

**County of San Bernardino
Department of Behavioral Health**

Reporting Dependent Adult/Elder Abuse and Neglect Policy

Effective Date 7/91
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Policy It is the policy of the Department of Behavioral Health (DBH) that all elder or dependent adult care custodians, medical practitioners, and non-medical practitioners who treat elders or dependent adults for any condition, must report actual or suspected elder or dependent adult abuse discovered when acting in their professional capacity or within the scope of their employment.

Purpose To ensure the responsibilities of all mandated reporters who are employed or contracted by the Department are clearly established; and to ensure that elder or dependent adult abuse is properly reported.

Definitions **Abandonment:** The desertion or willful forsaking of an elder or 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: The removal from this State or the restraint from returning to this State, of any elder or dependent adult who does not have the capacity to give consent, as well as the removal from this State or the restraint from returning to this State, of any conservatee without the consent of the conservator or the court.

Abuse: The infliction of injury, intimidation, cruel punishment, or other treatment with resulting physical harm, or mental suffering, or the deprivation by a caregiver of goods or services which are necessary to avoid physical harm or mental suffering.

Dependent Adult: A person between the ages of 18 and 64 who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights. This includes, but is not limited to, persons whose physical or mental abilities have diminished because of age.

Elder: A person sixty-five (65) years of age or older.

Financial Abuse: This includes theft, misuse of funds or property, extortion, duress and/or fraud.

Continued on next page

**County of San Bernardino
Department of Behavioral Health**

Reporting Dependent Adult/Elder Abuse and Neglect Policy,

Continued

**Definitions
(continued)**

Isolation: Acts intentionally committed to prevent an elder or dependent adult from receiving mail or telephone calls and from having contact with family, friends, or concerned people, against the expressed wishes of the elder or dependent adult, whether he or she is competent or not; false imprisonment as defined in Section 236 of the California Penal Code; physical restraint of an elder or dependent adult for the purpose of preventing the elder or dependent adult from meeting with visitors.

Neglect: The failure of any person having the care or custody of an elder or dependent adult to exercise that degree of care which a reasonable person in a like position would exercise. Neglect includes denial of food, clothing, shelter, health care, or the inability to provide basic needs.

Reasonable suspicion: An objectively reasonable suspicion that a person would entertain, based on facts that could cause a reasonable person in a like position, drawing upon his or her training and experience, to suspect abuse.

**Mandated
Reporters**

Persons who are mandated to report elder and dependent abuse include:

- Physicians
- Psychiatrists
- Social workers
- Psychologists
- Nurses
- Community Mental Health Technicians
- Marriage/Family/Child Counselors
- Unlicensed Interns
- Administrators
- Employees of community care facilities licensed to care for elders, and dependent adults
- All other staff assigned to evaluate and treat elder patients of the Department of Mental Health
- Short-Doyle contract agencies
- Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult

Responsibility

As described in Welfare and Institution Code, Section 15630 (b)(1), any mandated reporter who, in his or her professional capacity, or within his or her professional scope of employment, has:

Continued on next page

**County of San Bernardino
Department of Behavioral Health**

Reporting Dependent Adult/Elder Abuse and Neglect Policy,

Continued

**Responsibility
(continued)**

- *observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse or neglect,*
- *or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting abuse as described herein,*
- *or reasonably suspects abuse,*

...shall report the known or suspected incident by telephone immediately or as soon as possible, and by written report sent within two (2) days. (See [Reporting Dependent Adult/Elder Abuse and Neglect Procedure](#) for reporting procedures.)

When two or more persons, who are required to report, are present and jointly have knowledge of a suspected instance of elder abuse, or abuse of a dependent adult, the telephone report may be made by the person selected by mutual agreement. A single report shall be made and signed by the selected person. Any person who has knowledge that the person designated to report has failed to do so, shall thereafter make such a report.

The reporting duties are individual. No supervisor or administrator may impede or inhibit such reporting duties, and no person making such reports shall be subject to any sanction for making such a report.

Important: A mandated reporter does not have the duty or obligation to investigate a known or suspected incident; in fact, criminal liability may arise where a mandated reporter undertakes an investigation and determines that no report is needed.

**Client
Notification**

The client must be promptly informed that a report has or will be made, unless:

- The reporter believes, in exercising professional judgment, that upon informing the client will harm or place the client at risk of serious harm
- The reporter would be informing a personal representative who the reporter reasonably believes is responsible for abuse or neglect, and it is not in the best interest of the client

Note: Verbal notification is sufficient. A report must be made regardless if the client agrees with the report or not.

Continued on next page

**County of San Bernardino
Department of Behavioral Health**

**Reporting Dependent Adult/Elder Abuse and Neglect Policy,
Continued**

Client Documentation	All actions taken by staff shall be documented in the patient's medical record. A copy of the report form shall be filed in the legal section of the chart.
Failure to Report	A person who is required, by law, to report known or suspected elder or adult dependent abuse or neglect, and fails to do so, may be found guilty of a misdemeanor. Such charges may result in imprisonment and/or payable fines.
Exceptions to Reporting Requirements	A physician, registered nurse, or psychotherapist need not report an incident where <u>all</u> 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, abandonment, abduction, isolation, financial abuse or neglect• The mandated reporter is <u>not</u> aware of any independent evidence that corroborates the statement that abuse has <i>in fact</i> 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• The physician, registered nurse, or psychotherapist reasonably believes, in the exercise of his/her clinical judgment, that the abuse did <u>not</u> occur
Non-Mandatory Reporting	Reports of other types of elder or dependent adult abuse, that may include intimidation, cruel punishment, or other treatment that endangers emotional well-being, may be made by any person whether he/she is a mandated reporter or not. However, if it is not mandated by law as described above, the report may not be made by the elder/adult's provider unless it also complies with federal privacy regulations, which require the following: <ul style="list-style-type: none">• The victim agrees to disclosure

Continued on next page

**County of San Bernardino
Department of Behavioral Health**

**Reporting Dependent Adult/Elder Abuse and Neglect Policy,
Continued**

**Non-Mandatory
Reporting
(continued)**

- Professional judgment is exercised and the health care provider believed the disclosure is necessary to prevent serious harm to the victim or other potential victims
- If the victim is incapable of agreeing to disclosure, a law enforcement or other public official authorized to receive the report, represents that the protected health information to be disclosed is not intended for use against the victim, and immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the victim is able to agree to the disclosure (45 Code of Federal Regulations, Section 164.512 (c))

Those who are not mandated reporters are encouraged to consult with a mandated reporter if they suspect elder or dependent adult abuse; however, they are not required to report themselves.

References

- California Hospital Association. (2008). *Consent Manual: A Reference for Consent and Related Health Care Law*. Sacramento, California: California Hospital Association.
 - Code of Federal Regulations, Title 45, §164.512 (c)
 - Welfare and Institutions Code, Ch. 11, Article 2, §15610–15610.57, and Article 3, §15630
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