

Mandatory Reporting Requirements: The Elderly California

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Question	Answer
Who is required to report?	<ul style="list-style-type: none"> • Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not they receive compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults; • Any elder or dependent adult care custodian; • A health practitioner (including a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, registered nurse, dental hygienist, licensed clinical social worker or associate clinical social worker, marriage and family therapist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage and family therapist intern, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, or an unlicensed marriage and family therapist intern registered under Section 4980.44 of the Business and Professions Code, a clinical counselor trainee (as defined in subdivision (g) of Section 4999.12 of the Business and Professions Code), a clinical counselor intern registered under Section 4999.42 of the Business and Professions Code, a state or county public health or social service employee who treats an elder or a dependent adult for any condition, a coroner, or a substance use disorder counselor. As used in this section, a “substance use disorder counselor” is a person providing counseling services in an alcoholism or drug abuse recovery and treatment program licensed, certified, or funded under Part 2 (commencing with Section 11760) of Division 10.5 of the Health and Safety Code; • A clergy member (including a priest, minister, rabbi, religious practitioner, or similar functionary of a church, synagogue, temple, mosque, or recognized religious denomination or organization, but excluding any unpaid volunteers whose principal occupation or vocation does not involve active or ordained ministry in a church, synagogue, temple, mosque, or recognized religious denomination or organization, and who periodically visit elder or dependent adults on behalf of that church, synagogue, temple, mosque, or recognized religious denomination or organization); <ul style="list-style-type: none"> • A clergy member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication is not a mandated reporter. “Penitential communication” means a communication that is intended to be in confidence, including, but not limited to, a sacramental confession made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications and under the discipline tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret. Nothing shall limit a clergy member’s duty to report known or suspected elder and dependent adult abuse when he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective services agency. • An employee of a county adult protective services agency or a local law enforcement agency; • County in-home support services agency, county public authority; • All officers and employees of financial institutions are mandated reporters of suspected financial abuse; and • Any notary public who, in connection with providing notary services, has observed or has knowledge of suspected financial abuse of an elder or dependent adult is a mandatory reporter of suspected financial abuse.
When is a report required and where does it go?	<p>When is a report required?</p> <ul style="list-style-type: none"> • When a mandated reporter, in his or her professional capacity, or within the scope of his or her employment: <ul style="list-style-type: none"> • Has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse, or neglect; • Is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission constituting physical abuse, abandonment, abduction, isolation, financial abuse or neglect; or • Reasonably suspects that abuse. • When a mandated reporter of suspected financial abuse, who has direct contact with the elder or dependent adult or who reviews or approves the elder or dependent adult’s financial documents, records or transactions, and who within the scope of his or her employment or professional practice: <ul style="list-style-type: none"> • Has observed or has knowledge of an incident that is directly related to the transaction or matter that is within the scope of

- employment and reasonably appears to be financial abuse; or
- Reasonably suspects that abuse.

Where does it go?

- If physical abuse occurred in a long-term care facility, except a state mental health hospital or a state developmental center,
 - (1) if the suspected abuse results in serious bodily injury, an oral report by telephone shall be made to the local law enforcement agency immediately (and in no event later than 2 hours after the suspected abuse), and a written report shall be made to the local law enforcement agency, the local ombudsperson and the corresponding licensing agency within 2 hours after observing, obtaining knowledge of or suspecting physical abuse;
 - (2) if the suspected abuse does not result in serious bodily injury, then an oral report by telephone shall be made to the local law enforcement agency within 24 hours after observing, obtaining knowledge of or suspecting the abuse and a written report shall be made to the local law enforcement agency, the local ombudsperson and the corresponding licensing agency within 24 hours after the abuse; and
 - (3) if the suspected abuse is caused by a resident with a physician’s diagnosis of dementia and there is no serious bodily injury, the reporter shall report to the local ombudsperson or law enforcement agency by telephone immediately or as soon as reasonably practicable and by written report within 24 hours.
- If other-than-physical abuse occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the telephone and written report shall be made to the local ombudsman or the local law enforcement agency.
- If the abuse occurred in a state mental hospital or a state developmental center and the alleged abuse or neglect resulted in death, sexual assault, an assault with a deadly weapon by a nonresident of a state mental hospital or a state developmental center, an assault with force likely to produce great bodily injury, an injury to the genitals where the cause is undetermined or a broken bone where the cause of the break is undetermined, then the report shall be made immediately (but in any event within 2 hours of the event) to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services and also to the local law enforcement agency.
- Reports of all other suspected cases of abuse or neglect occurring in a state mental hospital or a state development center shall be made to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services or the local law enforcement agency.
- Reports related to suspected abuse or neglect that occurred in any place other than a long-term care facility, a state mental hospital or a state developmental center shall be made to the adult protective services agency or the local law enforcement agency.
- Reports related to suspected financial abuse of an elder or dependent adult shall be made to the local adult protective services agency, the local law enforcement agency, and the Department of Financial Protection and Innovation.
- Reports related to suspected financial abuse of an elder or dependent adult *that resides in a long-term care facility* shall be made to the local ombudsman, the local law enforcement agency, and the Department of Financial Protection and Innovation.

