

# Mandatory Reporting Requirements: The Elderly New Mexico

*Last Updated: April 2023*

Question	Answer
Who is required to report?	<ul style="list-style-type: none"> <li>• <b>Resident Abuse and Neglect Act:</b> Any person paid in whole or part for providing to a resident any treatment, care, good, service or medication. Additionally, any other person shall make a report if the person has reasonable cause to believe that a patient or resident of a facility has been abused, neglected or exploited.</li> <li>• <b>Adult Protective Services Act:</b> Any person, including financial institutions.</li> </ul>
When is a report required and where does it go?	<p><b>When is a report required?</b></p> <ul style="list-style-type: none"> <li>• Reasonable cause to believe that an incapacitated adult or resident is being or has been abused, neglected, or exploited.</li> </ul> <p><b>Where does it go?</b></p> <ul style="list-style-type: none"> <li>• Adult Protective Services Statewide Intake (1-866-654-3219) (<a href="http://nmaging.state.nm.us/protecting-adults#:~:text=lf%20you%20suspect%20an%20adult,-505-476-4912">http://nmaging.state.nm.us/protecting-adults#:~:text=lf%20you%20suspect%20an%20adult,-505-476-4912</a>).</li> <li>• See also Reporting Adult Abuse, Neglect/Self-Neglect, and Exploitation Web Intake Form (<a href="https://hssnmprod.wellsky.com/assessments/?WebIntake=736C2553-66C1-4A51-9E51-43B5C129FB89">https://hssnmprod.wellsky.com/assessments/?WebIntake=736C2553-66C1-4A51-9E51-43B5C129FB89</a>).</li> </ul>
What definitions are important to know?	<ul style="list-style-type: none"> <li>• <b>Resident Abuse and Neglect Act:</b> <ul style="list-style-type: none"> <li>• <b>“Abuse”</b> means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a resident, including: <ul style="list-style-type: none"> <li>• physical contact that harms or is likely to harm a resident of a care facility;</li> <li>• inappropriate use of a physical restraint, isolation or medication that harms or is likely to harm a resident;</li> <li>• inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physician’s order;</li> <li>• medically inappropriate conduct that causes or is likely to cause physical harm to a resident;</li> <li>• medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident; or</li> <li>• an unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident.</li> </ul> </li> <li>• <b>“Care Facility”</b> includes: a hospital; skilled nursing facility; intermediate care facility; care facility for individuals with developmental or intellectual disabilities; psychiatric facility; rehabilitation facility; kidney disease treatment center; home health agency; ambulatory surgical or outpatient facility; home for the aged or disabled; group home; adult foster care home; private residence that provides personal care, sheltered care or nursing care for one or more persons; a resident's or care provider's home in which personal care, sheltered care or nursing care is provided; adult daycare center; boarding home;</li> </ul> </li> </ul>

adult residential shelter care home; and any other health or resident care related facility or home, but does not include a care facility located at or performing services for any correctional facility.

- **“Great Physical Harm”** means physical harm of a type that causes physical loss of a bodily member or organ or functional loss of a bodily member or organ for a prolonged period of time.
- **“Great Psychological Harm”** means psychological harm that causes mental or emotional incapacitation for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms that require psychological or psychiatric care.
- **“Neglect”** means, subject to the resident’s right to refuse treatment and subject to the caregiver’s right to exercise sound medical discretion, the grossly negligent:
  - (1) failure to provide any treatment, service, care, medication or item that is necessary to maintain the health or safety of a resident;
  - (2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a resident; or
  - (3) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service or medication necessary to maintain the health or safety of a resident.
- **“Physical harm”** means an injury to the body that causes substantial pain or incapacitation.
- **“Resident”** means any person who resides in a care facility or who receives treatment from a care facility.
- **Adult Protective Services Act:**
  - **“Ability to Consent”** means an adult’s ability to understand and appreciate the nature and consequences of proposed protective services or protective placement, including benefits, risks and alternatives to the proposed services or placement and to make or communicate an informed decision.
  - **“Abuse”** means:
    - knowingly, intentionally or negligently and without justifiable cause inflicting physical pain, injury or mental anguish;
    - the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of an adult; or
    - sexual abuse, including criminal sexual conduct, incest and criminal sexual penetration.
  - **“Adult”** means a person 18 years of age or older.
  - **“Caretaker”** means a facility, provider or individual that has assumed the responsibility for the care of an adult.
  - **“Conservator”** means a person who is appointed by a court to manage the property or financial affairs, or both, of an incapacitated adult.
  - **“Court”** means the district court having jurisdiction;
  - **“Department”** means the aging and long-term services department;
  - **“Emergency”** means that an adult is living in conditions that present a substantial risk of death or immediate and serious physical harm to the adult or others;
  - **“Exploitation”** means an unjust or improper use of an adult's money or property for another person's profit or advantage, pecuniary or otherwise.
  - **“Facility”** means a hospital, nursing home, residential care facility, group home, foster care home, assisted living facility or other facility licensed by the state, but does not include a jail, prison or detention facility.

