

## **Your Legal Duty...**

### **Reporting Elder and Dependent Adult Abuse.**

Failure to report elder or dependent adult abuse in long-term health care facilities is a crime. To ensure that the staff of these facilities are trained in recognizing and reporting elder and dependent adult abuse, California law requires each long-term health care facility, community care facility or residential care facility for the elderly to provide training and continuing education to all staff in recognizing and reporting abuse.

“Your Legal Duty... Reporting Elder and Dependent Adult Abuse” curriculum and video are designed to meet the minimum core training requirements for recognizing and reporting elder and dependent adult abuse.

This training curriculum has been developed by the Department of Justice, in cooperation with the Department of Health Care Services and the Department of Social Services. The materials are to be used by staff development coordinators for the orientation and continuing education of all facility employees.

### **Overview**

#### **Your Legal Duty...Reporting Elder and Dependent Adult Abuse**

In the last 10 years, there has been tremendous growth in both the number and variety of long-term health care options for elder Californians.

In 2008, for example, more than 300,000 individuals received care in the approximately 1,700 skilled nursing facilities in the state. Thousands more are cared for at home or in other settings, such as assisted living communities, residential care facilities and out-of-home care facilities.

The potential for abuse, neglect or mistreatment in any care setting is of great concern to long-term care providers, law enforcement, government policymakers and the citizens of California. This concern is reflected by such state laws as Assembly Bill 1499 (Chapter 414, Statutes of 1999) and Assembly Bill 1690 (Chapter 196, Statutes of 2001) which require all staff of long-term health care facilities, community care facilities and residential care facilities for the elderly to be trained in recognizing and reporting elder and dependent adult abuse.

Working in a long-term health care facility is demanding both physically and mentally. Staff members are faced with enormous responsibilities on a daily basis. A vast majority of individuals working with elder and dependent adults are excellent caregivers. Unfortunately, stress can lead to unintended actions by caregivers — actions that may result in abuse, neglect or mistreatment.

In California, approximately 225,000 cases of elder abuse occur every year. Sadly, experts estimate that for every case of elder abuse and neglect that is reported, there may be as many as five cases that go unreported.

All of us should feel safe and secure in our homes. The same is true for elderly and disabled Californians living in long-term health care facilities.

By working together, staff members can play a critical role in ensuring a safe and dignified life for California's elder and dependent adults.

## **Introduction: Trainer Orientation**

This training curriculum is designed to be used with the video “**Your Legal Duty... Reporting Elder and Dependent Adult Abuse.**” This training program, which includes a pre-test and post-test, must be administered to all facility employees. (*Pre- and Post-test, see Appendix 1 and 2*)

**California law requires that this training be given as soon as possible after receipt of the training materials. Additionally, if a facility begins operation after July 31, 2000, training is to be completed within six (6) months of the date of the beginning of the operation of the facility.**

**Employees hired after June 1, 2001, are to be trained within sixty (60) days of their first day of employment.**

**As part of this training program, all facility staff members are to receive the following hand-outs:**

- Copy of the Mandated Reporting Requirements, as specified in California Welfare and Institutions Code Section 15630 (*See Appendix 3*)
- Copy of the Employee Confidentiality Rights, as specified in California Welfare and Institutions Code Section 15633 (*See Appendix 4*)

Each long-term health care facility is subject to review by either the State Department of Health Care Services or the State Department of Social Services for compliance with the training duties as outlined above.

## **Introduction to Trainer:**

**It is recommended that the trainer become familiar with the following information before beginning the training program:**

- State and federal laws governing elder and dependent adult abuse in a long-term health care setting.
- Your facility's staff profile (average age, education, cultural and religious background). This will help you identify issues which may affect your staff's attitudes toward caregiving.
- Any past cases of abuse, neglect and/or mistreatment which may have occurred at your facility. Become familiar with the circumstances of the case(s).

NOTE: This could be a helpful tool in identifying how new reporting laws will affect the way in which staff would respond if the situation were to occur.

## **Possible items for discussion:**

- What were the allegations?
- Who reported the incident and how was the incident reported?
- Was the Long-Term Care Ombudsman notified and by whom?
- How could the incident have been prevented?
- What was the final outcome of the investigation?
- Did it result in any policy changes within your facility?
- Are there current reporting mechanisms in place?
- What are your facility's current policies and procedures for reporting abuse?
- Does the facility encourage staff to report abusive and potentially abusive practices?
- How does management respond?
- Does the facility conduct ongoing training in prevention measures?
- Does management encourage good communication between staff and management?

# Part 1: You are a Mandated Reporter

## SUMMARY

California law mandates that certain individuals report known or suspected instances of elder or dependent adult abuse. Failure to do so is a crime. Senate Bill 2199 (Chapter 946, Statutes of 1998) broadened and redefined “abuse of an elder or dependent adult,” expanded the definition of “mandated reporters” and added “abandonment, isolation, financial abuse, and neglect” to the list of reportable crimes.

## LEARNING OBJECTIVE

To provide staff with the definition and legal responsibilities of mandated reporters. California law requires that mandated reporters follow specific requirements for reporting known or suspected cases of abuse to the proper authorities.

## CONTENT

### 1. Who is a Mandated Reporter?

California law states that: “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, or employee of a county adult protective services agency or local law enforcement agency is a mandated reporter.”

*(Welfare and Institutions Code Section 15630, see Appendix 5)*

A “care custodian” is defined as an administrator or an employee of a public or private facility who provides care for elders and dependent adults as part of his or her official duties, **including support and maintenance staff.**

**Therefore, all health practitioners and all employees in a long-term health care facility are mandated reporters.**

*(Note: For the complete legal definition of “care custodian” see Appendix 6)*

### 2. Legal Responsibilities of a Mandated Reporter

Individuals employed in long-term health care facilities have a legal responsibility to help assure that all residents in the facility are protected and kept safe from harm.

