via the investigative process.

Every employee is required to report all allegations of abuse or neglect of which they are made aware of.

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WELCOME

- The purpose of this training is to explain the definitions of abuse and neglect, how they are interpreted and applied, and to teach you how to, and when to, report an allegation of abuse or neglect.

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To begin with...

- The Department of Human Services ACT is a law which establishes the Office of Inspector General (OIG), defines abuse and neglect and establishes the reporting requirements of employees regarding reported, witnessed or suspected abuse or neglect.
 - 20 ILCS 1305/1-17
- That law requires that OIG write an Administrative Rule which interprets and operationalizes the law.
- That is what Rule 50 is.

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Training requirements

- Rule 50 requires that all employees must be trained in the requirements of Rule 50 upon being hired and at least biennially thereafter.
 - *Every two years*
- This slide presentation is designed to provide that training, and therefore satisfy that training requirement.

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Who qualifies as an employee?

- An “**employee**” is defined in Rule 50 as: *Any person who provides services at the facility or the community agency, on or off-site. The service relationship can be with the individual, the facility or the agency.*
- *This includes but is not limited to: owners, operators, payroll personnel, contractors, subcontractors, and volunteers.*

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Who qualifies as an employee?

- The definition of “**employee**” also includes:
- *Any employee or contractual agent of DHS or the community agency involved in providing, monitoring or administering mental health or developmental disability services, and*
- *Anyone who is no longer working for an agency or facility but is the subject of an ongoing investigation for which OIG has jurisdiction.*

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Examples of employees

- So, in addition to the daily scheduled employee, the definition of employee would include the following type of job titles (if providing a service at the agency/facility):
 - Landscaping company employees,
 - HVAC personnel who service the furnace/air conditioning systems,
 - Hairdresser/barber who comes to manicure individuals,
 - Vending company employees who service the agency/facility,

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Examples continued

- Janitorial service employees,
- Exterminators, etc.
- As long as the person is providing a service to the Individual, Agency or Facility and is allowed to be in the presence of an individual, they are considered employees in the context of Rule 50.
- Additionally, remember from the definition of employee, that ALL volunteers are also considered employees per Rule 50.

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Allegations and OIG

- To be reportable to OIG, an allegation or incident must involve an individual and an employee, facility or agency.
- An “individual” is defined in Rule 50 as: *Any person receiving mental health services, developmental disabilities services, or both from a facility or agency while either on-site or off-site.*

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Allegations and OIG

- OIG does not investigate alleged incidents that are:
 - Exclusively between employees, or
 - Exclusively between Individuals
 - Unless it was caused by an employee or an employee is somehow involved in the alleged incident.

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So, what if...

After dinner at the CILA, Claire who is an Individual, tells you that earlier in the day the employee Charles slapped her hand because she was “giving the finger” to her housemate Chloe because Chloe called her stupid.

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Is that reportable to OIG?

Remember, for an allegation to be reportable to OIG, the victim must be an individual and the accused must be an employee (or agency or facility).

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Is that reportable to OIG?

Because Claire receives services in a CILA, she meets the definition of an individual.

And because Charles is an employee who has been alleged to have physically abused an Individual, then...

Yes. This is reportable to OIG.

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So, what is “abuse”?

Rule 50 defines “abuse” as *any physical abuse, sexual abuse, mental abuse, or financial exploitation.*

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But what is “physical abuse”?

Rule 50 defines “physical abuse” as *an employee’s non-accidental and inappropriate contact with an individual that causes bodily harm.*

The definition *includes actions that cause bodily harm as a result of an employee directing an individual or person to physically abuse another individual.*

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What is “bodily harm”?

- Rule 50 defines “bodily harm” as either:
 - *Any injury, damage, or impairment to an individual’s physical condition* (like a cut, bruise, scrape, burn), or
 - *Making physical contact of an insulting or provoking nature with an individual.*

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Review

Although Claire did not suffer a visible injury, the act of slapping her hand for making an obscene gesture is *non-accidental, inappropriate physical contact of an insulting or provoking nature* and is, therefore, physical abuse.

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Some Examples of Physical Abuse

- Pushing, hitting, slapping, kicking an individual;
- Pulling an individual's hair, finger pointing to chest (making contact), prodding with an object, twisting an ear or arm, squeezing an individual's finger, arm, or neck;
- Snapping an individual with a towel, shooting or snapping a rubber band, throwing an object;
- Man handling, roughing up, stepping or stomping on an individual's foot, etc.

