



DEPARTMENT OF MENTAL HEALTH POLICY/PROCEDURE

SUBJECT REPORTING SUSPECTED ELDER/DEPENDENT ADULT ABUSE AND NEGLECT	POLICY NO. <p style="text-align: center;">202.9</p>	EFFECTIVE DATE <p style="text-align: center;">10/01/03</p>	PAGE <p style="text-align: center;">1 of 13</p>
APPROVED BY: <div style="text-align: center; margin-top: 10px;"> <p style="margin: 0;">Director</p> </div>	SUPERSEDES <p style="text-align: center;">102.9</p>	ORIGINAL ISSUE DATE <p style="text-align: center;">10/01/89</p>	DISTRIBUTION LEVEL(S) <p style="text-align: center;">2</p>

PURPOSE

- 1.1 To provide guidelines for reporting suspected cases of elder or dependent adult abuse.

DEFINITIONS

- 2.1 **Elder** is defined as any person residing in this state, 65 years of age or older. (Welfare and Institutions Code [WIC] 15610.27).
- 2.2 **Dependent adult** means any person between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his/her ability to carry out normal activities or to protect his/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. (WIC 15610.23(a))
 - 2.2.1 **Dependent adult** 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. (WIC 15610.23(b))
 - 2.2.2 **Developmental disability** means a disability that originated before an individual attains the age of 18, continues, or can be expected to continue, indefinitely and constitutes a substantial disability for that individual. This term shall include mental retardation, cerebral palsy, epilepsy and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature. (WIC 4514(a))
- 2.3 **Abuse of an elder or a dependent adult** means any of the conditions described in 2.3.1 or 2.3.2.
 - 2.3.1 Physical abuse, neglect, financial abuse, abandonment, isolation, abduction or other treatment with resulting physical harm or pain or mental suffering. (WIC 15610.07(a))



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2.3.1.1 Physical abuse means any of the following:

- Assault
- Battery
- Unreasonable physical constraint or prolonged or continual deprivation of food and/or water.
- Sexual assault, which means any of the following:
 - ◆ Sexual battery
 - ◆ Rape
 - ◆ Spousal rape
 - ◆ Incest
 - ◆ Sodomy
 - ◆ Oral copulation
 - ◆ Sexual penetration
- Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:
 - ◆ For punishment;
 - ◆ For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions were given; or
 - ◆ For any purpose not authorized by the physician and surgeon. (WIC 15610.63)

2.3.1.2 Neglect means either of the following:

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

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

- Failure to assist in personal hygiene or in the provision of food, clothing, or shelter;



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- Failure to provide medical care for physical or mental health needs. (No person shall be deemed neglected or abused for the sole reason that he/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; or
- Failure of an elder or dependent adult to satisfy the needs specified above for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health. (WIC Code 15610.57)

2.3.1.3

Financial abuse of an elder or dependent adult occurs when a person or entity:

- Takes, secretes, appropriates or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud or both; or
- Assists in taking, secreting, appropriating or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud or both.

A person or entity shall be deemed to have taken, secreted, appropriated or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates or retains possession of property in bad faith. A person or entity shall be deemed to have acted in bad faith if the person or entity knew or **should have known** that the elder or dependent adult had the right to have the property transferred or made readily available to the elder or dependent adult or to his/her representative.

- A person or entity **should have known** of a right specified above if, on the basis of the information received by the person or entity or the person or entity's authorized third party, or both, it is obvious to a reasonable person that the elder or dependent adult has the right specified.
- **Representative** means a person or entity that is either of the following:
 - ◆ A conservator, trustee, or other representative of the estate of an elder or dependent adult; or



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- ♦ An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney. (WIC 15610.30)

2.3.1.4 **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. (WIC 15610.05)

2.3.1.5 **Isolation** means any of the following:

- Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his/her mail or telephone calls.
- Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he/she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends or concerned persons.
- False imprisonment, as defined in Section 236 of the Penal Code.
- Physical restraint of an elder or dependent adult for the purpose of preventing the elder or dependent adult from meeting with visitors.

The acts set forth above shall be subject to a rebuttable presumption that they **do not constitute isolation** if they are performed pursuant to the instructions of a physician and surgeon licensed to practice medicine in the state, who is caring for the elder or dependent adult at the time the instructions were given and who has given the instructions as part of his/her medical care.

The acts set forth above **shall not constitute isolation** if they are performed in response to a reasonably perceived threat of danger to property or physical safety.

2.3.1.6 **Abduction** means the removal from this state and the restraint from returning to this state, or the restraint from returning to this state of any elder or dependent adult who does not have the capacity to consent to the removal from this state and the restraint from returning to this state, or



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the restraint from returning to this state, as well as the removal from this state or the restraint from returning to this state of any conservatee without the consent of the conservator or the court. (WIC 15610.06)

2.3.2 The deprivation of a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. (WIC 15610.07(b))

2.3.2.1 **Care custodian** is defined as an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care of services for elders or dependent adults, including members of the support staff and maintenance staff.

