

**CITY OF LOS ANGELES
DEPARTMENT OF AGING**

Subject: MANDATED ELDER ABUSE REPORTER POLICY & PROCEDURE	Directive No. <u>2.37</u> Effective Date: <u>07-01-06</u> Revision Date: Page <u>1</u> of <u>8</u>
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POLICIES AND PROCEDURES RELATED TO MANDATED ELDER ABUSE REPORTER

POLICY

The California Welfare & Institutions Code Section 15630 requires that certain employees must report suspected abuse of elders or dependent adults to the county Adult Protective Services department. These employees, referred to in the applicable code as 'mandated reporters', must comply with the reporting requirements. The Los Angeles Department of Aging (DOA) as a designated Area Agency on Aging is a mandated reporter and as such its policy is that all department employees including administrative support staff comply with the reporting requirements.

PURPOSE: 1.1

To remain in compliance with California's Welfare & Institutions Code 15630 by providing guidelines for the reporting of suspected cases of elder and dependent adult abuse required of Mandate Reporters. Responsibility is defined for all Mandated Reporters who are employed by the Department of Aging (DOA) and contract agencies/providers.

DEFINITIONS: 2.1

"Elder" means any person residing in this State, 65 years of age or older.

"Dependent Adult" means any person residing in this State, between the ages of 18 and 64 years, who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights including, but not limited to persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age or who is admitted as an inpatient to a 24-hour health facility as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety code. **"Dependent Adult"** also includes any person between the ages of 18 and 64 years who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code. (Welfare and Institutions Code Sections Section 15610.23).

"Abuse of an Elder" or "Dependent Adult" means either of the following:

Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting harm or pain or mental suffering, and/or;

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The deprivation by a care custodian of goods and services that is necessary to avoid physical harm or mental suffering.

“Health Practitioner” means a physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, licensed clinical social worker or associate clinical social worker, marriage, family, and child counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage, family, and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, or an unlicensed marriage, family, and child counselor intern registered under Section 4980.44 of the Business and Professions Code, state or county public health or social service employee who treats an elder or a dependent adult for any condition, or a coroner (Section 15610.37 of the Welfare and Institutions Code).

“Clergy Member” means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, synagogue, temple, mosque, or recognized religious denomination or organization. “Clergy member” does not include unpaid volunteers whose principle occupation or vocation does not involve active or ordained religious denomination or organization, and who periodically visit elder or dependent adults on behalf of that church, synagogue, temple, mosque, or recognized religious denomination or organization.

“Imminent Danger” means a substantial probability that an elder or dependent adult is in imminent or immediate risk of death or serious physical harm, through either his or her own action or inaction, or as result of the action or inaction of another person (Welfare and Institutions Code Section 15610.39).

“Care custodian” means an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff of any of the following: 24-hour facilities, as defined in Sections 1250, 1250.2 and 11250.3 of the Health and Safety Code; Clinics; Independent living centers; Camps; Community care facilities, as defined in Section 1502 of the Health and Safety Code and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code; Foster homes; Vocational rehabilitation facilities and work activity centers; Officer of patients’ rights advocates and clients’ right advocates, including attorney; Offices of public conservators, public guardians, and court investigators; Any protection or

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advocacy agency or entity that is designated by the Governor to fulfill the requirements and assurances of the following: The federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, contained in Chapter 144 (commencing with Section 15001) of Title 41 of the United States Code, for protection and advocacy of the rights of persons with developmental disabilities, and the Protection and Advocacy for the Mentally Ill Individuals Act of 1986, as amended, contained in Chapter 114 (commencing with Section 10801) of Title 41 of the United States Code, for the protection and advocacy of the rights of persons with mental illness. Any other protective, public, sectarian, mental health, or private assistance or advocacy agency or person providing health services or social services to elders or dependent adults. (Welfare and Institutions Code Sections 15610.17).

“Caretaker” means any person who has the care, custody, or control of or stands in a position of trust with, an elder or a dependent adult (Welfare and Institutions Code Section 15656d).

“Long-term care ombudsman” means the State Long-Term Care Ombudsman, local ombudsman coordinators, and other persons currently certified as ombudsmen by the Department of Aging as described in Chapter 11 (commencing with Section 9700) of Division 8.5 (Welfare and Institutions Code Section 15610.50).

“Multidisciplinary personnel team” means any team of two or more persons who are trained in the prevention, identification, and treatment of abuse of elderly or dependent adults and who are qualified to provide a broad range of services related to abuse of elderly or dependent adults. A multidisciplinary personnel team may include, but is not limited to, all of the following: Psychiatrists, psychologists, or other trained counseling personnel. Police officers or other law enforcement agents, Medical personnel with sufficient training to provide health services, Social workers with experience or training in prevention of abuse of elderly or dependent adults, Public guardians and the local long-term care ombudsman (Welfare and Institutions Code Section 15610.55).

“Physical abuse” means assault, battery, assault with a deadly weapon or force likely to produce great bodily injury, sexual assault, as defined in Section 240, 242, 245, 243.4, 264.1, 262, 285, 286, 288 and 289 of the Penal Code, or use of a physical or chemical restraint or psychotropic medication for punishment or a period beyond that for which the medication was ordered pursuant to the instructions or for any purpose not authorized by the physician and surgeon licensed in this State.

