

QUESTIONS & ANSWERS FROM AB 40 WEBINAR NOT ADDRESSED BY THE END OF THE PRESENTATION

**Joseph Rodrigues
California State Long-Term Care Ombudsman**

Q. Can you review the training on AB 40 that is required for adult day services facility staff (all staff?) – is it at time of new hire? Does training have to be repeated periodically?

A. There is no training requirement for facility staff in AB 40. The training requirement is in Welfare & Institutions Code Section 15655:

15655(a) (1) Each long-term health care facility, as defined in Section 1418 of the Health and Safety Code, community care facility, as defined in Section 1502 of the Health and Safety Code, or residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, that provides care to adults shall provide training in recognizing and reporting elder and dependent adult abuse, as prescribed by the Department of Justice. The Department of Justice shall, in cooperation with the State Department of Health Services and the State Department of Social Services, develop a minimal core-training program for use by these facilities. As part of that training, long-term care facilities, including nursing homes and out-of-home care facilities, shall provide to all staff being trained a written copy of the reporting requirements and a written notification of the staff's confidentiality rights as specified in Section 15633.

(2) Each long-term health care facility as defined in Section 1418 of the Health and Safety Code and each community care facility as defined in Section 1502 of the Health and Safety Code shall comply with paragraph (1) by January 1, 2001, or, if the facility began operation after July 31, 2000, within six months of the date of the beginning of the operation of the facility. Employees hired after June 1, 2001, shall be trained within 60 days of their first day of employment.

While the code does not specify that facilities need to repeat the training, it would be a best practice to review reporting requirements with staff.

Q. What are the timelines for reporting abuse not occurring in a long-term care facility?

A. Section 15630(b) of the Welfare & Institutions Code provides the times for reporting abuse not occurring in a long-term care facility:

15630(b) (1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63, 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 physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone or through a confidential Internet reporting tool, as authorized by Section 15658, immediately or as soon as practicably possible. If reported by telephone, a written report shall be sent, or an Internet report shall be made through the confidential Internet reporting tool established in Section 15658, within two working days.

Q: What if the abuse was verbal and caused by family members and the participant insisted on not reporting, worrying about severing their relationship?

A: Mandated reporters should report verbal abuse that results in mental suffering to the appropriate agency. Section 15610.53 of the Welfare & Institutions Code defines mental suffering:

“Mental suffering” means fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elder or dependent adult.

Once the mandated reporter has made a report, individuals may decline services from Adult Protective Services or the Long-Term Care Ombudsman Program. Section 15636(a) of the Welfare and Institutions Code states:

15636 (a) Any victim of 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. The adult protective services agency shall act only with the consent of the victim unless a violation of the Penal Code has been alleged. 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.

Q: Are RCFE/ALF/ARF not considered long-term care facilities?

Section 15610.47 of the Welfare & Institutions Code defines long-term care facilities:

Long-term care facility” means any of the following:

(a) Any long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

- (b) Any community care facility, as defined in paragraphs (1) and (2) of subdivision (a) of Section 1502 of the Health and Safety Code, whether licensed or unlicensed.
- (c) Any swing bed in an acute care facility, or any extended care facility.
- (d) Any adult day health care facility as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.
- (e) Any residential care facility for the elderly as defined in Section 1569.2 of the Health and Safety Code.

Section 1502(a) of the Health & Safety Code gives further clarification to the facilities references in (b) above:

As used in this chapter:

(a) "Community care facility" means any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes the following:

(1) "Residential facility" means any family home, group care facility, or similar facility determined by the director, for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

(2) "Adult day program" means any community-based facility or program that provides care to persons 18 years of age or older in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of these individuals on less than a 24-hour basis.

Q. How do we contact ombudsman when necessary?

- A. Here is a link to our web site that has a list of local Ombudsman programs by county:
<https://www.aging.ca.gov/Programs/LTCOP/Contacts/>

Q. What is the range of penalties for failure to report?

- A. Section 15630(h) of the Welfare & Institutions Code delineates the penalties for failure to report:
(h) Failure to report, or impeding or inhibiting a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report, or impedes or inhibits a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, if that abuse results in death or great

bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a law enforcement agency specified in paragraph (1) of subdivision (b) of Section 15630 discovers the offense.

