



Abuse Reporting Changes Under AB 40

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The Problem:

- Elder and dependent adult abuse occurring in LTC facilities is reported to:
 - The local LTCOP *or*
 - The local law enforcement agency
- Confidentiality requirements prohibit ombudsman cross-reporting crimes to law enforcement without consent or court order.

The Problem (continued)

- LTCOP data shows in FY 2009-10, almost $\frac{3}{4}$ of victims did not consent to disclose their identities.
- Therefore law enforcement may not be able to investigate some criminal abuse in LTC.

AB 40 Changes

- Becomes effective on January 1, 2013.
- Requires initial reporting of some types of physical abuse directly to local law enforcement.
- Attempts to align reporting requirements with requirements for SNFs under the Elder Justice Act provisions of the Patient Protection and Affordable Care Act.

AB 40 Changes (continued)

- Is it abuse occurring in a “long term care facility” in which Ombudsman have jurisdiction to investigate abuse?
- Is it physical abuse?
- Then AB 40 changes the reporting requirements for mandated reporters.

AB 40 Changes: Adds Welfare & Institutions Code section 15610.67

- Added to the definitions section of the Elder Abuse and Dependent Adult Civil Protection Act (W&I §15600 et seq.)
- Effective January 1, 2013

Welfare & Institutions Code section 15610.67 (continued)

- Language taken from the Elder Justice Act
- “ ‘*Serious bodily injury*’ means an injury involving extreme physical pain, substantial risk of death, or protracted loss or impairment of function of a bodily member, organ, or of mental faculty, or requiring medical intervention, including, but not limited to, hospitalization, surgery, or physical rehabilitation”

Physical abuse resulting in serious bodily injury

- Report by telephone to local law enforcement immediately, but no later than within two hours of obtaining knowledge
- Report in writing (SOC 341) to local law enforcement, LTCOP & licensing within two hours of obtaining knowledge

Physical abuse *not* resulting in serious bodily injury

- Report by telephone to local law enforcement within 24 hours of obtaining knowledge
- Report in writing (SOC 341) to local law enforcement, LTCOP, and licensing within 24 hours of obtaining knowledge
- BUT . . .

Physical abuse *not* resulting in serious bodily injury

- *If* alleged perpetrator is a resident, *and*
- has a physician's diagnosis of dementia,
- report by telephone to local law enforcement *or* LTCOP immediately or as soon as practicably possible.
- Report in writing (SOC 341) within 24 hours.



Mandated Reporter

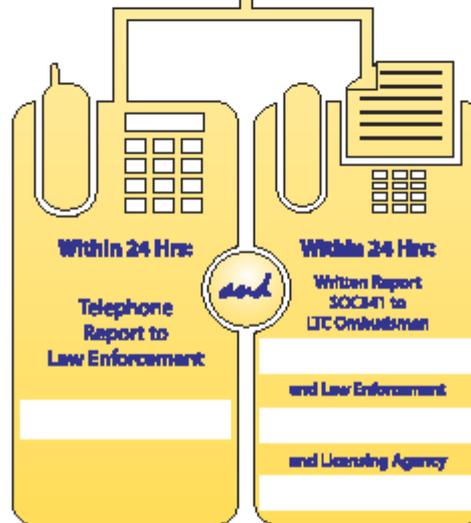
Observes, has knowledge of, or reasonably suspects Physical Abuse in a Long-Term Care Facility



Serious Bodily Injury
(See reverse for definition)

No Serious Bodily Injury
(See reverse for definition)

Caused by Resident Diagnosed with Dementia by Physician
No Serious Bodily Injury



Other (*not physical*) abuse occurring in LTC

- No changes
- Report by telephone to local law enforcement or LTCOP immediately or as soon as practicably possible
- Report in writing (SOC 341) within two working days