California’s mandated reporting law states: “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, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, financial abuse, or neglect, or reasonably suspects abuse shall report... ” (Emphasis added.)  
(*Welfare and Institutions Code Section 15630 (b)(1)*)

In summary, the reporting requirements are as follows:

**An employee SHALL report a known or a suspected instance of abuse if he or she:**

- Has observed or has knowledge of an incident that reasonably appears to be...
- Has been told by an elder or dependent adult that he or she has experienced behavior constituting abuse...
- Reasonably suspects that abuse has occurred.

**In other words, if you are a mandated reporter and you:**

- witness an incident;
- receive information or evidence, whether visual or audible;
- or an elder or dependent adult discloses or describes an incident that reasonably appears to constitute abuse,

## **You are required to make a report**

### **3. Reporting Exemptions**

Under California law, there are *certain designated* health practitioners who are not required to report abuse or neglect when *specific* conditions exist. This exemption applies to *only* the following health practitioners:

- Physician and surgeon
- Registered nurse
- Psychotherapist

These certain individuals are not required to report an incident, where *all of the following conditions exist*:

- The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, 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.

Remember: Every individual that has knowledge of an incident that appears to be abuse, must file a report.

There is no penalty for filing a report; there is a significant penalty for failing to file.

#### **4. Reporting Requirements for Mandated Reporters**

The reporting requirements for mandated reporters as outlined on the previous page are found in the California Welfare and Institutions Code, beginning with Section 15630.

*(See Appendix 3)*

#### **Message to Participants:**

- Nothing in California law requires or implies that mandated reporters have a duty to investigate any known or suspected case of abuse.
- Mandated reporters are only legally responsible for one thing: the reporting of suspected or known abuse.
- Reporting is an INDIVIDUAL DUTY. By law, a supervisor or administrator CANNOT prevent a staff member from reporting elder or dependent adult abuse. Neither can mandated reporters hand this responsibility over to another staff member.
- Mandated reporters must report the incident themselves, they must follow through and no one can alter this legal responsibility.
- When you report an instance of suspected abuse, you are acting according to the law and behaving in an ethical manner.

*Even if you have reasonable doubts or concerns, it is best to err on the side of caution and the law and file the report.*

#### **Message to Trainer:**

As part of this training, California law mandates that all staff are to be provided a copy of these mandated reporting requirements. Distribute handout.

*(See Appendix 3)*

Note: *HOW* and *WHERE* to file a report of known or suspected abuse is outlined in Part 3 of this curriculum.

## **Part 2: What You Report**

### **SUMMARY**

Like other forms of abuse, elder and dependent adult abuse is a complex problem and it is easy to have misconceptions. Abuse can occur in many forms and in varying degrees. It can range from acts of physical harm to neglect or mental suffering.

### **LEARNING OBJECTIVE**

To provide staff with the definitions of physical abuse, neglect, abandonment, financial abuse and isolation and to provide examples of each form of reportable abuse.

Staff need to know that even subtle actions on their part may violate the law and result in prosecution by law enforcement agencies. There are many ways that caregivers, either intentionally or unintentionally, may cause harm to residents.

### **Message to Trainer:**

As you review the following information with your employees, encourage discussion of the issues raised by each definition and example.

Possible questions for discussion involving the various examples of abuse:

- What, if anything, did the staff member do wrong in the described situation?
- If this was a mentally impaired resident or resident suffering from dementia rather than an alert resident, would that make any difference in how the situation was handled?
- Was there perhaps a specific reason the resident was behaving in this certain manner?
- How could this situation be handled differently?

## **CONTENT**

### **ABUSE**

**“Abuse of an elder or dependent adult”** is defined as the following:

- Physical abuse (includes sexual abuse);
- Neglect;
- Financial abuse; Abandonment;
- Isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering;

- Deprivation by a custodian of goods or services that are necessary to avoid physical harm or mental suffering.

*(Welfare and Institutions Code Section 15610.07)*

## **PHYSICAL ABUSE**

“**Physical Abuse**” means any of the following:

- Assault;
- Battery;
- Assault with a deadly weapon or force likely to produce great bodily injury;
- Unreasonable physical constraint, or continual deprivation of food or water;
- Sexual assault, that means any of the following:
  - Sexual battery;
  - Rape;
  - Rape in concert;
  - Spousal rape;
  - Incest;
  - Sodomy;
  - Oral copulation;
  - Penetration of a genital or anal opening by a foreign object.
- 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 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 are given.
  - For any purpose not authorized by the physician and surgeon.

*(Welfare and Institutions Code Section 15610.63)*

### **Examples of Physical Abuse:**

- A resident spits at a caregiver as she feeds the resident breakfast. In retaliation, the caregiver spits at the resident’s face and yells, “Don’t you ever spit at me again!”
- A resident refuses to get out of bed when encouraged with a gentle approach by a nurse to attend an activity session. The nurse then forcefully pulls the resident from a reclining to an upright position in his bed, pushes him out of his room, as the resident screams and cries to be left alone.

- A male employee is observed kissing an older Alzheimer's resident on her lips while fondling her breasts.
- While two nursing assistants are replacing a brain-injured resident's restraint, the resident grabs the shirt of one of the assistants. When the resident refuses to let go, the assistant slaps the resident's hands.
- After soiling her clothes and bedding, a resident is taken into the shower by a nursing assistant. The resident suffers from dementia and struggles with the assistant. The assistant sprays ice cold water directly into the face of the resident.

### **Possible Indicators of Physical Abuse:**

The following descriptions are not necessarily proof of abuse, but they may be clues that a problem exists. Signs that may indicate someone has been a victim of abuse may include:

- Unusual or recurring scratches, bruises, skin tears, welts
- Bilateral bruising (bruises on opposite sides of the body) "Wrap around" bruises
- Bruises around the breasts or genital area Infections around the genital area
- Injuries caused by biting, cutting, pinching or twisting of limbs
- Burns (may be caused by hot water)
- Fractures or sprains
- Torn, stained or bloody underclothing
- Any untreated medical condition
- Signs of excessive drugging
- Injuries that are incompatible with explanations
- Intense fear reaction to people in general, or certain individuals in particular

Descriptions are not necessarily proof of abuse, *BUT* they maybe clues that a problem exists.

