

Mandatory Reporting Requirements: The Elderly New York

Last Updated: March 2020

Question	Answer
Who is required to report?	<ul style="list-style-type: none"> • Required to report: <ul style="list-style-type: none"> • Operators and employees of a residential health care facility; • Persons (or employees of any corporation, partnership, organization or other entity) under contract to provide patient care services in a residential health care facility; • Nursing home administrators; • Physicians; • Medical examiners; • Coroners; • Physician's associates; • Specialist's assistants; • Osteopaths; • Chiropractors; • Physical therapists; • Occupational therapists; • Registered professional nurses; • Licensed practical nurses; • Dentists; • Podiatrists; • Optometrists; • Pharmacists; • Psychologists; • Licensed master social workers; • Licensed clinical social workers; • Speech pathologists; or • Audiologists.
When is a report required and where does it go?	<p>When is a report required?</p> <ul style="list-style-type: none"> • Reasonable cause to believe a person receiving care or services in a residential health care facility has been physically abused, mistreated, or neglected by other than a person receiving care or services in the facility. • Anyone may report physical abuse, mistreatment or neglect if he or she has reasonable cause to believe that a person receiving care or services has been physically abused, mistreated or neglected in a residential health care facility.

- Allegations of reportable incidents shall be reported immediately to the vulnerable persons' central register upon discovery.
 - For purposes of this article, "discovery" occurs when the mandated reporter witnesses a suspected reportable incident or when another person, including the vulnerable person, comes before the mandated reporter in the mandated reporter's professional or official capacity and provides the mandated reporter with reasonable cause to suspect that the vulnerable person has been subjected to a reportable incident.

Where does it go?

- Vulnerable persons' central register.

What definitions are important to know?

- **"Assisted living"** and **"assisted living residence"** means an entity which provides or arranges for housing, on-site monitoring, and personal care services and/or home care services (either directly or indirectly), in a home-like setting to five or more adult residents unrelated to the assisted living provider. An applicant for licensure as assisted living that has been approved in accordance with the provisions of this article must also provide daily food service, twenty-four hour on-site monitoring, case management services, and the development of an individualized service plan for each resident. An operator of assisted living shall provide each resident with considerate and respectful care and promote the resident's dignity, autonomy, independence and privacy in the least restrictive and most home-like setting commensurate with the resident's preferences and physical and mental status. Assisted living and enhanced assisted living shall not include:
 - (a) residential health care facilities or general hospitals;
 - (b) continuing care retirement communities, unless the continuing care retirement community is operating an assisted living residence;
 - (c) residential services for persons that are provided under a license or other residential services primarily funded by or primarily under the jurisdiction of the office for mental health;
 - (d) naturally occurring retirement communities;
 - (e) assisted living programs approved by the department;
 - (f) public or publicly assisted multi-family housing projects administered or regulated by the U.S. Department of Housing and Urban Development or the division of housing and community renewal or funded through the homeless housing assistance program that were designed for the elderly or persons with disabilities, or homeless persons, provided such entities do not provide or arrange for home care, twenty-four hour supervision or both, beyond providing periodic coordination or arrangement of such services for residents at no charge to residents. Except, however, such entities that are in receipt of grants for conversion of elderly housing to assisted living facilities;
 - (g) an operating demonstration (chronic care management demonstration programs authorized under state law);
 - (h) hospice and hospice residences;
 - (i) an adult care facility; and
 - (j) independent senior housing, shelters or residences for adults.
- **"Caretaker"** means a person appointed, pursuant to the provisions of Section 2806-b of the article, to act

as a fiduciary responsible to the court which appoints him for the conserving and preserving of the rights and property of the operator of a residential health care facility, while also preserving and providing for the rights of the patients in such facility to care appropriate to their needs in a clean and wholesome environment in accordance with applicable federal and state laws and regulations.

