

## APPENDIX B.1. GUIDANCE FOR DESIGNATING A REPORT AS NO NEED FOR PROTECTIVE SERVICES

**Below are unacceptable reasons for placing a Report of Need in the *no need for protective services* category. Guidance and discussion are provided under each. The below list is not exhaustive, and there are other instances where the categorization of “no need” is unacceptable. The below list represents some of the more frequent situations encountered by an investigator.**

### **The older adult is “alert and oriented”, “cognizant”, “competent” “cognitively intact”**

“Alert and oriented”, “alert to person and place”, “cognizant”, “competent” and “cognitively intact” are subjective and are not to be used as a reason to place a report in the *no need for protective services* category. The intake worker must ask questions and ascertain if the older adult is capable of accessing services. If the older adult has made efforts of self-resolution and risk reduction, then those efforts are documented in the Report of Need. However, an older adult’s ability to call 911 is not an indicator in itself that they are able to obtain services on their own. An older adult may *not* be screened out solely because they are able to call 911 for help. Without this information clearly documented in the report, it cannot be considered a *no need for protective services* report.

### **Older adult has “the right to make poor decisions”**

When examining the definition of incapacity under the Protective Services for Older Adults statute and regulations, intake workers must be aware that incapacity includes: fear, intimidation, physical or cognitive limitations or mental health needs that may impact an older adult’s ability to access services. The alleged ability to make “poor decisions” is not part of the statute or regulatory criteria to screen a person out of protective services. An investigation must be conducted and then a decision be made to determine if the person has the ability to understand risk, make a poor decision, and understand the consequences of making a poor decision.

### **Older adult has “the right to make poor decisions” when leaving a facility *against medical advice (AMA)***

There are many factors that could impact an older adult’s decision to leave a hospital or facility against medical advice. When examining incapacity under the statute and regulations, intake workers must be aware that incapacity includes: fear, intimidation, physical or cognitive limitations or mental health needs impacting the older adult’s ability to access services. The alleged ability to “make poor decisions” is not part of the statute or regulatory criteria and may not be used as a reason to screen a person out of protective services. An investigation must be conducted and then a decision be made to determine if the person has the capacity to understand

risk and decline protective services.

**The facility is/was a “responsible caretaker” or that the facility “acted appropriately or responsibly” when the allegation is abuse by a facility or a facility staff person**

By regulation, facilities are never considered responsible caretakers at the time of the report. Because they cannot be considered a responsible caretaker there is no means to determine without an investigation that the facility “acted appropriately”.

**“The risk was reduced because the alleged abuser was terminated”**

The category assigned to a report alleging abuse is determined by examining what occurred at the time of the alleged incident. ~~However,~~ Additionally, if the older adult has been reported to need protective services due to other reasons after the initial incident occurred, the report should not be categorized as a No Need (for a protective services investigations) solely because it wasn’t at the time of the incident. The older adult shall be evaluated for the need for an investigation based on any additional information in the report indicating the older adult’s need for protective services

Facilities do not always provide accurate or timely information about incidents. There have been many investigations that have revealed that the wrong person was terminated or that there were additional perpetrators that were not identified during the facility’s investigation. Termination of an employee is not justification or criteria to categorize a report in the *no need for protective services* category. The agency may not rely on the outcome of a facility investigation when assigning a category to the report.

**The facility “acted responsibly” by immediately intervening to remove the risk when there are allegations of resident-to-resident abuse**

The intake worker must ask questions and determine what the risk was at the time of the incident. The category assigned is determined by carefully examining the information provided by the reporter. The current status of the older adult or the facility investigation is not a consideration when assigning a category. The older adult’s need for protective services should be evaluated based on the time of the incident. If the older adult has been reported to need protective services due to other reasons after the initial incident occurred, the report should not be categorized as a No Need (for a protective services investigation) solely because it wasn’t at the time of the incident. The older adult shall be evaluated for the need for an investigation based on any additional information in the report indicating the older adult’s need for protective services

A facility’s response to the incident is not a consideration when categorizing the report. Facilities are not considered responsible caretakers at the time of the report. Because they cannot be considered a responsible caretaker, there is no means to

determine without an investigation, that the facility “acted appropriately or responsibly”. Additionally, facilities do not always provide accurate or timely information about incidents.

**There was “no injury” from an alleged incident resulting in no risk to the older adult (this includes situations of resident-to-resident abuse in facilities and for individuals in the community)**

There does not have to be an injury for a report of abuse to be investigated. An older adult can have pain or discomfort from an incident and not have any physical signs of injury (bruises, lacerations, etc.).

An older adult can also experience fear, intimidation, mental anguish or other emotional distress from a physical abuse incident that did not result in any outward signs of physical abuse.

**The “older adult has A Neurocognitive Disorder (formally dementia) and does not recall the alleged abusive incident so therefore there is no risk”**

An individual with dementia, or other cognitive deficits, can experience fear and intimidation from a physically or emotionally abusive incident. Another consideration is that reporters can minimize the situation or the incident that occurred.

Just because an older adult has memory deficits does not mean that they should be treated in an abusive manner. Statistically older adults with dementia are at a higher risk for abuse. They make the perfect victim because they are less likely to be believed and/or they may have difficulty expressing what happened to them. A diagnosis of dementia, Alzheimer’s etc., is not a reason to place the report in the *no need for protective services* category.

**The “agency is not the facility’s bill collector”**

The statute and regulations do not preclude facilities from reporting financial exploitation. Additionally, under the statute, older adults have the right to receive protection from abuse regardless of where they reside. An older adult residing in a facility is entitled to the same investigation and protective services as an older adult residing in the community.