## **NEGLECT**

“**Neglect**” means either of the following:

1. 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.
2. The negligent failure of the person themselves to exercise that degree of care that a reasonable person in a like 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.
3. Failure to protect from health and safety hazards.
4. Failure to prevent malnutrition or dehydration.
5. Failure of a person to provide the needs specified in paragraphs 1-4, inclusive, for themselves due to ignorance, illiteracy, incompetence, mental limitation, substance abuse or poor health.

*(Welfare and Institutions Code Section 15610.57)*

### **Examples of Neglect:**

- A wheelchair bound resident is taken to the bathroom and told by the nursing assistant to call when she is ready to return other room. The resident rings the call bell and no one answers. Frustrated, the resident tries to get into her wheelchair by herself and falls and fractures her hip.
- A resident repeatedly uses a call bell attempting to get attention. After several trips to the resident’s room, the nursing assistant unplugs the call bell so the resident can no longer use it
- A registered nurse permits a nursing assistant to feed a peanut butter sandwich to a resident on a pureed diet.
- A resident with a long history of wandering walks outside of the facility undetected. Despite the resident’s history of wandering, she is not adequately supervised. The resident is discovered later that day drowned in a nearby stream.
- You observe staff not assisting a resident who you know needs assistance eating or you observe a staff member take food away from a resident who has not yet finished because it is time for the staff person’s break.

- You know that a resident has bleeding gums, loose teeth and has difficulty eating. The resident's dentures were stolen and the resident has not been taken to a dentist.
- You discover residents that have been left in the care of a worker who has fallen asleep or is intoxicated while on duty.
- You arrive to begin your shift and notice that a resident has obviously been allowed to remain covered in feces or urine soaked undergarments all night.
- You observe a nursing assistant knowingly postponing a resident's incontinent care to take a break.

## **Possible Indicators of Neglect**

The following descriptions are not necessarily proof of neglect, but they may be clues that a problem exists. Some signs that indicate a resident has been a victim of neglect may include:

- Skin disorders or untreated rashes
- Unkempt, dirty, matted or uncombed hair, unshaven
- Neglected bedsores
- Signs of dehydration, malnutrition or sudden weight loss
- Soiled bedding or clothing
- Inadequate clothing
- Hunger
- Absence of, or failure to give prescribed medication
- Lack of necessary dentures, hearing aids or eyeglasses
- Untreated or unattended medical conditions

## **ABANDONMENT**

**“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.

*(Welfare and Institutions Code Section 15610.05)*

## **Examples of Abandonment:**

A facility takes a group of residents to an afternoon play, or other public location. A resident wanders away and the group returns to the facility leaving the resident unattended.

## **FINANCIAL ABUSE**

**“Financial Abuse”** occurs when a person or entity does any of the following:

1. 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.
2. 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.
  - (b) 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.
    1. 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 or her representative.
    2. For purposes of this section, a person or entity should have known of a right specified in paragraph (1) 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 a right specified in paragraph (1).
  - (c) For purposes of this section, “representative” means a person or entity that is either of the following:
    1. A conservator, trustee or other representative of the estate of an elder or dependent adult.
    2. An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

*(Welfare and Institutions Code Section 15610.30)*

## **Examples of Financial Abuse:**

- A staff member asks a resident if he would like to have pizza. The staff member then orders pizza using the resident's personal account money and gives the pizza to the night shift.
- A resident has a cell phone purchased by a family member. A staff member tells the resident she will keep the phone at the nurse's station and proceeds to use the cell phone for her personal use.
- A staff member is aware that a resident is unable to watch TV because of declining health. The staff member takes the TV set home and/or takes the TV set out to the nurse's break room for the staff to use without getting permission from the resident.

## **Possible Indicators of Financial Abuse**

The following descriptions are not necessarily proof of financial abuse, but they may be clues that a problem exists. Some signs that indicate a resident has been a victim of financial abuse may include:

- Disappearance of papers, checkbooks, legal documents
- Staff assisting residents with credit card purchases, ATM withdrawals
- Lack of amenities: appropriate clothing, grooming items, etc.
- Bills unpaid despite availability of adequate financial resources
- Provision of services that are not necessary or requested
- Unusual activity in bank accounts, such as withdrawals from automatic teller machines when the person cannot get to the bank
- Denial of necessary and/or needed services by the person controlling the elder or dependent adult's resources
- Use of "representative payee" under suspicious circumstances
- Use of power of attorney or conservatorship when not indicated by certain circumstances

## ISOLATION

“Isolation” means any of the following:

1. Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.
2. 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 or 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.
3. False imprisonment, as defined in Section 236 of the Penal Code.
4. Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.
  - A. The acts set forth in subdivision (a) 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 are given, and who gives the instructions as part of his or her medical care.
  - B. The acts set forth in subdivision (a) shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safety.

*(Welfare and Institutions Code Section 15610.43)*

### Examples of Isolation:

- A nursing assistant tells a resident’s family member that the resident does not wish to speak to them. You are aware, however, that the resident does indeed want to speak to his or her family and has never expressed the desire not to talk with them.
- A nursing assistant restrains a resident in bed and tells the resident’s family that the resident is too ill to have visitors.

### Possible Indicators of Isolation

The following descriptions are not necessarily proof of isolation, but they may be clues that a problem exists. Some signs that indicate a resident has been a victim of isolation may include:

- Resident is hesitant to speak freely
- Resident is withdrawn, timid and perhaps overly fearful or untrusting

## **ADDITIONAL COMPONENTS/DEFINITIONS OF ABUSE**

“**Abduction**” means the removal from this state and 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 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.

*(Welfare and Institutions Code Section 15610.06)*

“**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.
- Transportation and assistance necessary to secure any of the needs set forth above.

*(Welfare and Institutions Code Section 15610.35)*

“**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.