	<ul style="list-style-type: none"> <li>• <b>“Guardian”</b> means a person who has qualified to provide for the care, custody or control of an incapacitated adult pursuant to testamentary or court appointment, but excludes one who is a guardian ad litem;</li> <li>• <b>“Incapacitated Adult”</b> means any adult (18 or older) with a mental, physical or developmental condition that substantially impairs the adult’s ability to provide adequately for the adult’s own care or protection.</li> <li>• <b>“Neglect”</b> means the failure of the caretaker of an adult to provide for the basic needs of the adult, such as clothing, food, shelter, supervision and care for the physical and mental health of that adult; “neglect” includes self-neglect.</li> <li>• <b>“Provider”</b> means a private-residence or health care worker or an unlicensed residential or nonresidential entity that provides personal, custodial or health care;</li> <li>• <b>“Self-Neglect”</b> means an act or omission by an incapacitated adult that results in the deprivation of essential services or supports necessary to maintain the incapacitated adult’s minimum mental, emotional or physical health and safety.</li> </ul>
<p>What timing and procedural requirements apply to reports?</p>	<ul style="list-style-type: none"> <li>• Report must be made immediately. Report can be made orally or in writing to the New Mexico Aging and Long-Term Services Department.</li> </ul>
<p>What information must a report include?</p>	<ul style="list-style-type: none"> <li>• The name, age, and address of the victim;</li> <li>• The name and address of any other person responsible for the victim’s care;</li> <li>• The nature and extent of the victim’s condition;</li> <li>• The basis of the reporter’s knowledge; and</li> <li>• Any other relevant information.</li> </ul>
<p>Anything else I should know?</p>	<p><u>Adult Protective Services Statute:</u></p> <ul style="list-style-type: none"> <li>• Any person failing or refusing to report, or obstructing or impeding an investigation, is guilty of a misdemeanor. Failure to report, or obstructing or impeding any investigation, can result in a civil penalty of up to \$10,000 per violation.</li> <li>• Any person making a report, testifying in any judicial proceeding arising from the report or participating in a required evaluation pursuant to the Adult Protective Services Act or any law enforcement officer carrying out his responsibilities under that act or any person providing records or information as required under that act shall be immune from civil or criminal liability on account of that report, testimony or participation, unless the person acted in bad faith or with a malicious purpose.</li> </ul> <p><u>Resident Abuse and Neglect Statute:</u></p> <ul style="list-style-type: none"> <li>• Any person who is required to make a report but fails to do so is guilty of a misdemeanor and subject to imprisonment in the county jail for a definite term not to exceed 1 year or to the payment of a fine of not more than \$1,000 or to both.</li> <li>• Any person making a report in good faith shall not be liable for any civil or criminal action based on the report.</li> </ul>

- No facility shall, without just cause, discharge or in any manner discriminate or retaliate against any person who makes a report in good faith or testifies, or is about to testify, at a proceeding.
- No resident who is being treated by a duly accredited religious practitioner shall be considered for that reason alone, abused or neglected.

Statutory  
citation(s):

N.M. Stat. §§ 27-7-16, 27-7-30, 27-7-31 (Adult Protective Services Act); 30-47-3, 30-47-7, 30-47-9, 31-19-1(A) (Resident Abuse and Neglect Act).