Taking a Report of Need and investigating does not make the agency the facility’s “bill collector”. The agency has an obligation to protect the older adult.

If the reporter does not know why they are calling, inquire about the incident or abuse and explain the definition of abuse as it relates to protective services. The reporter will need to determine whether abuse is suspected.

The older adult’s facility bill may not be the only financial obligation that is impacted by the alleged financial exploitation. Pharmacy bills, insurance premiums, personal items, and other needs may also be unpaid and the resources are used to benefit another person,

thus placing the older adult at risk. The older adult's resources and income belong to the older adult and not the facility, therefore, the protective service unit has an obligation to investigate and determine what is happening to the older adult's resources.

**The older adult “has a responsible caretaker”**

This reason may not be used if the person/caretaker alleged to have committed the reported abuse is in a position of providing care or is power of attorney, guardian, representative payee, or any other person or entity involved with an older adult that is alleged to have abused, neglected, exploited or abandoned the older adult.

The regulations include a caretaker definition and a responsible caretaker definition. These exist because not all individuals or entities that self-define themselves as caretakers are always responsible caretakers. The protective service investigation is the only method to determine if there is a responsible caretaker.

**“The same allegations were investigated previously and found to be unsubstantiated”**

Only information provided by the reporter is placed in the Report of Need.

Additional information or agency knowledge about the older adult is not used when categorizing the report. The report is categorized based only on information provided by the reporter. Information from past reports may not be used to categorize a report as *no need for protective services*. Based on repeated RONS that have resulted in unsubstantiated allegations, the agency may conduct an abbreviated investigation.

**An older adult living in a domestic violence situation is “choosing to remain in the abusive situation” or “has remained with the abuser for a long time and has chosen to remain”**

Using any of these reasons or any other language that blames the victim is not to be used to categorize the report as no need for protective services. An older adult living in an abusive situation deserves and is entitled to have protective services offered to them. Many older adults remain in an abusive situation due to fear, intimidation, embarrassment, physical frailty, disability, financial worries, etc. Saying that a person “chooses” to remain in an abusive situation is blaming the victim. Protective services exists to offer protective services and support to those individuals that are living in an abusive situation, including domestic violence.

**The older adult “chooses to continue to drink”, “Chooses to continue to do drugs”, “refuses rehabilitation” etc.**

Older adults may experience many unique physiological and psychological effects from alcohol that a younger person may not experience. Exacerbated medical issues, fall risk, impaired cognition, etc. can place the older adult in a higher level of risk category when they are actively abusing drugs or drinking. The Older Adult's Protective Services

regulations do not preclude an older adult from receiving services because the reported problem is related to drugs and alcohol.

**“A police report was made so there is no need for protective services”**

Law enforcement and protective services are mutually exclusive. What Protective Services for Older Adults can provide is very different than what law enforcement can provide. Both can occur at the same time.

A report to law enforcement does not mean that the risk to the older adult will be reduced. In some cases, risk can increase when a referral to law enforcement is made. Risk reduction or elimination is the role of protective services. Older adults may benefit from services that law enforcement does not offer. Services can include: protection from abuse orders, referrals and assistance with entitlements, counseling, etc.

When a Report of Need is received, and it contains information that a referral to law enforcement has been made, care must be taken to categorize the report based on protective service criteria only. A referral to law enforcement, alone, is not a reason to categorize the report as *no need for protective services*.

**“The alleged abuser’s identity or cause of injury is unknown”**

When a reporter does not know the identity of the alleged perpetrator and/or causation of an injury the report is taken and may not be categorized as *no need for protective services* based on those details being unknown.

There is no regulation allowing for an alleged abuse report to be categorized as *no need for protective services* because the reporter does not know the identity of the alleged abuser or the cause of the injury. Unexplained bruising, fractures or other wounds are always concerning and are frequently reported by facilities or other individuals. If a facility is calling to report an unexplained injury, it is because they suspect abuse has occurred. They do not have to know or prove, at the time of intake, that it is abuse.

The standard for facility reporting is reasonable cause to suspect. Even if the reporter does not have any knowledge of the causation of the injury, the report must be categorized based on the protective service criteria and may not be categorized as *no need for protective services* solely because the details, on the cause of the injuries, are unknown. If the reporter does not know why they are calling, inquire about the incident or abuse and explain the definition of abuse as it relates to protective services. The reporter will need to determine whether abuse is suspected.

There are times when there are allegations of abuse and the older adult cannot identify the person that perpetrated the abuse. The lack of direct knowledge or the older adult’s inability to name an alleged abuser is not a reason to categorize a report as *no need for protective services*.

**The bank was able to intervene and freeze the alleged victim's account before any money was spent. There was no loss to the alleged victim and no need for a protective services investigation.**

Generally, bank employees are not able to provide enough information regarding the older adult to make a definitive determination of a no need report. Banks are able to identify the current risk of fraudulent activity, but this is not always enough to satisfy the five criteria. This intervention does not ensure that the older adult is aware they are being scammed and leaves the possibility for the older adult to continue participating in the scam at other banking locations or via gift card purchases.

Additionally, the capacity of the older adult may not be known at the time. Physical capacity might be observed if the older adult banks in person. However, it is more difficult to gauge cognitive capacity when the older adult is using online banking services. It may be prudent to determine when the older adult became incapacitated, especially when the alleged perpetrator is a power of attorney or guardian. This would not be known unless an investigation occurs.