*(Welfare and Institutions Code Section 15610.53)*

“**Resident-to-Resident Abuse**” means when one resident in a facility abuses another resident in the facility in any way. The abuse can be physical, mental or financial.

As with all other forms of abuse, resident-to-resident abuse is illegal and must be reported.

### **Message to Trainer:**

For additional definitions, see Appendix 6.

## Part 3: How You Report

### SUMMARY

Every mandated reporter within a long-term health care facility is required to make a report of known or suspected abuse.

Reporting of abuse or neglect is an **individual duty** and a facility employee **does not** satisfy his or her reporting obligations by simply making a report to another employee or facility administrator.

### LEARNING OBJECTIVE

To educate staff about how to make a report, where to make a report, and the penalties for failure to make a required report of elder or dependent adult abuse.

Reporting abuse is an individual duty.

### CONTENT

#### Making a Report

Mandated reporters are required to report incidents of known or suspected abuse in **two ways**:

- **By telephone immediately, or as soon as practically possible**, to the local ombudsman or the local law enforcement agency.

AND

- By written report, Department of Social Services Form (SOC Form 341), “Report of Suspected Dependent Adult/Elder Abuse” **sent within two (2) working days**.

#### Telephone Report

The telephone number of the local Long-Term Care Ombudsman is usually posted in a conspicuous location in every facility. Certain long-term care facilities are legally required to post the number in the following four locations:

- One location accessible to members of the public.
- One location used for employee breaks.
- One location that is next to a telephone designated for resident use.
- One location used for communal functions for residents, such as for dining or resident council meetings and activities.

A phone report may also be made to the local law enforcement agency, for example, the local city police or county sheriff's department.

*(See Appendix 8 for Long-Term Care Ombudsman Directory)*

## **Written Report**

### **SOC 341 Form – Report of Suspected Dependent Adult/Elder Abuse**

After a report is made by telephone, reports of known or suspected abuse are to be documented on the SOC 341 Form and sent within two (2) working days of the telephone report. Reports are to be sent to either the Office of the Long-Term Care Ombudsman or other responsible agency as identified on the General Instructions portion of the SOC 341 Form.

If the mandated reporter has questions about where to send the SOC 341 Form, it is recommended that the mandated reporter ask the Long-Term Care Ombudsman or local law enforcement agency when making the initial telephone report.

The SOC 341 Form is generally referred to as a “cross-reporting” form simply because it is the form used by one individual (or agency) to document and refer a case of suspected abuse to another agency for investigation.

Every facility has copies of the SOC 341 Form and the facility shall make these forms available to all employees upon request. SOC 341 Forms require the following information:

- Name, address, telephone number and occupation of person making the report
- Name and address of the victim
- The date, time and place of the incident
- Other details, as required

## **THE FOLLOWING IS AN OVERVIEW OF THE IMPORTANT INFORMATION THAT MUST BE PROVIDED WHEN FILLING OUT THE SOC 341 FORM:**

### **Victim**

The victim is the individual who has allegedly been abused in some way. The victim does not have to participate in the mandated reporting process. There may be one or more elder or dependent adult victims involved in the suspected abuse. Make sure the victim information is complete.

### **Reporting Party**

This section identifies the individual making the mandated report. A mandated reporter is not responsible for verifying claims, incidents or cases of abuse. A reporter may indicate whether they waive their right to confidentiality, but that is strictly a personal choice. Otherwise, the only individuals who will have or use the information will be the investigative or enforcement agencies receiving the report.

### **Incident Information**

This section states where the incident occurred, for example a nursing facility or community care facility.

### **Reported Types of Abuse**

This section should include whether there are clear physical signs of abuse or the victim discloses abuse and is able to identify the type of abuse, or if the reporter has witnessed an incident of abuse. Otherwise, the reporter must simply use his or her personal discretion and reasonable judgment in an attempt to identify the specific kind of abuse that may have occurred using his or her knowledge of the definitions of the various forms of abuse outlined earlier in the training. The investigative agency will ultimately determine and legally define the specific type(s) of abuse, if the abuse is substantiated.

### **Reporter's Observations, Beliefs and Statements by Victim if Available**

The reporter should be as complete as possible in providing details, observations, and any other important information. For example, any bruises, burns, cuts, sprains, bedsores, malnourishment, dehydration or other physical or psychological symptoms of abuse or neglect. It is also important for the reporter to include any specific behavior of the victim or statements made by the victim.

### **Family Member or Other Person Responsible for Victim's Care**

This section pertains primarily to individuals receiving care from a relative or paid in-home caregiver. Within facilities, the reporter should attempt to list the name of the individual identified as the resident's contact person, if known. There is a check box provided if the individual listed is a contact person only.

### **Collateral Contacts**

The reporter should indicate information about any other individuals that may have knowledge of the incident(s), the victim or the alleged abuse. Doctors, caregivers, relatives, etc., may be included. This section can also identify any other individuals who are mandated reporters and may know about the incident.

## **Suspected Abuser**

The reporter may not have the exact name of the individual or individuals that may be responsible for the abuse or neglect. However, the form allows the reporter to check a box if the suspected abuser is a care custodian, health practitioner, etc.

## **Telephone Report**

This section identifies the date and to whom the telephone report was made. The reporter must indicate the name of the individual to whom he or she gave the telephone report.

## **Written Report**

This indicates if the report was sent or faxed to the Ombudsman or law enforcement agency.

## **Agency Use Only**

This section is used by cross-reporting agencies to track the case status. These agencies can also choose to provide and exchange information with each other for possible licensing or enforcement actions.

*(See Appendix 7 for a copy of SOC 341 Form)*

## **Message to Participants:**

If an individual making a report needs help completing the SOC 341 Form, he or she may call the Long-Term Care Ombudsman for information and assistance.

## **WHO INVESTIGATES REPORTS OF ABUSE?**

The Long-Term Care Ombudsman Program, Local Law Enforcement and The Department of Justice, Bureau of Medi-Cal Fraud and Elder Abuse investigate reports of abuse.