- Twenty-four hour health facilities as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code
- Clinics
- Home health agencies
- Agencies providing publicly funded in-home supportive services, nutrition services, or other home and community-based support services
- Adult day health care centers and adult day care
- Secondary schools that serve 18 to 22 year old dependent adults and post-secondary educational institutions that serve dependent adults or elders
- Independent living centers
- Camps
- Alzheimer's Disease day care resource centers
- 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
- Respite care facilities
- Foster care
- Vocational rehabilitation facilities and work activity centers
- Designated area agencies on aging
- Regional centers for persons with developmental disabilities
- State Department of Social Services and State Department of Health Services licensing divisions
- County welfare departments
- Offices of patients' rights advocates and clients' rights advocates, including attorneys
- The office of the long-term care ombudsman



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- Offices of public conservators, public guardians and court investigators
- Any protection or advocacy agency or entity that is designated by the Governor to fulfill the requirements and assurances of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 or the Protection and Advocacy for the Mentally Ill Individuals Act of 1986, as amended.
- Humane societies and animal control agencies
- Fire departments
- Offices of environmental health and building code enforcement
- 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. (WIC 15610.17)

2.3.2.2 **Mental suffering** means fear, agitation, confusion, severe depression or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten or cause severe depression or serious emotional distress of the elder or dependent adult.

2.3.2.3 **Goods and services necessary to avoid physical harm or mental suffering** include, but are not limited to, all of the following:

- 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;
- Protection from malnutrition, under those circumstances where the results include, but are not limited to, malnutrition and deprivation of necessities or physical punishment; or
- Transportation and assistance necessary to secure any of the needs described above. (WIC 15610.35)



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2.4 **Long-term care facility** means any of the following: (WIC 15610.47)

- Any long-term health care facility as defined in subdivision (a) of Section 1418 of the Health and Safety Code;
- Any community care facility as defined in paragraphs (1) and (2) of subdivision (a) of Section 1502 of the Health and Safety Code, whether licensed or unlicensed;
- Any swing bed in an acute care facility or any extended care facility;
- Any adult day health care facility as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code; or
- Any residential care facility for the elderly as defined in Section 1569.2 of the Health and Safety Code.

2.5 **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 Welfare and Institutions Code, Sections 9700 et seq. (WIC 15610.50)

2.6 **Multi-disciplinary 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. (WIC 15610.55)

2.7 **Mandated reporter** is any of the following: (WIC 15630(a))

2.7.1 A 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 elderly or dependent adults; (See 2.3.2.1)

2.7.2 Elder or dependent adult care custodian;



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2.7.3 Health practitioner; **Health practitioner means:**

- A physician and 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 person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code;
- Any 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 and county public health and social service employees who treat an elder or a dependent adult for any condition; or
- A coroner. (WIC 15610.37)

2.7.4 Clergy member;

2.7.5 Employee of a county adult protective services agency; or

2.7.6 Employee of a local law enforcement agency.

POLICY

3.1 Employer Responsibilities

3.1.1 The Department of Mental Health (DMH), Bureau of Human Resources will ensure that prior to commencing employment, and as a prerequisite to employment, each newly hired mandated reporter shall sign a statement to the effect that he/she has knowledge of, and will comply with, the provision of Welfare and Institutions Code, Section 15630 regarding his/her individual duty to report. The completed form will become part of the employee's personnel record. (WIC 15659(a))

3.1.2 DMH shall provide a copy of Section 15630 to the newly hired mandated reporter.

3.1.3 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



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reporting, ensure confidentiality and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with the “Elder Abuse and Dependent Adult Civil Protection Act”. (WIC 15630(f))

3.1.3.1 The failure of any employee or other person associated with DMH to report abuse of elders or dependent adults pursuant to Section 15630 or otherwise meet the requirements of the “Elder Abuse and Dependent Adult Civil Protection Act” shall be the sole responsibility of that person. (WIC 15659(f))

3.2 Reporting Requirements

3.2.1 Any mandated reporter who, in his/her professional capacity, or within the scope of his/her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse or neglect, or is told by an elder or dependent adult that he/she has experienced behavior, including an act or omission, constituting physical abuse, abandonment, abduction, isolation, financial abuse or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as practicably possible and by written report sent within two working days. (WIC 15630(b)(1))

3.2.1.1 **Reasonable suspicion** means an objectively reasonable suspicion that a person would entertain, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, upon his/her training and experience, to suspect abuse. (WIC 15610.65)

3.2.1.2 **Written reports** shall be submitted on forms adopted by the State Department of Social Services. These reporting forms are distributed by the county adult protective services agencies and long-term care ombudsman programs. (WIC 15658(a)(1))

3.2.1.3 **Written reports** collect the following information:

- The name, address, telephone number and occupation of the person reporting;
- The name and address of the victim;
- The date, time and place of the incident;
- Other details, including the reporter’s observations and beliefs concerning the incident;



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- Any statement relating to the incident made by the victim;
- The name of any individuals believed to have knowledge of the incident; and
- The name of the individuals believed to be responsible for the incident and their connection to the victim.

