

# STATE OF NEW YORK

7649

## IN SENATE

February 5, 2018

Introduced by Sens. PHILLIPS, YOUNG -- read twice and ordered printed,  
and when printed to be committed 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.

26 (iii) "Emotional or psychological abuse" means willful infliction of  
27 mental or emotional anguish by threat, humiliation, intimidation or  
28 other abusive conduct, including but not limited to, frightening or

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

LBD13597-01-7

1 isolating an adult. Emotional or psychological abuse may also include  
2 the infliction of anguish, pain or distress through verbal or nonverbal  
3 acts, including but not limited to verbal assaults, insults, threats,  
4 intimidation, humiliation, and harassment, infantilizing a senior,  
5 isolating a senior from his or her family, friends or regular activ-  
6 ities, or enforced social isolation, the results of which may be evinced  
7 by impairments including but not limited to the caregiver's refusal to  
8 allow visitors to see a senior alone, or changes in the senior's behav-  
9 ior that result in the senior being emotionally upset or agitated, being  
10 extremely withdrawn and noncommunicative or nonresponsive, unusual  
11 behavior usually attributed to dementia (e.g. sucking, biting, rock-  
12 ing).

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

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

33 (vi) "Financial or material exploitation" means the illegal or improper  
34 use of a senior's funds, property, or assets, including without limi-  
35 tation cashing a senior's checks without authorization or permission,  
36 forging a senior's signature, misusing or stealing a senior's money or  
37 possessions, coercing or deceiving a senior into signing a document such  
38 as a contract or a will, or improper use of conservatorship, guardian-  
39 ship, or power of attorney.

40 (vii) "Self-neglect" means the behavior of an elderly person that  
41 threatens his or her own health or safety through the refusal or failure  
42 to provide himself or herself with adequate food, water, clothing, shel-  
43 ter, personal hygiene, medication (when indicated), and safety precau-  
44 tions.

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

51 3. The following persons are required to report or cause a report to  
52 be made in accordance with this section when, while acting in their  
53 professional or official capacity, they have reasonable cause to suspect  
54 that a senior coming before them is an abused senior, or when they have  
55 reasonable cause to suspect that a senior is an abused senior, as  
56 defined in subdivision one of this section:

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

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

(c) any mental health professional, substance abuse counselor or alcoholism counselor;

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

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

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

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

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

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

(a) the name and address of the senior;

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

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

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

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

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

(g) family composition, where appropriate;

(h) the source of the report;

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

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

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

6. Whenever such person required to report under this section in his or her capacity as a member of the staff of a medical or other public or private institution, facility or agency, he or she shall make the report

1 as required by this section and immediately notify the person in charge  
2 of such institution, facility or agency, or the designated agent of such  
3 person. Such person in charge, or the designated agent of such person,  
4 shall be responsible for all subsequent administration necessitated by  
5 the report. Nothing in this section is intended to require more than one  
6 report from any such institution, facility or agency.

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

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

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

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

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