State investigations of known or suspected instances of abuse, neglect, isolation, abandonment or financial abuse in a long-term health care facility are the responsibility of:

- The Long-Term Care Ombudsman Program
- Local Law Enforcement
- The Department of Justice, Bureau of Medi-Cal Fraud and Elder Abuse

Additionally, reports of abuse are forwarded to the individual licensing agency responsible for licensing long-term health care facilities. Reports are either forwarded to the Department of Health Care Services or the Department of Social Services (Community Care Licensing

Division). Both of these agencies are charged with investigating complaints against facilities that are alleged to have violated any state or federal regulations that govern those facilities.

Federal agencies also have strict laws and regulations governing abuse and neglect of long-term health care facility residents. The U.S. Department of Health and Human Services has three agencies that deal with issues involving complaints of abuse or neglect within facilities. The federal government is concerned about the quality of care that residents receive because a majority of residents have that care paid for by federal programs, such as Medicare. These federal agencies also look into complaints made by or on behalf of residents in an effort to ensure an environment that is free from abuse and the use of unnecessary restraints.

## **FACILITIES' POLICIES AND PROCEDURES**

Each facility may have its own policies and procedures for reporting and documenting known or suspected cases of elder or dependent adult abuse within its facility. However, no supervisor or administrator shall prevent an individual from not reporting cases of abuse. Facilities may develop policies and procedures to facilitate reporting and request that staff members reporting abuse notify supervisors and administrators. No facility's policies and procedures can conflict with the state's mandated reporting laws.

### **Message to Participants:**

- Reporting is an individual duty.
- Facilities may develop policies and procedures to facilitate reporting and instruct staff to advise supervisors and administrators when they report instances of abuse or neglect. **However, no facility may adopt policies and procedures that conflict with California's mandated reporting laws.**

## Part 4: Penalties & Protections

### SUMMARY

Under California law, mandated reporters who fail to report known or suspected instances of abuse are guilty of a crime.

### LEARNING OBJECTIVE

To educate all staff that there are strong penalties for anyone who fails to report elder or dependent adult abuse. Individuals who fail to report will be prosecuted. Mandated reporters are also protected by law and are guaranteed certain confidentiality rights.

### CONTENT

#### 1. Failure To Report

Mandated reporters have a legal obligation to report all known or suspected cases of elder or dependent adult abuse. Because of this, there are strong penalties for anyone who doesn't report.

California law states that:

- Failure to report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult is a misdemeanor, punishable by not more than six (6) months in county jail or by a fine of not more than one thousand dollars (\$1000), or by both a fine and imprisonment;

AND

- Any mandated reporter who willfully fails to report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult, where that abuse results in death or great bodily injury, is punishable by not more than one year in a county jail or by a fine of not more than five thousand dollars (\$5000), or by both that fine and imprisonment.

#### Message to Participants:

In summary:

- It is your legal obligation to report known or suspected instances of elder or dependent adult abuse. **Failure to report is a crime and there are strong penalties for anyone who fails to report.**
- If you have doubts or concerns, it is best to err on the side of caution and the law...file the report. There is no penalty for filing a report.
- Mandated reporters are provided with key protections.

## **2. Employee Liability**

The law provides certain key protections for mandated reporters. A mandated reporter who reports a known or suspected instance of abuse can be held civilly or criminally liable.

## **3. Employee Confidentiality Rights**

Reports of suspected elder or dependent adult abuse and the information contained in those reports shall be confidential and may be disclosed only to the following:

- Investigators from an adult protective services agency
- Local law enforcement agency
- Department of Justice, Bureau of Medi-Cal Fraud and Elder Abuse investigators
- Investigators of Department of Consumer Affairs, Division of Investigation

The identity of all persons who make a report will be confidential and disclosed only among the following:

- Adult protective services agencies
- Long-Term Care Ombudsman Programs (with resident's permission)
- Licensing agencies or their counsel
- Local law enforcement agencies
- Department of Justice, Bureau of Medi-Cal Fraud and Elder Abuse
- By the Bureau to District Attorneys in a criminal prosecution
- Upon waiver of confidentiality by the reporter
- By a court order

Any violation of these confidentiality provisions is a misdemeanor, punishable by up to six (6) months in county jail, a fine of five-hundred dollars (\$500.00), or by both that fine and imprisonment.

### **Message to Trainer:**

- Every facility employee is to be provided with a written copy of their confidentiality rights as specified in Welfare and Institutions Code Section 15633.
- Distribute handout.

*(See Appendix 4*

## Part 5: Message to Facilities/Trainers

### Understanding Stress and Abusive Behaviors

Education and training are two of the key elements in reducing abuse, neglect and mistreatment in long-term health care settings. It is important that staff receive training in appropriate intervention strategies, understanding stress and abusive behaviors and appropriate, preventive actions they can take to significantly reduce the risk of resident abuse.

In addition to being aware of the factors that increase their risk of losing control, it is also important for staff to be trained to effectively recognize and deal with residents who exhibit aggressive or noncompliant behavior.

The relationship between stress and increased incidents of abuse and mistreatment of residents is well-documented. Dealing with verbal and physical aggression from residents and completing difficult tasks on time are some of the most challenging aspects of working in long-term health care facilities.

Generally, there are six major risk factors that have been identified as leading to abusive behavior on the part of long-term health care staff. These six factors are:

- **Poor Attitude:** Staff members often do not view residents as individuals, but rather as burdens or tasks to be completed. Additionally, some staff view residents as children in need of discipline. These attitudes are much more likely to lead to abusive behavior.
- **Burn-out:** Working in long-term health care is emotionally and physically draining. As a result, staff can experience very high levels of stress, which may result in abuse.
- **Conflict:** Staff members are often not prepared for the high degree of conflict that may exist within long-term health care facilities. If staff members do not have adequate training on the various challenges of their job, they are apt to become abusive or neglectful.
- **Aggressive Resident Behavior:** Long-term health care staff are at significant risk of abuse from residents. Many studies indicate that a majority of all staff have frequently been verbally abused, pinched, grabbed, or bitten by residents. Without continuing training on why such behaviors occur and how to deal with these behaviors, staff are likely to feel helpless in dealing with such situations.
- **Lack of Supervision and Failure to Enforce Patient Abuse Laws:** Staff are more apt to commit abusive acts if they believe the quality of their work is not being monitored or if they are not concerned with the consequences of their acts of abuse or neglect.