“Neglect” means the negligent failure of any person having the care or custody of an elder or a dependent adult or the elder or dependent adult themselves to exercise that degree of care that a reasonable person in a like position would exercise. “Neglect”, means either of the following:

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The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.

The negligent failure of an elder or dependent adult to exercise that degree of self-care that a reasonable person in alike position would exercise that degree of self-care that a reasonable person in alike position would exercise.

Neglect includes, but is not limited to, all of the following:

- (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.
 - (2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.
- Failure to protect from health and safety hazards.
Failure to prevent malnutrition or dehydration.
Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

“Financial abuse” means a situation in which a person, including, but not limited to, one who has the care of custody of, or who stands in a position of trust to, an elder or a dependent adult, takes, secretes, or appropriates their money or property alone or in concert with a third party, to any wrongful use, or with the intent to defraud. Financial abuse also includes a bad-faith failure to transfer the property of the dependent adult or dependent elder to the person himself or herself, his or her representative, or a court-appointed receiver.

“Abandonment” means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

“Isolation” means the intentional act of preventing an elder or a dependent adult from receiving his or her mail, telephone calls, visitors or false imprisonment, as defined in Section 236 of the Penal Code, except if the fore mentioned act is performed pursuant to the instructions of a physician or surgeon licensed to practice medicine in the State and instructions are given as part of his or her medical care.

“Abduction” means to restrain from returning to this State or removal from this State of any elder or dependent adult who does not have the capacity to consent, or any conservatee without the consent of the conservator or the court.

“Mental suffering” means fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by threats harassment, or other forms of intimidating behavior.

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“Goods and services” necessary to avoid physical harm or mental suffering include, but are not limited to the provision of medical care for physical and mental health needs; assistance in personal hygiene; adequate clothing; adequately heated and ventilated shelter; protection from health and safety hazards; failure to protect from malnutrition and deprivation of necessities or physical punishment; and transportation and assistance necessary to secure any of the needs fore mentioned.

POLICY: 3.1 Mandated Reporters – What does the Law Require?

Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not that person receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or local law enforcement agency is a mandated reporter. Other persons not included can report as non-mandated reporter. Other persons not include can report as non-mandated reporters, as defined in the Welfare and Institutions Code Section 159631 a & b.

Any Mandated Reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse, or neglect (including self neglect), or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone/fax or through a confidential Internet reporting tool (WIC Section 15658) immediately or as soon as practicably possible, and by written report sent within two working days using form SOC 341 found in pdf format which can be downloaded and saved at this address: www.dss.cahwnet.gov/pdf/soc341.pdf

PROCEDURE: 4.1 Reporting Responsibilities

The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

Failure to report physical abuse, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment. Any mandated

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reporter who willfully fails to report physical abuse, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, where that abuse results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment.

When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is an agreement among them, the telephone/fax report or a confidential Internet report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

A telephone/fax report or a confidential Internet report of a known or suspected instance of elder or dependent adult abuse shall include, if known,

- the name of the person making the report,
- the name and age of the elder or dependent adult,
- the present location of the elder or dependent adult,
- the names and addresses of family members or any other person responsible for the elder or dependent adult's care,
- the nature and extent of the elder or dependent adult's condition,
- the date of the incident, and
- any other information, including information that led that person to suspect elder or dependent adult abuse, as requested by the agency receiving the report.

Circumstances Under Which No Reporting Takes Place

A Mandated Reporter who is a physician or surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, **shall not be required to report, an incident where all of the following conditions exist:**

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, abduction, isolation, financial abuse, or neglect. **Then, if any of the following sections are valid, no report takes place.**

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservator-ship because of a mental illness or dementia.

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(iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.

All DOA mandated reporters, clinical professionals, paraprofessionals and other mental health staff who have knowledge of, or reasonably suspects, that types of elder or dependent abuse for which reports are not mandated have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered, in any other way **may** report the known or suspected instance of abuse.

Reporting Protocol

All suspected elder or dependent adult abuse shall be reported by DOA Staff to:

- (1) The local ombudsman or the local law enforcement agency if the suspected or alleged abuse has occurred in a long-term facility.
- (2) The adult protective services or local law enforcement agency if the suspected or alleged abuse occurred other than a long-term facility.

The designated adult protective agencies in Los Angeles County are the Department of Community and Senior Services-Adult Protective Services (APS) and Law Enforcement Agencies. Report the known or suspected instance of abuse by telephone/fax or a confidential Internet report immediately or as soon as practically possible, and by written report sent within two working days using form SOC 341 distributed by the APS agency.

Confidentiality

The identity of all persons reporting suspected elder or dependent adult abuse is confidential and may be disclosed only between adult protective services agencies, long-term care ombudsman programs, when persons reporting waive confidentiality or by court order.

In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist-patient privilege applies to the specific information required to be reported.

Legal Liability / Immunity

Mandated reporters are given immunity from criminal and civil liability as a result of reporting suspected elder or dependent adult abuse. The law provides both civil and criminal liability protection for anyone who makes a report in good faith. This immunity includes taking photographs of the victim to submit with the report. Assistance with

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reasonable attorney's fees is available through the California Board of Control if legal action results from a report required or allowed by this law, and the reporter prevails. The law also provides both civil and criminal liability protection to mandated reporters who provide the requesting Adult Protective Services or local law enforcement representative access to the victim of a known or suspected instance of elder or dependent adult abuse.