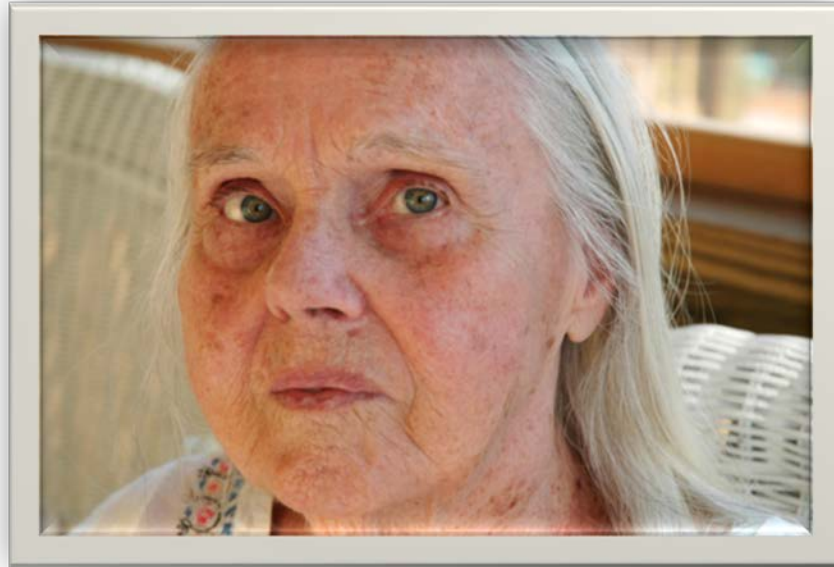


Fear of Retaliation



PARTICIPANT GUIDE

Developed by the
University of Wisconsin Oshkosh
Center for Career Development (CCDET)
and
Wisconsin Board on Aging and Long Term Care

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Special thanks to the
Connecticut Board on Aging and Long Term Care
Connecticut Department of Social Services Office of Organizational and Skill
Development
Wisconsin Department of Health Services Division of Quality Assurance

Pre-workshop Questionnaire

Circle your answers to the following questions:

Do you know the definition of the word "retaliation?"	Yes	No	Not sure
Do you think fear of retaliation exists in care facilities?	Yes	No	Not sure
Is being fearful of retaliation just a part of life?	Yes	No	Not sure
Has someone ever told you they were afraid to report a complaint?	Yes	No	Not sure
Do you think you can do anything to reduce fear of retaliation?	Yes	No	Not sure

Learning Objectives

At the end of this training, learners will be able to:

Acknowledge that fear of retaliation is a reality for people who must rely on others to meet their needs.

Residents will:

- Understand their right to voice concerns without fear of retaliation
- Learn ways to report
- Discover available resources

Staff will:

- Realize the impact of behavior and communication on those in their care
- Understand the right to be free of retaliation
- Acknowledge the responsibility to report retaliation
- Identify subtle actions that are retaliatory in nature
- Understand how fear may prevent or affect the manner in which residents voice concerns

Family members/friends will:

- Recognize the signs of retaliation
- Learn how to effectively report concerns



What is Retaliation?

Retaliation is a negative act in response to another person's real or perceived action or behavior. Other words for "retaliation" include:

- Payback
- Revenge
- Reprisal
- Punishment

Retaliation can be blatant (obvious) like this example:

Resident George asked Caregiver Sara to push his wheelchair to the activity room so that he could play cards with his friends. Sara refused, telling George that she wasn't going to help him anymore because he complained too much.

Retaliation can also be more subtle (indirect):

Caregiver Sara was upset with Resident George because he complained about her to the nurse. When it was time for Sara to help George to the activity room to play cards with his friends, she pretended to forget to take George to his favorite activity.

Name some other examples of retaliation between caregivers and residents, whether obvious or more indirect:

Examples of Retaliation

In addition to staff to resident, retaliation can occur between other combinations of people in a care facility. What could be the impact on the resident in each of these situations?

People Involved	Impact on Resident
Staff → Staff Manager → Staff	
Staff → Family/Friend of Resident	
Resident → Resident	
Family/Friend/Others → Resident	

Retaliation is sometimes confused with **bullying**. While retaliation is in response to another person's perceived actions or words, a bully may intimidate or harass another person for no reason at all. Sometimes bullies choose victims based on their view of the victim as weak or unable to "fight back" or retaliate. Some instances of bullying may be viewed as retaliation.