### Recommendation

It is recommended that this training curriculum, “**Your Legal Duty...Reporting Elder and Dependent Adult Abuse**” be incorporated into a facility’s other in-service training that is designed to address some of the important items discussed above.

## Part 6: Appendices

### Appendix 1: Pre-test

Administer to ALL Participants Prior to Training (**Approximate time: 10 minutes**)

**1. The largest growing segment of California’s population is:**

- A. People over 65 years of age
- B. People over 70 years of age
- C. People over 85 years of age

**2. Which of the following individuals are mandated reporters?**

- A. Facility maintenance staff
- B. Certified nursing assistant
- C. Dietary staff
- D. Activities director
- E. Physical therapist
- F. Licensed vocational nurse
- G. All of the above

**3. “Neglect” is:**

- A. Physical contact that harms or is likely to harm a person
- B. Use of medications, isolation or physical restraints which harm a resident
- C. Failure to provide that degree of care that a reasonable person would provide, for example, failure to assist in personal hygiene, or in the provision of food, clothing or shelter.

**4. You witness a nursing assistant slap a resident across the face after the resident begins to yell and throw food on the floor. Under California law, this is abuse and must be reported.**

- A. True
- B. False

**5. Mandated reporters must report known or suspected instances of physical abuse, abandonment, isolation, financial abuse, or neglect by telephone to the Long-Term Care Ombudsman or law enforcement:**

- A. Within 24 hours
- B. Within two working days
- C. Immediately, or as soon as possible
- D. Never, they must simply advise their supervisor

**6. According to California law, mandated reporters are required to report all instances of abuse in a long-term care facility to:**

- A. The Long-Term Care Ombudsman or local law enforcement agency
- B. The facility administrator

**7. You report an incident of suspected abuse to your supervisor and they tell you, “Don’t worry about it, I will take care of reporting it.” Does this relieve you of your legal responsibility to make a report?**

- A. Yes, informing your supervisor is enough
- B. No, under California law, no matter what your supervisor says, you must make a report

**8. Mandated reporters are provided immunity from civil and criminal liability as a result of making a required report of known or suspected elder or dependent adult abuse.**

- A. True
- B. False

**9. A supervisor or administrator who interferes with the reporting duties of a facility employee and/or punishes the employee for making the report can be punished for up to six months in the county jail, a fine of not more than \$500, or both.**

- A. True
- B. False

**10. A person who fails to report abuse, abandonment, isolation, financial abuse, or neglect, is guilty of a misdemeanor. This misdemeanor is punishable by:**

- A. Not more than six months in the county jail
- B. A fine of not more than one thousand dollars (\$1,000),
- C. Both a fine of not more than one thousand dollars (\$1,000) and imprisonment

## Appendix 2: Post-test

### Answers Indicated in Purple

1. The largest growing segment of California's population is:

- A. People over 65 years of age
- B. People over 70 years of age
- C. People over 85 years of age**

2. Which of the following individuals are mandated reporters?

- A. Facility maintenance staff
- B. Certified nursing assistant
- C. Dietary staff
- D. Activities director
- E. Physical therapist
- F. Licensed vocational nurse
- G. All of the above**

3. "Neglect" is:

- A. Physical contact that harms or is likely to harm a person
- B. Use of medications, isolation or physical restraints which harm a resident
- C. Failure to provide that degree of care that a reasonable person would provide, for example, failure to assist in personal hygiene, or in the provision of food, clothing or shelter**

4. You witness a nursing assistant slap a resident across the face after the resident begins to yell and throw her food on the floor. Under California law, this is abuse and must be reported.

- A. True**
- B. False

**5. Mandated reporters must report known or suspected instances of physical abuse, abandonment, isolation, financial abuse, or neglect by telephone to the Long-Term Care Ombudsman or law enforcement:**

- A. Within 24 hours
- B. Within two working days
- C. Immediately, or as soon as possible**
- D. Never, they must simply advise their supervisor

**6. According to California law, mandated reporters are required to report all instances of abuse in a long-term care facility to:**

- A. The Long-Term Care Ombudsman or local law enforcement agency**
- B. The facility administrator

**7. You report an incident of suspected abuse to your supervisor and they tell you, “Don’t worry about it, I will take care of reporting it.” Does this relieve you of your legal responsibility to make a report?**

- A. Yes, informing your supervisor is enough
- B. No, under California law, no matter what your supervisor says, you must make a report**

**8. Mandated reporters are provided immunity from civil and criminal liability as a result of making a required report of known or suspected elder or dependent adult abuse.**

- A. True**
- B. False

**9. A supervisor or administrator who interferes with the reporting duties of a facility employee and/or punishes the employee for making the report can be punished for up to six months in the county jail, a fine of not more than \$500, or both.**

- A. True**
- B. False

**10. A person who fails to report abuse, abandonment, isolation, financial abuse, or neglect is guilty of a misdemeanor. This misdemeanor is punishable by:**

- A. Not more than six months in the county jail
- B. A fine of not more than one thousand dollars (\$1,000)
- C. Both a fine of not more than one thousand dollars (\$1,000) and imprisonment**

## Handout

### Appendix 3: Mandated Reporting Requirements

“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 physical harm or pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.”

California state law requires 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, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, financial abuse, or neglect, or reasonably suspects abuse shall report the known or suspected instance of abuse:

- By telephone immediately or as soon as practically possible to the local ombudsman or the local law enforcement agency;
- and
- By written report, SOC Form 341, sent within two (2) working days, as follows:

**If the abuse has occurred in a long-term care facility, except a state mental hospital or a state developmental center, the report shall be made to the local ombudsman or the local law enforcement agency.**

If the abuse has occurred any place other than one described above, the report shall be made to the adult protective services agency.

