

Mandatory Reporting Requirements: The Elderly New York

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Question	Answer
Who is required to report?	<ul style="list-style-type: none"> • With respect to persons in residential health care facilities: <ul style="list-style-type: none"> • Operators and employees of a residential health care facility; • Employees of any corporation, partnership, organization or other entity which, or other person who, is under contract with 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. • With respect to vulnerable persons (note: certain other mandatory reporters are included in the statute which appear to be solely applicable to children): <ul style="list-style-type: none"> • Custodian; • Physician, registered physician assistant, or surgeon; • Medical examiner or coroner; • Dentist or dental hygienist; • Osteopath; • Optometrist; • Chiropractor; • Podiatrist; • Resident, intern; • Psychologist; • Registered nurse, licensed practical nurse, or nurse practitioner; • Social worker; • Emergency medical technician; • Licensed creative arts therapist, licensed marriage and family therapist, licensed mental health counselor, licensed psychoanalyst, licensed behavior analyst, certified behavior analyst assistant, licensed speech/language pathologist or audiologist, licensed physical therapist, or licensed occupational therapist; • Hospital personnel engaged in the admission, examination, care or treatment of persons; • Christian Science practitioner;

- Mental health professional;
- Person credentialed by the office of alcoholism and substance abuse services;
- Peace officer;
- Police officer;
- District attorney or assistant district attorney; or
- Investigator employed in the office of a district attorney or other law enforcement official.

When is a report required and where does it go?

When is a report required?

People in Residential Health Care Facilities

- Reasonable cause to believe a person receiving care or services in a residential health care facility has been abused, mistreated, neglected, or subjected to the misappropriation of property, other than by a person receiving care or services in the facility.
- Anyone may report abuse, mistreatment, neglect or misappropriation of property if he or she has reasonable cause to believe that a person receiving care or services has been abused, mistreated, neglected, or subjected to the misappropriation of property in a residential health care facility.

Vulnerable Persons

- With respect to vulnerable persons, upon discovery of a reportable incident (abuse or neglect).
 - “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?

- With respect to vulnerable persons, the report goes to the Vulnerable Persons’ Central Register (VPCR) of the New York State Justice Center for the Protection of People with Special Needs. Toll free hotline is 1-855-373-2122. See also [Justice Center | Adult Services | OCFS \(ny.gov\)](http://ocfs.ny.gov/programs/adult-svcs/ftha/justice-center.php#:~:text=The%20Justice%20Center%20operates%20a.-855-373-2122) - <http://ocfs.ny.gov/programs/adult-svcs/ftha/justice-center.php#:~:text=The%20Justice%20Center%20operates%20a.-855-373-2122>
- With respect to persons in residential health care facilities, it goes to the NY Department of Health.

What definitions are important to know?

People in Residential Health Care Facilities

- **“Hospital”** means a facility or institution engaged principally in providing services by or under the supervision of a physician or, in the case of a dental clinic or dental dispensary, of a dentist, or, in the case of a midwifery birth center, of a midwife, for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, public health center, diagnostic center, treatment center, a rural emergency hospital under [42 USC 1395x\(kkk\)](#), or successor provisions, dental clinic, dental dispensary, rehabilitation center other than a facility used solely for vocational rehabilitation, nursing home, tuberculosis hospital, chronic disease hospital, maternity hospital, midwifery birth center, lying-in-asylum, out-patient department, out-patient lodge, dispensary and a laboratory or central service facility serving one or more such institutions, but the term hospital shall not include an institution, sanitarium or other facility engaged principally in providing services for the prevention, diagnosis or treatment of mental disability and which is subject to the powers of visitation, examination, inspection and investigation of the department of mental hygiene except for those distinct parts of such a facility which provide hospital service.
- **“Nursing home”** means a facility providing therein nursing care to sick, invalid, infirm, disabled or convalescent persons in addition to lodging and board or health-related service, or any combination of the foregoing, and in addition thereto, providing nursing care and health-related service, or either of them, to persons who are not occupants of the facility.
- **“Residential health care facility”** means a nursing home or a facility providing health-related service.

Elder Law

- **“Abuse and maltreatment”** shall mean any of the following:
 - (i) “Physical abuse,” which means the non-accidental use of force that results in bodily injury, pain or impairment, including but not limited to, being slapped, burned, cut, bruised or improperly physically restrained.