3.2.1.4 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 agreement among them, the telephone 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. (WIC 15630(d))

3.3 Exceptions to the Reporting Requirement

3.3.1 Notwithstanding Section 3.2, a mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to Section 3.2, an incident where **all** of the following conditions exist: (WIC 15630(b)(3))

- The mandated reporter has been told by an elder or dependent adult that he/she has experienced behavior constituting physical abuse, abandonment, abduction, isolation, financial abuse, or neglect;
- The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred;
- The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia; **AND**
- 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.



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3.3.1.1 This exception shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters. (WIC 15630(b)(3)(B))

3.4 **Agencies Designated to Receive Reports**

- 3.4.1 If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the report shall be made to the local ombudsman or the local law enforcement agency. (WIC 15630(b)(1)(A)) (Attachment I)
- 3.4.2 If the suspected or alleged abuse occurred in a state mental hospital or a state developmental center, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services or to the local law enforcement agency. (WIC 15630(b)(1)(B))
- 3.4.3 If the abuse has occurred in any place other than the one described in Section 3.4.1 or 3.4.2, the report shall be made to the adult protective services agency or the local law enforcement agency. (WIC 15630(b)(1)(C))

3.5 **Regarding Confidential Information and Privileged Communication**

- 3.5.1 All information obtained in the course of providing mental health services is made confidential under Welfare and Institutions Code, Section 5328 et seq. Confidential information may be disclosed for reporting purposes. Such disclosure should be not more than the minimum amount of information necessary to achieve the goal of the report. (45 CFR 164-512(c))
 - 3.5.1.1 The fact that information described in 3.5.1 has been disclosed must be documented in the client's medical record. Documentation will include:
 - Date of disclosure;
 - Purpose/circumstance of disclosure;
 - The names of persons/agencies to whom the disclosure was made; and
 - The specific information disclosed. (45 CFR 164.528(b)(2))



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3.5.2 In any court proceeding or administrative hearing, neither the physician-patient nor the psychotherapist-patient privilege applies to the specific information reported pursuant to “Elder Abuse and Dependent Adult Civil Protection Act”. (WIC 15632(a))

3.6 Immunity

3.6.1 The employer of a mandated reporter shall incur no civil or other liability for failure of these persons to comply with the requirements of the “Elder Abuse and Dependent Adult Civil Protection Act”. (WIC 15659(f))

3.6.2 No mandated reporter who reports a known or suspected instance of elder or dependent adult abuse shall be civilly or criminally liable for any report required by section 3.2. (WIC 15634(a))

3.6.2.1 A mandated reporter may present to the State Board of Control a claim for reasonable attorney fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he/she prevails in the action. (WIC 15634(c))

3.6.3 No mandated reporter who, pursuant to a request from an adult protective services agency or a local law enforcement agency investigating a report of known or suspected elder or dependent adult abuse, provides the requesting agency with access to the victim of a known or suspected instance of elder or dependent adult abuse, shall incur civil or criminal liability as a result of providing that access. (WIC 15634(b))

3.6.3.1 A mandated reporter may present to the State Board of Control a claim for reasonable attorney fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion of summary judgment made by that person, or if he/she prevails in the action. (WIC 15634(c))

3.6.4 No person required to make a report pursuant to this article, or any person taking photographs at his/her discretion, shall incur any civil or criminal liability for taking photographs of a suspected victim of elder or dependent adult abuse or causing photographs to be taken of such a suspected victim or for disseminating the photographs with the reports described in section 3.2. (WIC 15634(a))



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3.6.4.1 A mandated reporter may present to the State Board of Control a claim for reasonable attorney fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he/she prevails in the action. (WIC 15634(c))

3.7 **Liability**

- 3.7.1 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. (WIC 15460(h))
- 3.7.2 Any mandated 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. (WIC 15360(h))

AUTHORITY

Elder Abuse and Dependent Adult Civil Protection Act
Welfare and Institutions Code, Chapter 11 (2003)

ATTACHMENT

Attachment I Agencies Designated to Receive Reports

AGENCIES DESIGNATED TO RECEIVE REPORTS

For consumers at Metropolitan State Hospital, send reports to:

State Department of Mental Health
Office of Patients' Rights
100 Howe Ave., Suite 240 N
Sacramento, CA 95825
Telephone: 916-575-1610
Fax: 916-575-1613

For consumers in Long-Term Care Facilities, send reports to:

Long Term Care Ombudsman
1527 Fourth St., Suite 250
Santa Monica, CA 90401
Telephone: 800-334-9473
Fax: 310-395-4090

For all other consumers, send reports to:

Adult Protective Services
Centralized Intake Unit
3333 Wilshire Blvd. Suite 400
Los Angeles, CA 90010
Telephone: 888-202-4CIU (888-202-4248)
Fax: 213-738-6485
After Hours Telephone: 877-4-R-SENIORS (877-477-3646)