*As an employee of this facility your employment position falls within the definition of a mandated reporter. Therefore, you must comply with the elder and dependent adult abuse reporting requirements as stated above.*

## **Handout**

### **Appendix 4: Employee Confidentiality Rights**

Reports of elder or dependent adult abuse shall be confidential and may be disclosed only as provided below. Any violation of the confidentiality required by law is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars (\$500), or by both that fine and imprisonment.

Information relevant to the incident of elder or dependent adult abuse may be given to an investigator from an adult protective services agency, a local law enforcement agency, or the Bureau of Medi-Cal Fraud and Elder Abuse or investigators of the Department of Consumer Affairs, Division of Investigation who are investigating the known or suspected case of elder or dependent adult abuse.

The identity of all persons who report under these provisions shall be confidential and disclosed only among adult protective agencies, local law enforcement agencies, the Bureau of Medi-Cal Fraud and Elder Abuse, and the Division of Investigation to counsel representing an adult protective services agency, Long-Term Care Ombudsman Program, licensing agency or a local law enforcement agency, by the Bureau to the District Attorney in a criminal prosecution, when persons reporting waive confidentiality, or by the court order.

Additionally, no person reporting a known or suspected instance of elder or dependent adult abuse shall incur civil or criminal liability as a result of any report, unless it can be proven that a false report was made and the person knew the report was false.

*As an employee of this facility your employment position falls within the definition of a mandated reporter and you are protected by the confidentiality rights as stated above.*

## Appendix 5: Welfare and Institutions Code Section 15630

Mandated Reporters; known or suspected abuse; telephone reports; failure to report; penalty

**15630.** (a) 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, or employee of a county adult protective services agency or a local law enforcement agency is a mandated reporter.

(b) (1) 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, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, 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 practically possible, and by written report sent within two working days, as follows:

(A) 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.

Except in an emergency, the local ombudsman and the local law enforcement agency shall report any case of known or suspected abuse to the State Department of Health Services and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(B) If the suspected or alleged abuse occurred in a state mental health 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.

Except in an emergency, the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(C) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2) (A) 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 paragraph (1), 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, isolation, financial abuse, or neglect.
- (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 conservatorship because of a mental illness or dementia.
- (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.

(B) This paragraph 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.

(3) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Health Care Services determines, upon approval by the Bureau of Medi-Cal Fraud and the state long-term care ombudsman, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c) (1) Any mandated reporter who has knowledge of, or reasonably suspects that, types of elder or dependent adult 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.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsman program. Except in an emergency, the local ombudsman shall report any case of known or suspected abuse to the State Department of Health Care Services and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services, or to a local law enforcement agency or to the local ombudsman. Except in an emergency, the local ombudsman and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) 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.

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include 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, if known, 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, requested by the agency receiving the report.

(f) 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.

(g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that law enforcement agency.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report physical abuse, abandonment, 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 or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report physical abuse, abandonment, 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, is punishable by not more than one year in a county jail or by a fine of not more than five thousand dollars (\$5,000) or by both that fine and imprisonment.

## Appendix 6: Definitions of Terms

Definitions surrounding abuse and neglect of elder and dependent adults are as complex and varied as the individuals and disabilities themselves. Many of these terms are defined within California law and those definitions are reflected in this section.

**Abandonment:** 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. **Abduction:** 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 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.

**Abuse (Elder/Dependent):** Abuse of an elder or a dependent adult means either of the following: (A) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering. (B) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

**Care Custodian:** An administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for elders and dependent adults, including members of support and maintenance staff: Clinics, 24-hour health facilities, home health agencies, agencies providing publicly funded in-home supportive services, nutrition services, or other community-based services, adult day health care centers and adult day care, secondary schools that serve 18-22 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, respite care facilities, foster homes, 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, Office of the Long-Term Care Ombudsman, Offices of Public Conservators, public guardians, and court investigators. 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.

**Dependent Adult:** 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. Dependent adult also includes any person between the ages of 18 and 64 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. **Elder:** Any person residing in this state, 65 years of age or older.

**Financial Abuse:** Financial abuse of an elder or dependent adult occurs when a person or entity does any of the following: (1) 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. (2) 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. (B) 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. (1) 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 or her representative. (2) 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 a right specified in paragraph (1). For the purposes of this section, "representative" means a person or entity that is either of the following: (1) A conservator, trustee, or other representative of the estate of an elder or dependent adult, (2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

**Isolation:** Isolation means any of the following: (1) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls. (2) 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 or 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. (3) False imprisonment, as defined in Section 236 of the Penal Code. (4) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.

**Local Law Enforcement Agency:** Means a city police or county sheriff's department, or a county probation department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

**Long-Term Care Ombudsman:** The State Long-Term Care Ombudsman, local ombudsman coordinators, and other persons currently certified as ombudsmen by the Department of Aging.

**Long-Term Health Care Facility:** For purposes of this training, each long-term health care facility as defined in Section 1418 of the Health and Safety Code or community care facility as defined in Section 1502 of the Health and Safety Code, or a residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

**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.

**Neglect:** Means either of the following: (1) 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. (2) The negligent failure of the person themselves to exercise that degree of care that a reasonable person in a like position would exercise. (B) 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. (3) Failure to protect from health and safety hazards. (4) Failure to prevent malnutrition or dehydration. (5) Failure of a person to provide the needs specified in paragraphs (1) to (4) inclusive, for themselves due to ignorance, illiteracy, incompetence, mental limitation, substance abuse, or poor health.

**Physical Abuse:** Physical abuse means any of the following: (a) Assault, (b) Battery, (c) Assault with a deadly weapon or force likely to produce great bodily injury (d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water (e) Sexual assault, that means any of the following: sexual battery, rape, rape in concert, spousal rape, incest, sodomy, oral copulation, use of a physical or chemical restraint or psychotropic medication under any of the following conditions: (1) For punishment, (2) 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 are given or (3) For any purpose not authorized by the physician and surgeon.