SOC 341 To Be Revised

- Estimated completion to be February 1, 2013.
- Available on Department of Social Services website or through links on LTCOP site.
- <http://www.dss.cahwnet.gov/cdssweb/entres/forms/English/SOC341.pdf>

SOC 341 To Be Revised

STATE OF CALIFORNIA - HEALTH AND HUMAN SERVICES AGENCY CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

**CONFIDENTIAL REPORT -
NOT SUBJECT TO PUBLIC DISCLOSURE**

REPORT OF SUSPECTED DEPENDENT ADULT/ELDER ABUSE DATE COMPLETED: _____

TO BE COMPLETED BY REPORTING PARTY. PLEASE PRINT OR TYPE. SEE GENERAL INSTRUCTIONS.

A. VICTIM Check box if victim consents to disclosure of information (Ombudsman use only - WIC 15636(a))

NAME (LAST NAME FIRST)	AGE	DATE OF BIRTH	SSN	GENDER <input type="checkbox"/> M <input type="checkbox"/> F	ETHNICITY	LANGUAGE (✓ CHECK ONE) <input type="checkbox"/> NON-VERBAL <input type="checkbox"/> ENGLISH <input type="checkbox"/> OTHER (SPECIFY)
*ADDRESS (IF FACILITY, INCLUDE NAME AND NOTIFY OMBUDSMAN)		*CITY	*ZIP CODE	*TELEPHONE ()		
*PRESENT LOCATION (IF DIFFERENT FROM ABOVE)		*CITY	*ZIP CODE	*TELEPHONE ()		

ELDERLY (65+) DEVELOPMENTALLY DISABLED MENTALLY ILL/DISABLED PHYSICALLY DISABLED UNKNOWN/OTHER LIVES ALONE LIVES WITH OTHERS

B. SUSPECTED ABUSER ✓ Check #1: **Self-Neglect**

NAME OF SUSPECTED ABUSER	<input type="checkbox"/> CARE CUSTODIAN (gpa)	<input type="checkbox"/> PARENT	<input type="checkbox"/> SON/DAUGHTER	<input type="checkbox"/> OTHER
	<input type="checkbox"/> HEALTH PRACTITIONER (gpa)	<input type="checkbox"/> OTHER RELATION		
ADDRESS	*ZIP CODE	*TELEPHONE	GENDER <input type="checkbox"/> M <input type="checkbox"/> F	ETHNICITY
*CITY		*STATE	*HEIGHT	*WEIGHT
*EYES		*HAIR		

C. REPORTING PARTY: Check appropriate box if reporting party waives confidentiality to: ✓ All All but victim All but perpetrator

NAME (PRINT)	SIGNATURE	OCCUPATION	AGENCY/NAME OF BUSINESS
RELATION TO VICTIM/HOW KNOWN OF ABUSE	(STREET)	(CITY)	(ZIP CODE) (E-MAIL ADDRESS) TELEPHONE ()

D. INCIDENT INFORMATION - Address where incident occurred:

DATE/TIME OF INCIDENT(S)	PLACE OF INCIDENT (✓ CHECK ONE) <input type="checkbox"/> OWN HOME <input type="checkbox"/> HOME OF ANOTHER <input type="checkbox"/> COMMUNITY CARE FACILITY <input type="checkbox"/> HOSPITAL/ALTERNATE CARE HOSPITAL <input type="checkbox"/> NURSING FACILITY/RESIDENT BED <input type="checkbox"/> OTHER (Specify)
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E. REPORTED TYPES OF ABUSE ✓ CHECK ALL THAT APPLY.

