

# THE OKLAHOMAN

## Q&A with Samuel P. Clancy: Long-term care industry adds abuse through technology to definitions



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### Long-term care industry adds abuse through technology to definitions

**Q: Individuals working in long-term-care facilities increasingly have shared inappropriate photos and recordings of residents on social media — often through Snapchat, an app used to send pictures or videos that vanish seconds after being seen. How has the Centers for Medicare and Medicaid Services (CMS) responded?**

*Samuel P. Clancy is an attorney with GableGotwals.* **A:** In 2016, CMS amended its abuse definition for long-term care facilities to include abuse facilitated or enabled through the use of technology. CMS also issued a memo to state surveyors on protecting resident privacy and prohibiting mental abuse related to pictures and recordings by facility staff. Mental abuse includes abuse facilitated by staff taking or using pictures or recordings that would “demean or humiliate” a resident — a vague, subjective standard.

### **Q: When would pictures or recordings demean or humiliate a resident?**

**A:** Examples include (without limitation) pictures and recordings of residents that involve nudity, intimate relations, bathing, toileting, providing perineal care, agitating residents to solicit responses, directing residents to use inappropriate language, showing residents in compromised positions, and demeaning labels, comments or statements. State surveyors investigate allegations of a picture or recording of a resident, or the manner that it is used, demeaning or humiliating the resident, regardless of whether the resident provided consent and regardless of the resident's cognitive status.

### **Q: Should facilities revisit their policies and procedures, and provide training and oversight?**

**A:** Facilities must develop and implement written policies and procedures that prohibit abuse and outline reporting requirements. Facilities should review and revise their policies and procedures to ensure staff is prohibited from taking or using pictures or recordings that would demean or humiliate residents. And facilities must train staff on abuse-prohibition policies, identifying abuse, and reporting requirements. Training is key to establishing an environment that encourages reporting allegations to facility administrators without fearing repercussion. Facilities also must supervise staff to assure that policies and procedures are implemented properly.

**Q: How should facilities handle abuse allegations?**

**A:** Facilities must report abuse allegations to state officials, protect residents involved in allegations, conduct thorough investigations, implement corrective actions to prevent additional abuse, and report investigative findings to state officials. After consulting legal counsel, facilities also should consider notifying the resident's family or legal representative. Facilities should consider the following as corrective actions: changing staff, banning staff from carrying phones, increasing supervision, protecting against retaliation, and providing counseling for residents.

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