**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 or her training and experience, to suspect abuse.

Sample Form SOC 341; Report of Suspected Dependent Adult/Elder Abuse

[http://search.ca.gov/search?q=soc+341&output=xml\\_no\\_dtd&site=ca\\_dss&client=ca\\_dss&proxystylesheet=ca\\_dss](http://search.ca.gov/search?q=soc+341&output=xml_no_dtd&site=ca_dss&client=ca_dss&proxystylesheet=ca_dss)

## Appendix 8: Ombudsman Directory

Toll Free Crisis Line: 1-800-231-4024

[www.aging.ca.gov/programs/ombudsman\\_contacts.asp](http://www.aging.ca.gov/programs/ombudsman_contacts.asp)

## Appendix 9: Assembly Bill 1499

### Chapter 414, Statutes of 1999

An act to add Section 15655 to the Welfare and Institutions Code, relating to human services.  
(Approved by the Governor on September 16, 1999. Filed with the Secretary of State on September 16, 1999.)

### LEGISLATIVE COUNSEL'S DIGEST

AB 1499, Lowenthal. Elder and dependent abuse reporting: training. Existing law requires mandated reporters to report instances of abuse of elder or dependent adults. This bill would specify that long-term health care facilities or community care facilities that provide care to adults shall provide training to their staff in recognizing and reporting elder and dependent adult abuse.

#### *The people of the State of California do enact as follows:*

SECTION 1. Section 15655 is added to the Welfare and Institutions Code, to read: 15655. (a) (1) Each long-term health care facility, as defined in Section 1418 of the Health and Safety Code or community care facility, as defined in Section 1502 of the Health and Safety Code that provides care to adults shall provide training in recognizing and reporting elder and dependent adult abuse, as prescribed by the Department of Justice. The Department of Justice shall, in cooperation with the State Department of Health Services and the State Department of Social Services, develop a minimal core training program for use by these facilities. As part of that training, long-term health care facilities, including nursing homes and out-of-home care facilities, shall provide to all staff being trained a written copy of the reporting requirements and a written notification of the staff's confidentiality rights as specified in Section 15633. (2) Compliance with paragraph (1) shall be completed by January 1, 2001, or, if the facility begins operation after July 31, 2000, within six months of the date of the beginning of the operation of the facility. Employees hired after June 1, 2001, shall be trained within 60 days of their first day of employment. (b) Each long-term health care facility, as defined in Section 1418 of the Health and Safety Code, shall be subject to review by the State Department of Health Services Licensing and Certification Unit for compliance with the duties imposed in subdivision (a). (c) Each community care facility, as defined in Section 1502 of the Health and Safety Code shall be subject to review by the State Department of Social Services Community Care Licensing Unit for compliance with the duties imposed in subdivision (a).

# Appendix 10: Assembly Bill 1690

## Chapter 196, Statutes of 2001

An act to amend Section 15655 of the Welfare and Institutions Code, relating to human services. (Approved by the Governor on August 12, 2001. Filed with the Secretary of State on August 13, 2001.)

### LEGISLATIVE COUNSEL'S DIGEST

AB 1690, Committee on Human Services. Elder and dependent abuse reporting: training. Existing law requires mandated reporters to report instances of abuse of elder or dependent adults. Existing law also specifies that long-term health care facilities or community care facilities that provide care to adults shall provide training to their staff in recognizing and reporting elder and dependent adult abuse.

This bill would also make residential care facilities for the elderly subject to the requirement to provide training to staff in recognizing and reporting elder and dependent adult abuse, and would require compliance by July 1, 2002.

#### *The people of the State of California do enact as follows:*

SECTION 1. Section 15655 of the Welfare and Institutions Code is amended to read: 15655. (a) (1) Each long-term health care facility, as defined in Section 1418 of the Health and Safety Code, community care facility, as defined in Section 1502 of the Health and Safety Code, or residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, that provides care to adults shall provide training in recognizing and reporting elder and dependent adult abuse, as prescribed by the Department of Justice. The Department of Justice shall, in cooperation with the State Department of Health Services and the State Department of Social Services, develop a minimal core training program for use by these facilities. As part of that training, long-term care facilities, including nursing homes and out-of-home care facilities, shall provide to all staff being trained a written copy of the reporting requirements and a written notification of the staff's confidentiality rights as specified in Section 15633. (2) Each long-term health care facility as defined in Section 1418 of the Health and Safety Code and each community care facility as defined in Section 1502 of the Health and Safety Code shall comply with paragraph (1) by January 1, 2001, or, if the facility began operation after July 31, 2000, within six months of the date of the beginning of the operation of the facility. Employees hired after June 1, 2001, shall be trained within 60 days of their first day of employment. (3) Each residential care facility as defined in Section 1569.2 of the Health and Safety Code shall comply with paragraph (1) by July 1, 2002, or, if the facility began operation after July 1, 2002, within six months of the date of the beginning of the operation of the facility. Employees hired on or after July 1, 2002, shall be trained within 60 days of their first day of employment. (b) Each long-term health care facility, as defined in Section 1418 of the Health and Safety Code, shall be subject to review by the State Department of Health Services Licensing and Certification Unit for compliance with the duties imposed in subdivision (a). (c) Each community care facility, as defined in Section 1502 of the Health and Safety Code, and residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, shall be subject to review by

the State Department of Social Services Community Care Licensing Unit for compliance with the duties imposed in subdivision (a).

## **Acknowledgments**

This curriculum was prepared by the Attorney General's Crime Office, California Department of Justice, in association with the California Health and Human Services Agency. The Center gratefully acknowledges the Department of Health Care Services, Department of Social Services, the Department of Aging, Office of the Long-Term Care Ombudsman, and the California Department of Justice Bureau of Medi-Cal Fraud and Elder Abuse for their contributions and assistance. Special thanks also to Carol Wright Illustration and Graphic Design.

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