(ii) "Sexual abuse," which means non-consensual sexual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party.

(iii) "Emotional abuse," which means willful infliction of mental or emotional anguish by threat, humiliation, intimidation or other abusive conduct, including but not limited to, frightening or isolating an adult.

(iv) "Active neglect," which means willful failure by the caregiver to fulfill the care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment, willful deprivation of food, water, heat, clean clothing and bedding, eyeglasses or dentures, or health related services.

(v) "Passive neglect," which means non-willful failure of a caregiver to fulfill care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment or denial of food or health related services because of inadequate caregiver knowledge, infirmity, or disputing the value of prescribed services.

(vi) "Financial exploitation," which means improper use of an adult's funds, property or resources by another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets.

- "**Self neglect**" means an adult's inability, due to physical and/or mental impairments to perform tasks essential to caring for oneself, including but not limited to, providing essential food, clothing, shelter and medical care; obtaining goods and services necessary to maintain physical health, mental health, emotional well-being and general safety; or managing financial affairs.
- "**Older adult**" shall mean an individual aged sixty years of age or older.
- "**Director**" shall mean the director of the office for the aging.

Vulnerable Persons

- "**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. 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 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, 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.

	<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. • “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. 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. • “Unlawful use or administration of a controlled substance” means any administration by a custodian to a service recipient of: a controlled substance as defined by article thirty-three of the public health law, without a prescription; or other medication not approved for any use by the federal food and drug administration, except for the administration of medical cannabis when such administration is in accordance with article three of the cannabis law, and any regulations promulgated thereunder, as well as the policies or procedures of the facility or provider agency governing such custodians. It also shall include a custodian unlawfully using or distributing a controlled substance as defined by article thirty-three of the public health law, at the workplace or while on duty. • “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"> • With respect to people in residential health care facilities, must immediately report by telephone, followed by a written report within 48 hours to the NY Department of Health. • With respect to vulnerable persons, allegations of reportable incidents (abuse or neglect) shall be reported immediately to the vulnerable persons’ central register upon discovery. Reports of allegations of reportable incidents shall be submitted, by a statewide, toll-free telephone number or by electronic transmission, in a manner and on forms prescribed by the executive director.
<p>What information must a report include?</p>	<ul style="list-style-type: none"> • A written 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. • With respect to vulnerable persons, forms provided by the justice center to contain: <ul style="list-style-type: none"> • Name and contact information of person making the report; • 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. • With respect to persons in residential health care facilities, written reports may be made on forms supplied by the Department of Health and shall include: <ul style="list-style-type: none"> • 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 abuse, mistreatment, neglect or misappropriation of property (if known); • The nature and extent of the abuse, mistreatment, neglect, or misappropriation of property; • The date, time, and specific location of the occurrence; • The names of next of kin or sponsors of the subject of the alleged abuse, mistreatment, neglect, or misappropriation of property (if known); and

	<ul style="list-style-type: none"> • 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.
Anything else I should know?	<ul style="list-style-type: none"> • Any person who in good faith makes a report of a person receiving care or services in a residential health care 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 abuse, mistreatment, neglect or misappropriation of property. The supreme court may grant injunctive relief to any person subject to such retaliation or discrimination. Similarly, no medical or other public or private institution, state agency, school, facility or provider agency or its vendors or contractors shall take any retaliatory personnel action against any employee, agent, vendor, or contractor because such a person believed or had reasonable cause to suspect that a vulnerable person was subjected to an incident that was subject to mandatory reporting and who thereafter makes a report or who cooperates with any investigation of a reportable incident. In the event any such retaliation occurs, a court may grant injunctive relief to any person subjected to such retaliation. • Any licensed person who commits an act of abuse, mistreatment, neglect or misappropriation of property of a person receiving care or services in a residential health care facility or 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. • 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. Certain information regarding vulnerable adults has been included above. Please see the statutory citation category for more information.
Statutory citation(s):	<ul style="list-style-type: none"> • N.Y. Pub. Health Law §§ 12 (Penalties), 2801, 2803-D • N.Y. Elder Law §§ 260 and 261; and • N.Y. Social Services Law §§ 473, 473-B, 488, 491, 492.