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Are you a required reporter?

- A required reporter is *any employee who suspects, witnesses, or is informed of an allegation of... mental abuse, physical abuse, sexual abuse, neglect, or financial exploitation.*
- So, yes, you are a required reporter!

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How Long do you have to report it?

Allegations must be reported to OIG's Hotline **within four hours** after they are first discovered. *That means that if Claire told you about it at 6:00 pm, then the allegation must be reported to the OIG Hotline by 10:00 pm that evening.*

The Hotline is operated 24 hours per day/ 7 days per week.

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OIG's Hotline number is:

800-368-1463

800-368-1463

800-368-1463

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How to report it

- Your agency or facility policy may instruct you to report it through internal procedures. That's OK, but remember, every allegation must be reported to OIG within four hours of the time it was first discovered, and
- You are a required reporter.
- So, you should report it as soon as you possibly can, either through your agency's procedure or directly to OIG via the Hotline.

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How to report it

- Putting the report in your boss' mailbox until the next day is unacceptable.
- Writing your boss an e-mail reporting it is unacceptable.

If you witness, are informed of or suspect an allegation of abuse at 10:00pm, then you must call the OIG Hotline by 2:00am, or you are guilty of late reporting.

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How to report it

- When you call the Hotline number during normal business days/hours, an OIG Intake Investigator will answer the phone.
- He/she will ask you questions to determine if the allegation meets the criteria for initiating an investigation.
- If so, they will complete an OIG Intake Report and the investigation process will begin.
- You, then, have completed your responsibilities as a required reporter.

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After hours reporting

- If you call the Hotline between 4:45 pm and 8:30 am the next morning, you will get the OIG answering service.
 - The answering service also will take calls on weekends, holidays and times of call overload.
 - The answering service will:
 - Take information about the incident, and
 - Tell you that an OIG representative will call you back the next business day.
- Someone at your agency/facility who knows about the incident must be available to complete the report.*

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Do you have to report these incidents to the police, too?

If you need immediate assistance, call the police.

- Anytime there is credible evidence of a criminal act in a State-operated facility, OIG will contact the Illinois State Police.
- If the alleged criminal act is at a community agency, the agency should contact the local police.
- Please notify OIG if you have contacted the police.

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Should you report?

- If you are unsure or only suspect abuse or neglect might have happened, should you really report it?
 - YES
- Report it even if it might have happened a long time ago.
 - There is no statute of limitations on allegations. So, if someone tells you of abuse that happened 10 or 15 years ago, you still have to report it.
- **Screening is strictly forbidden.**

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What is “screening”?

- Screening is withholding, altering, or delaying any report of abuse or neglect.
- Deciding not to report an allegation of abuse or neglect because you know it did not, or could not, have happened is also screening.
 - If anyone complains of abuse or neglect by an employee, you must report it, no matter what the surrounding circumstances or what you know!

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What if you don't report it?

- You could be disciplined.
- If you have a license, your license or certification could be affected.
- You could be charged with a crime.

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What if you don't report it?

- The law classifies the willful failure to report abuse or neglect as a Class A misdemeanor which is punishable by:
 - Up to one year in JAIL, and/or
 - Up to a \$2,500.00 fine.
 - Willful means intentional.
- The failure to report abuse or neglect can also be handled administratively by some other form of corrective action, thusly bypassing criminal charges.

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Some cautions about reporting

- You are violating the Department of Human Services Act (*20 ILCS 1305/1-17*), if you:
 - Create and transmit a false report to the OIG Hotline, or
 - Cover up an allegation or evidence and don't report it, or
 - You retaliate against someone who reports abuse or neglect in good faith.

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Does anything other than physical abuse need to be reported?

- Yes, you must also report any allegation of:
 - Mental abuse,
 - Sexual abuse,
 - Financial exploitation, or
 - Neglect
- You must also report certain deaths to the OIG Hotline.

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What deaths are reportable?

- It must be reported to OIG if the individual dies on-site in any program that is operated, licensed, certified or funded by DHS, like;
 - Residential facilities and CILAs,
 - Day treatment and developmental training sites and
 - Mental health outpatient programs.
- It is also reportable if the individual dies within:
 - 14 calendar days after discharge or transfer, or
 - 24 hours after deflection from a residential program or facility.