What definitions are important to know?

- **“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.
- **“Abduction”** means the removal from the State of California and the restraint from returning to the State of California, or the restraint from returning to the State of California and the restraint from returning to the State of California, or the restraint from returning to the State of California, as well as the removal from the State of California or the restraint from returning to the State of California, of any conservatee without the consent of the conservator or the court.
- **“Adult protective services”** means those activities performed on behalf of elders and dependent adults who have come to the attention of the adult protective services agency due to potential abuse or neglect.
- **“Abuse of an elder or a dependent adult”** means any of the following:
 - Physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering;
 - The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering; or
 - Financial abuse.
- **“Care custodian”** means an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff: (a) Twenty-four-hour health facilities, (b) Clinics, (c) Home health agencies, (d) Agencies providing publicly funded in-home supportive services, nutrition services, or other home and community-based support services, (e) Adult day health care centers and adult day care, (f) Secondary schools that serve 18- to 22-year old dependent adults and postsecondary educational institutions that serve dependent adults or elders, (g) Independent living centers, (h) Camps, (i) Alzheimer’s Disease day care resource centers, (j) Community

care facilities and residential care facilities for the elderly, (k) Respite care facilities, (l) Foster homes, (m) Vocational rehabilitation facilities and work activity centers, (n) Designated area agencies on aging, (o) Regional centers for persons with developmental disabilities, (p) State Department of Social Services and State Department of Health Services licensing divisions, (q) County welfare departments, (r) Offices of patients' rights advocates and clients' rights advocates, including attorneys, (s) The office of the long-term care ombudsman, (t) Offices of public conservators, public guardians, and court investigators, (u) Any protection or advocacy agency or entity that is designated by the Governor to fulfill the requirements and assurances of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 or the Protection and Advocacy for the Mentally Ill Individuals Act of 1986, (v) Humane societies and animal control agencies, (w) Fire departments, (x) Offices of environmental health and building code enforcement, and (y) 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”** means:
 - a person, regardless of whether the person lives independently, between the ages of 18 and 64 years, inclusive, who resides in California and who has a combination of a disability and the inability to protect their own interest, or who has an inability to carry out normal activities to protect their rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age, or
 - a person between 18 and 64 years of age, inclusive, who is admitted as an inpatient to a 24-hour facility.
- **“Elder”** means any person residing in California, 65 years of age or older.
- **“Financial Abuse”** of an elder or dependent adult occurs when a person or entity does any of the following:
 - Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both;
 - Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both; or
 - Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence.
 - A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.
 - For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.
 - For purposes of this section, “representative” means a person or entity that is either of the following:
 - A conservator, trustee, or other representative of the estate of an elder or dependent adult; or
 - An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.
- **“Isolation”** means any of the following:
 - Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls;
 - Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor, where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he 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;
 - False imprisonment (as defined in the Penal Code); or
 - Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.
- **“Neglect”** means either of the following:
 - The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise; or
 - The negligent failure of an elder or dependent adult to exercise that degree of self-care that a reasonable person in a like position would exercise.

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

- Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.
- Failure to provide medical care for physical and mental health needs. A person shall not be deemed neglected or abused for the sole reason that the person voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.
- Failure to protect from health and safety hazards.

