

# STATE OF NEW YORK

5638

2019-2020 Regular Sessions

## IN ASSEMBLY

February 14, 2019

Introduced by M. of A. GIGLIO, BARCLAY, CROUCH, DeSTEFANO, GOODELL, HAWLEY, KOLB, LAWRENCE, McDONOUGH, MIKULIN, B. MILLER, MORINELLO, NORRIS, PALMESANO, REILLY, SAYEGH -- 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 Assembly, do enact as follows:

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

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

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

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

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

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

(ii) "Sexual abuse" means non-consensual sexual contact of any kind with a senior, including but not limited to, unwanted touching, sexual

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

LBD06936-01-9

1 assault or battery, rape, sodomy, coerced nudity, and sexually explicit  
2 photographing, forcing sexual contact or forcing sex with a third party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50     (g) family composition, where appropriate;

51     (h) the source of the report;

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

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

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

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

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

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

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

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

46 § 2. This act shall take effect immediately. Effective immediately the  
47 addition, amendment and/or repeal of any rule or regulation necessary  
48 for the implementation of this act on its effective date are authorized  
49 to be made and completed on or before such date.