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What is “deflection”?

- Deflection is when an individual comes to a facility or agency for admission or services but is not admitted by the staff.
 - It does not matter why he or she was deflected. If he or she was turned away or sent somewhere else and died within 24 hours, then you must report it to OIG when you become aware of it.
- **Remember:** If a death may have resulted from abuse or neglect, it must be reported to OIG **within four hours** of initial discovery.

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What if ...

Tammy, an individual, tells you that whenever she comes back from a home visit, the staff member named Terry takes her in the bathroom and makes her take all her clothes off so he can check her for any weapons or things that could cause harm to herself or others. Tammy says that Terry touches and rubs her “all over” when he does this and it makes her very uncomfortable. Tammy says that Terry is the only one who does this so she wonders why.

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Is that sexual abuse?

Rule 50 defines **sexual abuse** as: *Any sexual contact or intimate physical contact between an employee and an individual, including an employee's coercion or encouragement of an individual to engage in sexual behavior that results in sexual contact, intimate physical contact, sexual behavior or intimate physical behavior.*

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Sexual abuse definition

- **Sexual abuse** also includes: *an employee's actions that result in the sending or showing of sexually explicit images to an individual via computer, cellular phone, electronic mail, portable electronic device, or other media with or without contact with the individual; or an employee's posting of sexually explicit images of an individual online or elsewhere whether or not there is contact with the individual.*

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Sexual abuse definition

- **Sexual abuse** does not include allowing individuals to, of their volition, view movies or images of a sexual nature, or read text containing sexual content unless the individual's guardian prohibits the viewing of such movies or images or reading of such material.

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Sexual abuse definition

- "Sexually explicit images" includes, but is not limited to, any material which depicts nudity, sexual conduct, or sado-masochistic abuse, or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sado-masochistic abuse.
- This does not include those images contained in sex education materials used by employees to educate individuals.

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What is "sexual contact"?

According to Rule 50, sexual contact is:
Inappropriate sexual contact between an employee and an individual involving either an employee's genital area, anus, buttocks or breasts or an individual's genital area, anus, buttocks or breasts. Sexual contact also includes sexual contact between individuals that is coerced or encouraged by an employee.

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So, is this sexual abuse?

Tammy is an individual, Terry is an employee, and Terry allegedly rubbed Tammy "all over" after he made her take her clothes off. So, this is an allegation of sexual abuse.

The investigation will have to determine if what Terry did constitutes sexual abuse/contact or not, but as far as reporting it to OIG, this information suffices and yes, it should be reported.

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How soon must it be reported?

- Since it is a sexual abuse allegation, it must be reported to OIG's Hotline within 4 hours from Tammy alleging it.
- A sexual abuse finding can be referred to law enforcement, and if the employee is charged criminally and convicted, it would be a Class 3 felony which is punishable by two to five years in prison and a fine of up to \$25,000.

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Sexual misconduct with a person with a disability...

- It is a Class 3 felony (*720 ILCS 5/11-9.5*).
- The victim's consent is not a defense.
- In addition to the prison time and a fine, it is also punishable by:
 - Mandatory registration as a sex offender with supervision for one year;
 - Immediate loss of job; and
 - Listing on the Health Care Worker Registry which prohibits them from working in any state-operated facility, community agency, or program site funded by the state.

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What if...

Roberto, an individual, tells you that he wanted to take his own medicine and Robin, the nurse, said to him "you retard are too stupid to take your own medicine, that's why they pay me to stand here and give it to you in a little cup."

Roberto said that he wanted to punch the nurse in the face, but didn't.

Is this reportable to OIG?

First: Is the alleged victim an individual? Yes

Is the accused person an employee? Yes

Then, are Robin's actions abusive?

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What is “mental abuse”?

Rule 50 defines mental abuse as:

The use of demeaning, intimidating, or threatening words, signs, gestures, or other actions by an employee... about an individual and in the presence of an individual or individuals... that results in emotional distress or maladaptive behavior, or could have resulted in emotional distress or maladaptive behavior, for any individual present.

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Is it alleged mental abuse?

- Robin is an employee, and Roberto is an individual.
- Saying someone with a disability is “too stupid” is clearly demeaning.
- It resulted in the individual becoming upset and wanting to lash out violently.
- Therefore, it is alleged mental abuse, and it is reportable (within four hours of discovery) to OIG.