Legal Background



Retaliation is not only a poor practice affecting the quality of life for people in care. It also violates the law. Wisconsin statutes prohibit retaliation against residents, health care staff, providers and others under certain circumstances. (WI Stats., ch. 16, 46, 50)

Other rules and regulations guarantee certain rights to persons in care, including the right to file grievances or complaints and be free from retaliation.

In a recent study, almost 25% of nursing home residents and 13% of assisted living residents indicated that they **do** fear retaliation if they report an incident of abuse or neglect.

Retaliation toward residents by their caregivers sometimes constitutes caregiver misconduct (abuse/neglect/misappropriation) and therefore must be reported immediately to a manager and also externally to the Division of Quality Assurance. Specific legal references and other resources are listed at the end of this guide.

Activities: Video Interviews

The following videos help us “walk in the shoes” of residents and better understand their perspectives and feelings.

Depending on Others

Can you think of some of the benefits and challenges of receiving care?

Next we’ll watch a short video of a person talking about both the benefits and challenges of receiving care.

Richard is a 58 year-old man who spent three weeks in a rehabilitation facility after hip replacement surgery one year ago. He is otherwise in good health. Richard owns a small business and is used to being quite independent, making his own decisions and providing a comfortable lifestyle for himself and his family.

Can you add any benefits or challenges of receiving care to our list after watching the video?

In this next video, meet Cathleen.

Cathleen is a 70-something woman who has had rheumatoid arthritis since age 21. She is also experiencing vision loss. After a recent surgery, Cathleen and her family decided that she couldn't live alone any longer. After much research, they decided on a nursing home that had come highly recommended to them.

Cathleen was good at describing her feelings. Which of those feelings stood out to you?

A Victim of Retaliation

How would you feel if someone (your caregiver, a co-worker, another person in care) retaliated against you for making a complaint?

Next we'll watch a video of a person in care talking about being a victim of retaliation.

Barbara is a woman with COPD (chronic obstructive pulmonary disease). She uses a nasal cannula and oxygen to help her lung function. Barbara has a small apartment within a CBRF where she has lived for the last 3 years. As her COPD progresses, she finds it more and more difficult to walk even short distances or care for herself and her surroundings.

Can you identify the retaliation in this video?

How did the resident council help Barbara in this instance?

Have you ever felt afraid or hesitant about reporting something because you were afraid of the response, either in your work or personal life? If so, think about that situation for a moment. Which of the feelings on our list might you have felt?

Goals and Best Practices: How to Reduce Fear of Retaliation

Goals

Listed below are some goals for reducing fear of retaliation. Take a moment to review the list.

1. Residents, staff, family members and others understand that retaliation is never acceptable.
2. People who feel they are victims of retaliation and their families know where to safely seek help.
3. Staff who observe or suspect retaliation against a person in their care: a) understand their responsibility to report it and b) know to whom they must report.
4. Facilities are clear in actions and words that retaliation by any person against another is not tolerated.

Best Practices

Here are some best practices for reaching the goals:

1. Residents, staff, family members and others understand that retaliation is never acceptable.

- Care facilities introduce training about fear of retaliation and prevention to all parties that could be involved
- Care facilities review resident rights with residents, family members and staff at staff orientation, resident admission, and annual continuing education

2. Residents who feel that they are victims of retaliation and their families know where to safely seek help.

- Care facilities ensure that residents and others are made aware of anti-retaliation resources at resident admission and new employee orientation
- Care facilities post information about internal processes for addressing resident grievances including retaliation. For example, nursing homes have resident councils, CBRFs have grievance procedures.
- Care facilities post contact information for outside agencies that can help residents: For example:
 - a) Ombudsman Program (WI Board on Aging and Long Term Care)
 - b) Wisconsin Division of Quality Assurance
 - c) County Adult Protective Services

3. Staff who observe or suspect retaliation against a person in their care: a) understand their responsibility to report it and b) know to whom they must report.