	<ul style="list-style-type: none"> • Failure to prevent malnutrition or dehydration. • Substantial inability or failure of an elder or dependent adult to manage their own finances. • Being homeless if the elder or dependent adult is also unable to meet any of the needs referenced above. • Failure of an elder or dependent adult to satisfy the needs specified above for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health. • “Physical abuse” means any of the following: <ul style="list-style-type: none"> • Assault (as defined in the Penal Code); • Battery (as defined in the Penal Code); • Assault with a deadly weapon or force likely to produce great bodily injury (as defined in the Penal Code); • Unreasonable physical constraint, or prolonged or continual deprivation of food or water; • Sexual assault; • Use of a physical or chemical restraint or psychotropic medication under any of the following conditions: <ul style="list-style-type: none"> • (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. • “Sexual Assault” means (all terms as defined in the Penal Code): <ul style="list-style-type: none"> • Sexual battery; • Rape; • Rape in concert; • Spousal rape; • Incest; • Sodomy; • Oral copulation; • Sexual penetration; or • Lewd or lascivious acts.
<p>What timing and procedural requirements apply to reports?</p>	<ul style="list-style-type: none"> • A telephone report or confidential Internet reporting tool report shall be made immediately or as soon as practicably possible, and, if the initial report was made by telephone, a written report must be sent, or an Internet report shall be made, within two working days. • Also see timing requirements under “When is a report required and where does it go?” above for long-term care facilities, state mental hospitals and state developmental centers.
<p>What information must a report include?</p>	<ul style="list-style-type: none"> • Each county operates its own abuse reporting hotline. The applicable telephone numbers can be found at: http://www.cdss.ca.gov/Adult-Protective-Services/County-APS-Offices • The written report shall be submitted on a form adopted by the State Department of Social Services (available at: https://www.cdss.ca.gov/Portals/9/FMUForms/Q-T/SOC341.pdf), which requires, among other things, the following: <ul style="list-style-type: none"> • The name, e-mail address, telephone number, and occupation of the person reporting; • The name, age, gender, sexual orientation, protected class, and address of the victim; • The date, time, and place of the incident; • Other details, including the reporter’s observations and beliefs concerning the incident; • Any statement relating to the incident made by the victim; • The name of any individuals believed to have knowledge of the incident; and • The name of the individuals believed to be responsible for the incident and their connection to the victim (suspected abuser). • A form has been prepared for use by financial institutions for reports of suspected dependent adult/elder financial abuse: https://www.cdss.ca.gov/Portals/9/Additional-Resources/Forms-and-Brochures/2020/Q-T/SOC342.pdf?ver=2022-07-06-082718-167

<p>Anything else I should know?</p>	<ul style="list-style-type: none"> • 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 or Internet 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. • A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist is not required to report an incident where all of the following conditions exist: <ul style="list-style-type: none"> • The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect. • The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred. • The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia. • 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. • In a long-term care facility, a mandated reporter is not required to report as a suspected incident of abuse, an incident where all of the following conditions exist: <ul style="list-style-type: none"> • The mandated reporter is aware that there is a proper plan of care. • The mandated reporter is aware that the plan of care was properly provided or executed. • A physical, mental, or medical injury occurred as a result of care provided pursuant to the clauses above. • The mandated reporter reasonably believes that the injury was not the result of abuse. • Any person who fails to make a required report, or impedes or inhibits a report, shall be guilty of a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than \$1,000, or both. Any mandated reporter who willfully fails to report, or impedes or inhibits a report, and the abuse results in death or great bodily injury shall be punished by not more than one year in a county jail, a fine of not more than \$5,000, or both. • Failure of a financial institution to report financial abuse shall be subject to a civil penalty not exceeding \$1,000 or if the failure to report is willful, a civil penalty not exceeding \$5,000, which shall be paid by the financial institution that is the employer of the mandated reporter to the party bringing the action. • Any person who is not a mandated reporter under these laws who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse <u>may</u> report that abuse to a long-term care ombudsman program or local law enforcement agency, or both the long-term care ombudsman program and local law enforcement agency when the abuse is alleged to have occurred in a long-term care facility. • Any person who is not a mandated reporter under these laws who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse in any place other than a long-term care facility <u>may</u> report the abuse to the county adult protective services agency or local law enforcement agency. • A mandated reporter of suspected financial abuse of an elder or dependent adult is authorized to not honor a power of attorney as to an attorney-in-fact, if the mandated reporter of suspected financial abuse of an elder or dependent adult makes a report to an adult protective services agency or a local law enforcement agency of any state that the principal may be subject to financial abuse, as described in this chapter or as defined in similar laws of another state, by that attorney-in-fact or person acting for or with that attorney-in-fact.
<p>Statutory citation(s):</p>	<p>Elder Abuse and Dependent Adult Civil Protection Act, Ca. Welf. & Inst. §§ 15600 to 15675</p>