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What is “mental abuse”

- What if Roberto did not get upset and just shrugged his shoulders and walked away?
- Should you still report it?
- Yes...his emotional distress or engagement in a maladaptive behavior may not present itself until sometime later. Just the utterance of a disabled person being “too stupid” is enough to initiate an investigation.

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What is “mental abuse”?

- If there truly was no emotional distress or maladaptive behavior or if any of the other elements of the offense were missing, then the incident could be referred back to the agency to follow up on administratively.

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Mental Abuse

- There may be times when an individual , due to his/her disability, cannot show emotional distress or engage in a maladaptive behavior, or
- Times when an individual may have historically responded to a certain stimuli in an emotional or maladaptive way but now, due to therapies learned and applied, may internalize or avoid disruptive behaviors.

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Mental Abuse

- It is under circumstances such as those where OIG may consider the included statutory language of “could have resulted in emotional distress or maladaptive behavior.”
- In situations like that the individual is no less a victim so OIG will take into account that person’s diagnosis or history when evaluating the case for the proper evaluation of conclusions or findings.

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Financial Exploitation

Financial exploitation is defined in Rule 50 as:

Taking unjust advantage of an individual's assets, property, or financial resources through... deception, intimidation, or conversion... for the employee's, facility's, or agency's own advantage or benefit.
("conversion" means theft)

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Financial exploitation

- Some examples:
 - Removing money from an individual's purse.
 - Taking money from the individual's trust fund.
 - Stealing money from a bank account.
 - Using and not returning an individual's clothing.
 - Taking food that belongs to an individual.
 - Coercing an individual to trade you for something he or she has that you want.
- All of these would be financial exploitation and should be reported to OIG.

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OIG investigates abuse and neglect

- OIG investigates allegations of abuse:
 - Physical abuse,
 - Sexual abuse,
 - Mental abuse, and
 - Financial exploitation.
- OIG also investigates allegations of neglect.

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What is “neglect”?

- Rule 50 defines **neglect** as: *An employee's, agency's, or facility's failure to provide adequate medical care, personal care, or maintenance that, as a consequence:*
 - *Causes an individual pain, injury, or emotional distress, or*
 - *Results in either an individual's maladaptive behavior or the deterioration of an individual's physical or mental condition, or*
 - *Places an individual's health or safety at substantial risk.*

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What is “egregious neglect”?

- If an allegation of neglect is substantiated, the Inspector General determines if it is “egregious neglect.”
- It is “egregious neglect” if it both:
 - *Represents a gross failure to adequately provide for, or a callous indifference to, the health, safety, or medical needs of an individual, and*
 - *Results in an individual's death or other serious deterioration of an individual's physical or mental condition.*

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Gross failure? Callous indifference?

- Gross failure refers to a failure that is glaring, obvious or outrageous.
- Callous indifference refers to an attitude of being unsympathetic, unconcerned or uncaring.

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What if...

- Eric, an individual, is non-ambulatory and confined to bed. A physician's order says to reposition him every 30 minutes. Staff fail to do so, and after approximately 5 days, he develops bedsores.

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Is this alleged neglect?

- Yes, because:
 - The staff appear to have failed to provide him with adequate medical care which was ordered by a doctor, and
 - The failure appears to have caused him pain and a deterioration of his physical condition.

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What if...

The other staff refuse to attend to the bedsores because they feel this is a nursing duty and they are tired of doing nurse Evelyn's job. After about a month, Eric's bedsores become very deep and cause septicemia (a serious blood infection). He is admitted into the hospital in critical condition but survives.

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Might this be egregious neglect?

- Yes, because:
 - The staff knew he had bedsores, yet refused to attend to him, despite the obvious risk:
 - That could be a *gross failure* and/or a *callous indifference* to Eric's medical needs; and
 - It resulted in a serious deterioration of Eric's physical condition.
- So, it may be egregious neglect.
 - Egregious neglect may be referred to the Health Care Worker Registry.

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Health Care Worker Registry

- The Registry is a database maintained by the Illinois Department of Public Health.
- If someone's name and substantiated finding is listed on the Registry, then that person may not work in any capacity at any state-operated facility, community agency, or program site funded by the state.