- Care facilities have written procedures in place that:
 - a) explain resident rights
 - b) outline caregivers' responsibility to report suspected abuse and neglect (including retaliation) to a supervisor or other designated staff under federal regulations, Wisconsin's Caregiver law and Wisconsin's Elder Abuse and Adult-at-Risk reporting law
 - c) remind caregivers that there is no tolerance for failure to report

4. Facilities are clear in actions and words that retaliation by any person against another is not tolerated.

- Supervisors and managers:
 - a) maintain awareness of the potential for retaliation
 - b) spend time with both residents and staff during each shift when possible
 - c) pay special attention to those in their care who may be at particular risk for retaliation

Activity: What You Can Do

Although many best practices start with care facility managers, there are actions and steps that we can all take to help ensure that everyone is safe from retaliation.

What are some actions you could take *in your role* to help reduce fear and retaliation?

Re-visit the Pre-workshop Questionnaire

Turn back to the questionnaire you filled out earlier and review each question. Have any of your answers changed?

Review Learning Objectives

At the end of this training, learners will be able to:

Acknowledge that fear of retaliation is a reality for people who must rely on others to meet their needs

Residents will:

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- Learn ways to report
- Discover available resources

Staff will:

- Realize the impact of behavior and communication on those in their care
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Family members/friends will:

- Recognize the signs of retaliation
- Learn how to effectively report concerns

Closing



The next pages in your guide contain contact information for outside resources mentioned earlier in this training. Also included is the statutory language pertaining to retaliation in certain settings/special circumstances that we previously reviewed.

Thank you for your participation in this workshop!

Resources and References

Wisconsin Board on Aging and Long Term Care (Ombudsman Program)

<http://longtermcare.wi.gov/>

The word, "Ombudsman" (om-budz-man), is Scandinavian. In this country the word has come to mean an advocate or helper. An ombudsman protects and promotes the rights of long term care consumers, working with consumers and their families to achieve quality care and quality of life. Mandated by Congress through the Older Americans Act, in Wisconsin the Board on Aging and Long Term Care operates the program statewide. Long term care consumers have an undeniable right to express concerns without fear of retaliation or reprisal.

The Board on Aging and Long Term Care provides service to persons age 60 and older who are consumers of Wisconsin long term care programs. The Ombudsman Program has, by statute, authority to obtain access to all residents and tenants of Wisconsin nursing homes, Community Based Residential Facilities (CBRF's), Residential Care Apartment Complexes (RCAC's), and persons served by the Community Options Program and Family Care/Partnership programs.

Fifteen dedicated and skilled Ombudsmen serve residents of all of Wisconsin's 72 counties. Services are available at no charge, and all complaints are kept confidential, as per the direction of the individual voicing the concern.

To find the ombudsman in a specific Wisconsin county, click here:

<http://longtermcare.wi.gov/county.asp?cocatid=1&locid=123>

For general information, call this number:

1-800-815-0015

Wisconsin Division of Quality Assurance

<https://www.dhs.wisconsin.gov/dqa/sections.htm>

The Division of Quality Assurance (DQA) is responsible for assuring the safety, welfare and health of persons using health and community care provider services in Wisconsin including nursing homes, community-based residential facilities (CBRFs), adult family homes (AFHs), residential apartment care complexes (RCACs), home health and personal care agencies.

Any person (resident, employee, ombudsman, relative, friend, other) may file a complaint regarding a facility staff person or a regulated health care facility at

<https://4.selectsurvey.net/DHS/TakeSurvey.aspx?SurveyID=82L1n82K>.

If you have questions, e-mail the Division of Quality Assurance at dhswebmaildqa@wisconsin.gov or call (608) 266-8481.

Wisconsin Elder-at-risk Help Lines

<https://www.dhs.wisconsin.gov/aps/ear-agencies.htm>

Every county has an elder (also known as elder abuse) agency that will look into reported incidents of abuse including retaliation, neglect, financial exploitation and self-neglect. Call your County Help Line if you need to talk to someone about suspected abuse of an elder (age 60 and over). To report abuse of an adult age 18 to 59, contact your county agency.

To find a county's help line, go to the website above. If you do not know the name of the county, you can find it by looking it up as long as you know the city, town or village.