1. PERPETRATED BY OTHERS (WIC 15610.07 & 15610.83)	2. SELF-NEGLECT (WIC 15610.57(b)(5))
a. PHYSICAL <input type="checkbox"/> ASSAULT/BATTERY <input type="checkbox"/> CONSTRAINT OR DEPRIVATION <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> CHEMICAL RESTRAINT <input type="checkbox"/> OVER OR UNDER MEDICATION	a. PHYSICAL CARE (e.g., personal hygiene, food, clothing, shelter) b. MEDICAL CARE (e.g., physical and mental health needs) c. HEALTH AND SAFETY HAZARDS d. MALNUTRITION/DEHYDRATION e. OTHER (Non-Mandated e.g., financial)
b. NEGLECT <input type="checkbox"/> FINANCIAL <input type="checkbox"/> ABANDONMENT <input type="checkbox"/> ISOLATION	1. ABDUCTION 9. OTHER (Non-Mandated e.g., deprivation of goods and services, psychological/abuse)

ABUSE RESULTED IN (✓ CHECK ALL THAT APPLY) NO PHYSICAL INJURY MINOR MEDICAL CARE HOSPITALIZATION CARE PROVIDER REQUIRED
 DEATH MENTAL SUFFERING OTHER (SPECIFY) UNKNOWN

F. REPORTER'S OBSERVATIONS, BELIEFS, AND STATEMENTS BY VICTIM IF AVAILABLE. DOES ALLEGED PERPETRATOR STILL HAVE ACCESS TO THE VICTIM? PROVIDE ANY KNOWN TIME FRAME (2 days, 1 week, ongoing, etc.). LIST ANY POTENTIAL DANGER FOR INVESTIGATOR (animals, weapons, communicable diseases, etc.). ✓ CHECK IF MEDICAL, FINANCIAL, PHOTOGRAPHS OR OTHER SUPPLEMENTAL INFORMATION IS ATTACHED.

G. TARGETED ACCOUNT

ACCOUNT NUMBER (LAST 4 DIGITS)	TYPE OF ACCOUNT: <input type="checkbox"/> DEPOSIT <input type="checkbox"/> CREDIT <input type="checkbox"/> OTHER	TRUST ACCOUNT: <input type="checkbox"/> YES <input type="checkbox"/> NO
POWER OF ATTORNEY: <input type="checkbox"/> YES <input type="checkbox"/> NO	DIRECT DEPOSIT: <input type="checkbox"/> YES <input type="checkbox"/> NO	OTHER ACCOUNTS: <input type="checkbox"/> YES <input type="checkbox"/> NO

H. OTHER PERSON BELIEVED TO HAVE KNOWLEDGE OF ABUSE. (family significant others, neighbors, medical providers and agencies involved, etc.)

NAME	ADDRESS	TELEPHONE NO.	RELATIONSHIP
()			

I. FAMILY MEMBER OR OTHER PERSON RESPONSIBLE FOR VICTIM'S CARE. (if unknown, list contact person)

NAME	IF CONTACT PERSON ONLY ✓ CHECK <input type="checkbox"/>	RELATIONSHIP
*ADDRESS	*CITY	*ZIP CODE
		*TELEPHONE ()

J. TELEPHONE REPORT MADE TO: Local APS Local Law Enforcement Local Ombudsman Calif. Dept. of Mental Health Calif. Dept. of Developmental Services

NAME OF OFFICIAL CONTACTED BY PHONE	TELEPHONE	DATE/TIME
		()

K. WRITTEN REPORT Enter information about the agency receiving this report. Do not submit report to California Department of Social Services Adult Programs Bureau.

AGENCY NAME	ADDRESS OR FAX #	<input type="checkbox"/> Data Mailed <input type="checkbox"/> Data Faxed
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L. RECEIVING AGENCY USE ONLY Telephone Report Written Report

1. Report Received by: _____ Date/Time: _____

2. Assigned Immediate Response Ten-day Response No Initial Face-To-Face Required Not APS Not Ombudsman

Approved by: _____ Assigned to (optional): _____

3. Cross-Reported to: CDHS, Licensing & Cert.; CDSS-OCL; CDA Ombudsman; Bureau of Medi-Cal Fraud & Elder Abuse; Mental Health; Law Enforcement; Professional Board; Developmental Services; APS; Other (Specify) _____ Date of Cross-Report: _____