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Health Care Worker Registry

- OIG refers an employee's name to the Registry when it substantiates physical abuse, sexual abuse, financial exploitation or egregious neglect against the employee.
- OIG will first notify the person of his/her right to file an appeal (a "50.90 appeal").
 - This appeal is only about the referral of his/her name to the Registry.
 - It does not appeal the finding of the case itself.
- OIG will not refer the name until all other pending legal action is resolved.

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Health Care Worker Registry

- Once on the Registry, a person may appeal to be removed by submitting a 50.100 petition.
 - A petition can be filed once every twelve months.
 - OIG conducts an investigation to determine if the petitioner has provided accurate information in their petition.
 - The administrative law judge then makes a recommendation to the Department Secretary who ultimately makes the final decision.

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License Referrals

The Illinois Department of Financial and Professional Regulation (DFPR) also investigates allegations against a licensed professional, such as a doctor or nurse. OIG may report allegations to DFPR, and OIG may give its final investigative reports to that agency.

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Privacy Concerns

Confidentiality laws – like HIPAA (the Health Insurance Portability and Accountability Act) – protect personal information. However, as an investigating entity, OIG has specific exemptions from those laws. So, you are not in violation of confidentiality, privacy or HIPAA restrictions when you give OIG information during an investigation.

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First investigative steps

- The agency/facility must do the following in any allegation of abuse/neglect:
 - Ensure the health and safety of everyone;
 - Order medical exams of alleged victims;
 - Remove accused staff from all individuals (if the allegation has any credible evidence); and
 - Allow only employees trained by OIG to do the following steps:
 - Secure the scene and keep unauthorized people out,
 - Photograph the scene and any injuries,
 - Keep relevant documents and evidence safe, and
 - Identify, separate witnesses and collect witness statements.

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OIG case finding

- OIG must prove its investigations by a “preponderance of the evidence” standard.
 - Preponderance of evidence means *there is enough evidence to show that it is more likely than not that the abuse or neglect occurred.*
- So, if over 50% of the weighted evidence indicates that the abuse or neglect occurred, then OIG substantiates the case.

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What findings can OIG cases have?

- **Substantiated**, again, means *there is a preponderance of the evidence to verify the substance of the allegation.*
- **Unsubstantiated**, means *there is credible evidence, but less than a preponderance of evidence to verify the substance of the allegation.*
- **Unfounded**, means *there is no credible evidence to verify the substance of the allegation.*

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Recommendations

OIG's investigations may find other concerns that relate to abuse/neglect, like training, staffing, or policy issues.

OIG may cite these in the case report. These are called “**recommendations**.”

By law, the agency/facility must address these concerns. You may see new training courses or a new policy as the result of an OIG recommendation.

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Notifications

- When the investigation is complete, OIG notifies the following people of the finding and of their right to request a **clarification** or **reconsideration** of the finding:
 - The agency/facility's authorized representative;
 - The complainant, if not the agency/facility;
 - The alleged victim (or guardian); and
 - All accused employees.
 - *The right to request a clarification or reconsideration is limited by law to the facility, agency, victim or guardian and the subject employee.*

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Clarification/Reconsideration

- A **clarification** only asks OIG to explain the investigative finding.
- A **reconsideration** challenges the finding, asking OIG to evaluate the evidence again.
 - *Rule 50 says that a reconsideration request must provide additional information that OIG was not aware of or did not consider.*

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Wrap up

- Abuse – *physical, sexual, mental abuse and financial exploitation* – along with neglect involve an individual and staff, on or off-site.
 - The individual must be receiving services.
- You are required to report all allegations and even suspicions of abuse/neglect.
- Allegations must be reported to the OIG Hotline within four hours
 - Deaths without suspicion within 24 hours.

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Wrap up

- You are not allowed to screen allegations.
 - They must all be reported to OIG within four hours.
- Failure to report may result in discipline, or it could be considered a crime.
- You must cooperate with OIG investigations.
 - You must answer questions honestly and fully.
- If you are accused in an allegation, you will get a letter with the findings.

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Wrap up

The OIG Hotline number is:

800-368-1463

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THANK YOU

- Thank you for completing this training session.
- If you have any questions please call your respective Bureau Chief:
 - **Donnie Williams (North and Metro)** at 708-338-7404
 - **Pablo Lozada Jr. (Cook)** at 708-338-7433
 - **Sheira Schluter (Central)** at 217-786-6883
 - **James Nesler (South)** at 618-833-5161, ext. 2291.

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