Connecticut Long Term Care Ombudsman Program

<http://www.ct.gov/ltcop/cwp/view.asp?Q=473774&A=3821>

“Voices Speak Out Against Retaliation”

Prompted by a resident question at the VOICES Forum in 2005, Connecticut's Long Term Care Ombudsman Program (LTCOP) initiated a statewide work group and also commissioned the University of Connecticut Health Center to study Fear of Retaliation in skilled nursing facilities. That study concluded that retaliation and the fear of retaliation is a reality in any supportive housing situation.

Special thanks to the Connecticut Ombudsman Program and the Connecticut Department of Social Services Office of Organizational and Skill Development for permission to use training and study materials in developing this workshop for Wisconsin providers, residents, and family members.

Wisconsin Legislation Related to Retaliation in Certain Care Facilities

Statutes

<http://legis.wisconsin.gov/rsb/stats.html>

CHAPTER 16 DEPARTMENT OF ADMINISTRATION

16.009 Board on aging and long-term care

(5) (a) No person may do any of the following:

1. Discharge or otherwise retaliate or discriminate against any person for contacting, providing information to or otherwise cooperating with any representative of the board.
2. Discharge or otherwise retaliate or discriminate against any person on whose behalf another person has contacted, provided information to or otherwise cooperated with any representative of the board.

(b) Any person who violates par. (a) may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(d) Any employee who is discharged or otherwise retaliated or discriminated against in violation of par. (a) may file a complaint with the department of workforce development under s.106.54(5).

(e) Any person not described in par. (d) who is retaliated or discriminated against in violation of par. (a) may commence an action in circuit court for damages incurred as a result of the violation.

CHAPTER 46 SOCIAL SERVICES

46.90 Elder abuse reporting system

(4) REPORTING. (ab) The following persons shall file reports as specified in par. (ad):

1. An employee of any entity that is licensed, certified, or approved by or registered with the department.
3. A health care provider, as defined in s. 155.01 (7).
4. A social worker, professional counselor, or marriage and family therapist certified under ch. 457.

(ad) Except as provided in par. (ae), a person specified in par. (ab) who has seen an elder adult at risk in the course of the person's professional duties shall file a report with the county department, the elder-adult-at-risk agency, a state or local law enforcement

agency, the department, or the board on aging and long-term care if the elder adult at risk has requested the person to make the report, or if the person has reasonable cause to believe that any of the following situations exist:

1. The elder adult at risk is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss and is unable to make an informed judgment about whether to report the risk.
2. An elder adult at risk other than the subject of the report is at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by a suspected perpetrator.

(ae) A person specified in par. (ab) to whom any of the following applies is not required to file a report as provided in par. (ad):

1. If the person believes that filing a report would not be in the best interest of the elder adult at risk. If the person so believes, the person shall document the reasons for this belief in the case file that the person maintains on the elder adult at risk.
2. If a health care provider provides treatment by spiritual means through prayer for healing in lieu of medical care in accordance with his or her religious tradition and his or her communications with patients are required by his or her religious denomination to be held confidential.

(ar) Any person, including an attorney or a person working under the supervision of an attorney, may report to the county department, the elder-adult-at-risk agency, a state or local law enforcement agency, the department, or the board on aging and long-term care that he or she believes that abuse, financial exploitation, neglect, or self-neglect of an elder adult at risk has occurred if the person is aware of facts or circumstances that would lead a reasonable person to believe or suspect that abuse, financial exploitation, neglect, or self-neglect of an elder adult at risk has occurred. The person shall indicate the facts and circumstances of the situation as part of the report.

(b) 1. a. **No person may discharge or otherwise retaliate or discriminate** against any person for reporting in good faith under this subsection.

b. **No person may discharge or otherwise retaliate or discriminate** against any individual on whose behalf another person has reported in good faith under this subsection.

(cm) Any discharge of a person or act of retaliation or discrimination that is taken against a person who makes a report under this subsection, within 120 days after the report is made, establishes a rebuttable presumption that the discharge or act is made in response to the report. This presumption may be rebutted by a preponderance of evidence that the discharge or act was not made in response to the report.

2. b. Any employee who is discharged or otherwise discriminated against may file a complaint with the department of workforce development under s. 106.54 (5).

c. Any person not described in subd. 2. b. who is retaliated or discriminated against in violation of subd. 1. a. or b. may commence an action in circuit court for damages incurred as a result of the violation.