4. APS/Ombudsman/Law Enforcement Case File Number: _____

SOC 341 (1/2006)

Other Facility Reporting Requirements

- SNFs
 - Health and Safety Code section 1418.91 (Alleged or Suspected Abuse)
 - Report to CDPH, “all instances of alleged abuse or suspected abuse of a resident of the facility to the department immediately, or within 24 hours.”
 - “Abuse” shall mean as of the conduct set forth in Welfare & Institutions Code section 15610.07(a) or (b).
 - More broad than “physical abuse.”
 - Does not change any reporting requirements under Welfare & Institutions Code section 15630
 - Deemed to be compliant with EJA if the requirements of AB 40 set forth in Welfare & Institutions Code section 15630(n)(1)(A)(i) and (ii) are met. See, section 15630(b)(1)(A)(iv)

Other Facility Reporting Requirements

- Title 22, Cal Code Regs, section 72541 (Unusual Occurrences)
 - Report to CDPH “unusual occurrences” such as “epidemic outbreaks, poisonings, fires, major accidents, deaths from unnatural causes or other catastrophes and unusual occurrences which threaten the welfare, safety or health of patients, personnel or visitors” within 24 hours by telephone and confirmed in writing.
 - Deemed to be compliant with EJA if the requirements of AB 40 set forth in Welfare & Institutions Code section 15630(b)(1)(A)(i) and (ii) are met. See, section 15630(b)(1)(A)(iv).

Other Facility Reporting Requirements

- 42 C.F.R. section 483.13(c) (Alleged Mistreatment, Neglect or Abuse)
Report to CDPH “all alleged violations involving mistreatment, neglect or abuse, including injuries of unknown source and misappropriation of resident property . . . immediately . . . in accordance with State law through established procedures.”
- Report results of the required investigation “within 5 working days of the incident.”
- No “deemer” provisions in AB 40.

Other Facility Reporting Requirements

- ICF-MR Facilities, ICF-DD, ICF-DD-H, ICF-DD-N, etc. (Alleged Mistreatment, Neglect or Abuse)
 - 42 C.F.R. section 483.420(d)(2)
 - Report to CDPH “all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source . . . immediately . . . in accordance with State law through established procedures.”
 - Report results of the required investigation “within five working days of the incident.”
 - No “deemer” provisions in AB 40.

Cross-Reporting

- LTCOP and local law enforcement must cross-report “as soon as practicable,” unless an emergency, and then immediately:
 - Licensing –
 - DSS for RCFEs and adult day programs
 - DPH for long-term health care facilities (SNFs and ICFs)
 - DPH and CDA for adult day health care (CBAS)
 - BMFEA - known or suspected criminal activity
 - DA - known or suspected physical and financial abuse

Ombudsman Role

- [W&I §15630(b)(1)(A)(iv)]
- Work with local law enforcement agencies to create protocols for responding to abuse reports *received by both agencies*
- Can use MOU template
- “Provide the most immediate and appropriate response”

Ombudsman Role (continued)

- W&I §15650(f)
- *“The intent of this section is to acknowledge that the ombudsman responsibility in abuse cases is to receive reports, determine the validity of the reports, refer verified abuse cases to appropriate agencies for further action as necessary, and follow up to complete the required report information. Other ombudsman services shall be provided to the resident, as appropriate.”*

Ombudsman Role (continued)

- W&I §15636(a)
- *“Any victim or elder or dependent adult abuse may refuse or withdraw consent at any time to an investigation or the provision of protective services by an adult protective services agency or long-term care ombudsman program.”*

Ombudsman Confidentiality

- W&I §15636(a) (continued)
- *“A local long-term care ombudsman shall act only with the consent of the victim and shall disclose confidential information only after consent to disclose is given by the victim or pursuant to court order.”*
- Consistent with federal Older Americans Act requirements



Questions?