

STATE OF NEW YORK

8809

2017-2018 Regular Sessions

IN ASSEMBLY

November 29, 2017

Introduced by M. of A. GIGLIO, GRAF -- read once and referred to the
Committee on Aging

AN ACT to amend the social services law, in relation to mandatory
reporting of senior abuse or maltreatment

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Title 1 of article 9-B of the social services law is
2 amended by adding a new section 473-aa to read as follows:

3 § 473-aa. Duty to report senior abuse. 1. As used in this section:

4 (a) "Senior" means a person sixty years of age or older.

5 (b) "Person legally responsible for a senior" means and includes the
6 senior's custodian, guardian or any other person formally or informally
7 responsible for the senior's care at the relevant time, any person
8 acting with power of attorney, trustee appointed by a court, or any
9 person who by consent, contract or legal order acts to arrange the
10 affairs of the senior.

11 (c) "Abused senior" means and includes a senior abused in any of the
12 following manners:

13 (i) "Physical abuse" means the non-accidental use of force that
14 results in the suffering of bodily injury, physical pain or impairment
15 resulting from the use of physical force against a senior, including but
16 not limited to, striking with or without an object, hitting, beating,
17 pushing, shoving, shaking, kicking, pinching, being slapped, burned,
18 cut, bruised or improperly physically restrained. Also includes any
19 physical signs of impairment or of being subjected to punishment, or
20 signs of being restrained, or a senior's report of being hit, slapped,
21 kicked, or mistreated.

22 (ii) "Sexual abuse" means non-consensual sexual contact of any kind
23 with a senior, including but not limited to, unwanted touching, sexual
24 assault or battery, rape, sodomy, coerced nudity, and sexually explicit
25 photographing, forcing sexual contact or forcing sex with a third party.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD13597-01-7

(iii) "Emotional or psychological abuse" means willful infliction of mental or emotional anguish by threat, humiliation, intimidation or other abusive conduct, including but not limited to, frightening or isolating an adult. Emotional or psychological abuse may also include the infliction of anguish, pain or distress through verbal or nonverbal acts, including but not limited to verbal assaults, insults, threats, intimidation, humiliation, and harassment, infantilizing a senior, isolating a senior from his or her family, friends or regular activities, or enforced social isolation, the results of which may be evinced by impairments including but not limited to the caregiver's refusal to allow visitors to see a senior alone, or changes in the senior's behavior that result in the senior being emotionally upset or agitated, being extremely withdrawn and noncommunicative or nonresponsive, unusual behavior usually attributed to dementia (e.g. sucking, biting, rocking).

(iv) "Neglect" means the refusal or failure to fulfill any part of a person's obligations or duties to a senior, failure of a person who has fiduciary responsibilities to provide care for a senior or the failure on the part of an in-home service provider to provide such necessary care, including the refusal or failure to provide an elderly person with such life necessities as food, water, clothing, shelter, personal hygiene, medicine, comfort, personal safety, and other essentials included in an implied or agreed-upon responsibility to such senior, the results of which may be evinced by such visible physical impairments as dehydration, malnutrition, untreated bed sores, and poor personal hygiene, unattended or untreated health problems, hazardous or unsafe living conditions/arrangements, unsanitary and unclean living conditions (e.g. dirt, fleas, lice on person, soiled bedding, fecal/urine smell, inadequate clothing).

(v) "Abandonment" means the desertion of a senior by an individual who has assumed responsibility for providing care for such senior, or by a person with physical custody of a senior, including but not limited to the desertion of a senior at a hospital, a nursing facility, or other similar institution, or the desertion of a senior at a shopping center or other public location; or a senior's report of being abandoned.

(vi) "Financial or material exploitation" means the illegal or improper use of a senior's funds, property, or assets, including without limitation cashing a senior's checks without authorization or permission, forging a senior's signature, misusing or stealing a senior's money or possessions, coercing or deceiving a senior into signing a document such as a contract or a will, or improper use of conservatorship, guardianship, or power of attorney.

(vii) "Self-neglect" means the behavior of an elderly person that threatens his or her own health or safety through the refusal or failure to provide himself or herself with adequate food, water, clothing, shelter, personal hygiene, medication (when indicated), and safety precautions.

2. Adult protective services shall establish a registry that shall be capable of receiving reports by telephone, fax, e-mail, and any other forms of communication the local commissioner of social services deems appropriate, alleging that a senior has become an abused senior, or immediately identifying prior reports of abuse involving such senior or other persons named in the report.