- **“Custodian”** means a director, operator, employee or volunteer of a facility or provider agency; or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a facility or provider agency pursuant to contract or other arrangement that permits such person to have regular and substantial contact with individuals who are cared for by the facility or provider agency.
- **“Deliberate inappropriate use of restraints”** means the use of a restraint when the technique that is used, the amount of force that is used or the situation in which the restraint is used is deliberately inconsistent with a service recipient’s individual treatment plan or behavioral intervention plan, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies, except when the restraint is used as a reasonable emergency intervention to prevent imminent risk of harm to a person receiving services or to any other person. For purposes of this subdivision, a “restraint” shall include the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body.
- **“Long-term care facilities”** means residential health care facilities as defined in subdivision three of section twenty-eight hundred one of the public health law, adult care facilities as defined in subdivision twenty-one of section two of the social services law, and assisted living residences, as defined in article forty-six-B of the public health law, or any facilities which hold themselves out or advertise themselves as providing assisted living services and which are required to be licensed or certified under the social services law or the public health law.
- **“Neglect”** means any action, inaction or lack of attention that breaches a custodian’s duty and that results in or is likely to result in physical injury or serious protracted impairment of the physical, mental or emotional condition of a service recipient. Neglect shall include, but is not limited to: (i) failure to provide proper supervision, including a lack of proper supervision that result in conduct between persons receiving services that would constitute abuse as described in paragraphs (a) through (g) of this subdivision if committed by a custodian; (ii) failure to provide adequate food, clothing, shelter, medical, dental, optometric or surgical care, consistent with the rules or regulations promulgated by the state agency operating, certifying or supervising the facility or provider agency, provided that the facility or provider agency has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric or surgical treatment have been sought and obtained from the appropriate individuals; or (iii) failure to provide access to educational instruction, by a custodian with a duty to ensure that an individual receives access to such instruction in accordance with the provisions of part one of article sixty-five of the education law and/or the individual’s individualized education program.
- **“Physical abuse”** means conduct by a custodian intentionally or recklessly causing, by physical contact, physical injury or serious or protracted impairment of the physical, mental or emotional condition of a service recipient or causing the likelihood of such injury or impairment. Such conduct may include but shall not be limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging,

	<p>throwing, punching, shaking, burning, cutting or the use of corporal punishment. Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any person.</p> <ul style="list-style-type: none"> • “Psychological abuse” means conduct by a custodian intentionally or recklessly causing, by verbal or non-verbal conduct, a substantial diminution of a service recipient’s emotional, social or behavioral development or condition, supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor, or causing the likelihood of such diminution. Such conduct may include but shall not be limited to intimidation, threats, the display of a weapon or other object that could reasonably be perceived by a service recipient as a means for infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury, taunts, derogatory comments or ridicule. • “Residential health care facility” includes nursing homes and facilities providing health-related services (which includes lodging, board and physical care including, but not limited to, the recording of health information, dietary supervision and supervised hygienic services). • “Sexual abuse” means any conduct by a custodian that subjects a person receiving services to any offense defined in article 130 or section 255.25, 255.26 or 255.27 of the penal law; or any conduct or communication by such custodian that allows, permits, uses or encourages a service recipient to engage in any act described in articles 230 or 263 of the penal law. For purposes of this paragraph only, a person with a developmental disability who is or was receiving services and is also an employee or volunteer of a service provider shall not be considered a custodian if he or she has sexual contact with another service recipient who is a consenting adult who has consented to such contact. • “Use of aversive conditioning” means the application of a physical stimulus that is intended to induce pain or discomfort in order to modify or change the behavior of a person receiving services in the absence of a person-specific authorization by the operating, licensing or certifying state agency pursuant to governing state agency regulations. Aversive conditioning may include but is not limited to, the use of physical stimuli such as noxious odors, noxious tastes, blindfolds, the withholding of meals and the provision of substitute foods in an unpalatable form and movement limitations used as punishment, including but not limited to helmets and mechanical restraint devices. • “Vulnerable person” shall mean a person who, due to physical or cognitive disabilities, or the need for services or placement, is receiving services from a facility or provider agency.
<p>What timing and procedural requirements apply to reports?</p>	<ul style="list-style-type: none"> • Must immediately report by telephone, followed by a written report within 48 hours.
<p>What information must a report include?</p>	<ul style="list-style-type: none"> • A report to the register shall include: <ul style="list-style-type: none"> • Name, title and contact information of every person known to the mandated reporter to have the same information as the mandated reporter concerning the reportable incident • Forms to contain: <ul style="list-style-type: none"> • Name and contact information of person making the report, if available; • If report made by a custodian, any other staff who have the same information; • Name and address of facility or provider agency;