CHAPTER 50
UNIFORM LICENSURE**50.07 Prohibited acts**

(1) No person may:

(e) **Intentionally retaliate or discriminate** against any resident or employee for contacting or providing information to any state official, including any representative of the office of the long-term care ombudsman under s. 16.009 (4), or for initiating, participating in, or testifying in an action for any remedy authorized under this subchapter.

(em) **Intentionally retaliate or discriminate** against any resident or employee on whose behalf another person contacted or provided information to any state official, including any representative of the office of the long-term care ombudsman under s.16.009 (4), or initiated, participated in or testified in an action for any remedy authorized under this subchapter.

(f) Intentionally destroy, change or otherwise modify an inspector's original report.

(2) Violators of this section may be imprisoned up to 6 months or fined not more than \$1,000 or both for each violation.

(3) (b) Any employee who is discharged or otherwise retaliated or discriminated against in violation of sub. (1) (e) or (em) may file a complaint with the department of workforce development under s. 106.54 (5).

(c) Any person not described in par. (b) who is retaliated or discriminated against in violation of sub. (1) (e) or (em) may commence an action in circuit court for damages incurred as a result of the violation.

50.09 Rights of residents in certain facilities

(1) Residents' rights. Every resident in a nursing home or community-based residential facility shall, except as provided in sub. (5), have the right to:

(b) **Present grievances** on the resident's own behalf or others to the facility's staff or administrator, to public officials or to any other person **without justifiable fear of reprisal**, and to join with other residents or individuals within or outside of the facility to work for improvements in resident care.

Wisconsin Administrative Code

<http://legis.wisconsin.gov/rsb/code.htm>

DHS 83.32 Rights of residents (CBRF)

(3) Rights of residents. Any form of coercion to discourage or prevent a resident or the resident's legal representative from exercising any of the rights under this subchapter is prohibited. **Any form of retaliation** against a resident or the resident's legal representative for exercising any of the rights in this subchapter, or against an employee or any other person who assists a resident or the resident's legal representative in the exercise of any of the resident rights in this subchapter, **is prohibited.**

DHS 83.33 Grievance procedure (CBRF)

(1) A CBRF shall have a written grievance procedure and shall provide a copy to each resident and the resident's legal representative before or at the time of admission. The grievance procedure shall specify all of the following:

(a) A resident or any individual on behalf of the resident may file a grievance with the CBRF, the department, the resident's case manager, if any, the board on aging and long term care, Disability Rights Wisconsin, Inc., or any other organization providing advocacy assistance. The resident and the resident's legal representative shall have the right to advocate throughout the grievance procedure. The written grievance procedure shall include the name, address and phone number of organizations providing advocacy for the client groups served, and the name, address and phone number of the department's regional office that licenses the CBRF.

(b) Any person investigating the facts associated with a grievance shall not have had any involvement in the issue leading to the grievance.

(c) Any form of coercion to discourage or prevent any individual from filing a grievance or in **retaliation** for having filed a grievance **is prohibited.**

(d) The CBRF shall provide a written summary of the grievance, the findings and the conclusions and any action taken to the resident or the resident's legal representative and the resident's case manager. The CBRF shall maintain a copy of the investigation.

DHS 88.10 Resident Rights (Licensed Adult Family Homes)

(6) **COERCION AND RETALIATION PROHIBITED.** Any form of coercion to discourage or prevent a resident or the resident's guardian or designated representative from exercising any of the rights under this section is prohibited. Any form of coercion or retaliation against a resident or the resident's guardian or designated representative for exercising any of the rights in this section, or against a service provider who assists a resident or the resident's guardian or designated representative in exercising any of the resident's rights in this section, is prohibited.

DHS 89.36 Coercion and retaliation prohibited (Residential Care Apartment Complex)

Any form of coercion to discourage or prevent a tenant or the tenant's guardian or designated representative from exercising any of the rights under this subchapter or from filing a grievance or complaint is prohibited. Any form of retaliation against a tenant for exercising his or her rights or filing a grievance or complaint, or against an employee or service provider who assists a tenant in exercising his or her rights or filing a grievance or complaint, is prohibited.