3. The following persons are required to report or cause a report to be made in accordance with this section when, while acting in their professional or official capacity, they have reasonable cause to suspect

1 that a senior coming before them is an abused senior, or when they have
2 reasonable cause to suspect that a senior is an abused senior, as
3 defined in subdivision one of this section:

4 (a) any health care worker, including any physician, physician assist-
5 ant, surgeon, medical examiner, coroner, dentist, dental hygienist,
6 osteopath, optometrist, chiropractor, podiatrist, resident, intern,
7 psychologist, registered nurse, emergency medical technician, or any
8 hospital or nursing home and assisted living personnel engaged in the
9 admission, examination, care or treatment of persons, or any other
10 health care or health services practitioner, including a Christian
11 Science practitioner, acupuncturist, or other such person;

12 (b) any social worker, social services worker, or any provider of
13 family or group family day care;

14 (c) any mental health professional, substance abuse counselor or alco-
15 holism counselor;

16 (d) any person, including a director, operator, employee, volunteer,
17 or contractor, in a public, private, or not-for-profit facility which
18 provides care to one or more seniors and which is licensed or registered
19 pursuant to the provisions of this chapter or the public health law;

20 (e) any peace officer, police officer, district attorney or assistant
21 district attorney, investigator employed in the office of a district
22 attorney or other law enforcement official; and

23 (f) any banker, financial consultant, attorney, or paralegal with
24 access to a senior's financial records or resources or legal documents
25 or who possesses power of attorney for such senior.

26 The local commissioner of social services shall further define and
27 enumerate in regulations persons and occupations which are required to
28 report when they suspect that a senior has become an abused senior.

29 4. Reports of senior abuse made pursuant to this section shall be made
30 within forty-eight hours of discovery to adult protective services by
31 telephone, fax, e-mail or any other communication protocol on a form
32 supplied by the local commissioner of social services. Oral reports
33 shall be followed by a report in writing within forty-eight hours after
34 such oral report.

35 5. Written reports shall be made in a manner prescribed by and on
36 forms supplied by the local commissioner of social services and shall
37 include the following information:

38 (a) the name and address of the senior;

39 (b) the person responsible for his or her care, if known;

40 (c) the name and address of the care facility or program in which the
41 senior resides or is receiving care;

42 (d) the senior's age, sex and race;

43 (e) the nature and extent of the injuries, abuse or maltreatment,
44 including any evidence of prior injuries, abuse or maltreatment;

45 (f) the name of the person or persons alleged to be responsible for
46 causing the injury, abuse or maltreatment, if known;

47 (g) family composition, where appropriate;

48 (h) the source of the report;

49 (i) the person making the report and where he or she can be reached;

50 (j) the actions taken by the reporting source, including the taking of
51 photographs and technological scans, or notifying the medical examiner
52 or coroner; and

53 (k) any other information which the local commissioner of social
54 services may by regulation require, or which the person making the
55 report believes might be helpful, in the furtherance of the intent and
56 purposes of this title.

1 6. Whenever such person required to report under this section in his
2 or her capacity as a member of the staff of a medical or other public or
3 private institution, facility or agency, he or she shall make the report
4 as required by this section and immediately notify the person in charge
5 of such institution, facility or agency, or the designated agent of such
6 person. Such person in charge, or the designated agent of such person,
7 shall be responsible for all subsequent administration necessitated by
8 the report. Nothing in this section is intended to require more than one
9 report from any such institution, facility or agency.

10 7. A person or official required to report suspected senior abuse or
11 maltreatment who has reasonable cause to suspect that a senior died as a
12 result of abuse or maltreatment shall report the fact to the appropriate
13 medical examiner or coroner. The medical examiner or coroner shall
14 accept the report for investigation and shall report his or her finding
15 to the police, the appropriate district attorney, the local social
16 services office, and, if the institution making the report is a hospi-
17 tal, the hospital.

18 8. A medical or other public or private institution, facility or agen-
19 cy shall not take any retaliatory personnel action, as such term is
20 defined in paragraph (e) of subdivision one of section seven hundred
21 forty of the labor law, against an employee because such employee
22 believes that he or she has reasonable cause to suspect that an individ-
23 ual coming before him or her is a victim of senior abuse and that
24 employee therefore makes a report in accordance with this section. No
25 residential care facility provider, hospital, medical institution
26 provider or mental health facility provider shall impose any conditions,
27 including prior approval or prior notification, upon a member of their
28 staff specifically required to report under this section. At the time of
29 the making of a report, or at any time thereafter, such person or offi-
30 cial may exercise the right to request the findings of an investigation
31 made pursuant to this section.

32 9. Any person, institution, facility, agency, organization, partner-
33 ship or corporation which employs persons mandated to report suspected
34 senior abuse shall provide all such current and new employees with writ-
35 ten information explaining the reporting requirements set out in this
36 section. The employers shall be responsible for the costs associated
37 with printing and distributing the written information.

38 10. Any person, official or institution required by this section to
39 report a case of suspected abuse or maltreatment of a senior who will-
40 fully fails to do so shall be guilty of a class A misdemeanor and shall
41 be civilly liable for the damages proximately caused by such failure.

42 § 2. This act shall take effect immediately; provided, however, that
43 effective immediately, the addition, amendment and/or repeal of any rule
44 or regulation necessary for the implementation of this act on its effec-
45 tive date are authorized and directed to be made and completed on or
46 before such effective date.