- Names of the operator and administrator of the facility, if known;
- Date, time, specific location and description of incident;
- Name and contact information of subject of reportable incident, if known;
- Name of vulnerable person alleged to have been subjected to a reportable incident;
- Names of next of kin or sponsors for vulnerable person who is alleged to have been subjected to a reportable incident, if known; and
- Any other information or documentation the executive director believes may be helpful.
- Written reports must be made on forms supplied by the Department of Health and shall include:
 - The identity of the person making the report and where she can be found;
 - The name and address of the residential health care facility;
 - The names of the operator and administrator of the facility (if known);
 - The name of the subject of the alleged physical abuse, mistreatment, or neglect (if known);
 - The nature and extent of the physical abuse, mistreatment, or neglect;
 - The date, time, and specific location of the occurrence;
 - The names of next of kin or sponsors of the subject of the alleged physical abuse, mistreatment, or neglect (if known); and
 - Any other information which the person making the report believes would be helpful.
- Written reports made other than on forms supplied by the commissioner which contain the information required by statute shall be treated as if made on such forms.
- Any person or official required to report allegations of reportable incidents pursuant to this section may take or cause to be taken color photographs of visible trauma and the face of the vulnerable person named in the report and upon the consent of a person authorized to consent to medical care for the vulnerable person, shall, if medically indicated, cause to be performed a radiological examination of the vulnerable person. Any photographs or radiological examinations taken shall be provided to the justice center for use only for the purposes of an investigation of a reportable incident.

Anything else I should know?

- Any person who in good faith makes a report of a person receiving care or services in a residential health facility shall have immunity from any civil or criminal liability for having made such report. Good faith is presumed in any civil or criminal proceeding.
- No residential health care facility or officer or employee thereof shall discharge or in any manner discriminate or retaliate against any person in any residential health care facility, or any relative, or sponsor thereof, or against any employee of the facility, or against any other person because such person, relative, legal representative, sponsor or employee has made, or is about to make, a report pursuant to this section, or has testified, or is about to testify, in any proceeding relating to physical abuse, mistreatment or neglect. The supreme court may grant injunctive relief to any person subject to such retaliation or discrimination.
- Any licensed person required to report who fails to do so shall be guilty of unprofessional conduct in the practice of his or her profession.
- Any person who commits an act of physical abuse, neglect or mistreatment, or who fails to report such an act shall be liable for civil fines of up to (i) \$2,000 per violation, (ii) up to \$5,000 if such person has previously committed the same violation, with respect to the same or any other person or persons, within 12 months of the initial violation and said violations were a serious threat to the health and safety of an

individual, or (iii) up to \$10,000 per violation if the abuse, neglect or mistreatment results in serious physical harm to any patient.

- State oversight agencies shall ensure that all facilities or provider agencies operated, licensed, or certified by such state oversight agencies have policies and procedures in place to identify and report possible crimes against a service recipient by a custodian. State oversight agencies shall provide guidance to facilities or provider agencies operated, licensed, or certified by such state oversight agencies that do not already have policies and procedures for the identification and reporting of possible crimes.
- The state long-term care ombudsman will:
 - identify, investigate and resolve complaints that are made by, or on behalf of, long-term care residents;
 - the state ombudsman may refer to the appropriate investigatory agency information obtained during the investigation of a complaint which suggests the possible occurrence of physical abuse, mistreatment or neglect;
 - provide services to assist residents in protecting their health, safety, welfare and rights, including but not limited to representing the interests of residents before governmental agencies and seeking appropriate administrative, legal and other remedies to protect their welfare, safety, health and rights;
 - Upon receipt of a complaint, the ombudsman or state ombudsman shall determine whether there are reasonable grounds for an investigation.
 - Notwithstanding any law to the contrary, any individual, when acting in his or her official capacity as an ombudsman, shall be exempt from the mandatory reporting of abuse, neglect, exploitation, or maltreatment. However, an ombudsman may report abuse, neglect, exploitation, or maltreatment in accordance with the Older Americans Act of 1965, as amended, and the regulations promulgated thereunder as well as rules and regulations promulgated by the state office for the aging; provided, however, that upon consent of the resident, the ombudsman or state ombudsman shall immediately make such referral.
- In addition to the information above, New York has laws which cover vulnerable adults generally, regardless of an adult's status as elderly or disabled. Please see the statutory citation category for more information.

Statutory citation(s):

- N.Y. Pub. Health Law §§ 12, 2801, 2803-d; 4651
- N.Y. Elder Law § 218; and
- N.Y. Social Services Law §§ 473, 488, 489, 491, 492.