Q. Which CBAS center employees are mandated reporters?

- A. Welfare and Institutions Code Sections 15610.17 and 15610.17(f) says care custodians are mandated reporters:
“Care custodian” means an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff:
(e) Adult day health care centers and adult day care.

Q. We operate a group home. What if we suspect an injury occurred at a resident’s day program?

- A. If you are reporting physical abuse and the Department of Social Services or Department of Public Health licenses the day program, the report goes to local law enforcement, the local Ombudsman program, and the respective licensing agency. If it is not a licensed day program, the report would be made to either local law enforcement or Adult Protective Services.

Q. If a participant with a dementia diagnosis likes to kick the other participants lightly, resulting in no injuries, does it constitute a report?

- A. If the mandated reporter, in his or her professional capacity or within the scope of his or her employment has observed or has knowledge of an incident that *reasonably appears* to be abuse must report that abuse. Welfare and Institutions Code section 15610.65 defines reasonable suspicion:
“Reasonable suspicion” means an objectively reasonable suspicion that a person would entertain, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his or her training and experience, to suspect abuse. Please keep in mind the definition of physical abuse that is contained in Section 15610.63 of the Welfare and Institutions Code:

“Physical abuse” means any of the following:

- (a) Assault, as defined in Section 240 of the Penal Code.
- (b) Battery, as defined in Section 242 of the Penal Code.
- (c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code.

- (d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.
- (e) Sexual assault, that means any of the following:
 - (1) Sexual battery, as defined in Section 243.4 of the Penal Code.
 - (2) Rape, as defined in Section 261 of the Penal Code.
 - (3) Rape in concert, as described in Section 264.1 of the Penal Code.
 - (4) Spousal rape, as defined in Section 262 of the Penal Code.
 - (5) Incest, as defined in Section 285 of the Penal Code.
 - (6) Sodomy, as defined in Section 286 of the Penal Code.
 - (7) Oral copulation, as defined in Section 288a of the Penal Code.
 - (8) Sexual penetration, as defined in Section 289 of the Penal Code.
 - (9) Lewd or lascivious acts as defined in paragraph (2) of subdivision (b) of Section 288 of the Penal Code.
- (f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:
 - (1) For punishment.
 - (2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.
 - (3) For any purpose not authorized by the physician and surgeon.

Q. If the alleged perpetrator is a participant and has a physician's diagnosis of Bipolar Disorder or any other psych diagnosis (does a report need to be made)?

- A. Welfare and Institutions Code Section 15630(b)(3)(A) partially addresses this issue:

15630(b)(3)(A) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), an incident if all of the following conditions exist:

- (i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect.
- (ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.
- (iii) 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.
- (iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

Q. Every facility should have an Ombudsman poster in their facility, yes?

A. California law only requires skilled nursing facilities and residential care facilities for the elderly to display the Ombudsman poster.

Q. My comment is very important to be considered, because the approach of reporting will be different. When Pt. has Dx of Alzheimer's disease, but not dementia as it is stated, then the employee/mandatory reporter will read your doc., and will come up with conclusion there is no dementia. Actually here the Dx is no so important, the most important fact is Pt. cognitive state.

A. The intent in AB 40 was to include any resident who has a physician's diagnosis of dementia, including Alzheimer's, Parkinson's, or vascular.

Q. If during initial assessment a patient's daughter reports that her brother is financially abusing her mother but as a social worker you don't have evidences besides daughter's report. Do we need to report and where? Or do we need to do further assessment than report?

A. Mandated reporters are to *report*, not *investigate* suspected or known abuse or neglect. In this scenario, I'm presuming the abuse is taking place at home or some other place in the community, e.g., a financial institution. In this case, the report should be made to local law enforcement or Adult Protective Services.

Q. If the physical abuse happens at home, and the participant accuses that the staff at ADHC did it to her, should we report it to the local law enforcement?

A. The mandated reporter should report to local law enforcement, Adult Protective Services, and since it may be occurring at the facility as well, the local Ombudsman program.

Q. Once an abuse case has been reported to APS, is there any other follow up action required?

A. The APS worker will usually follow up with the mandated reporter for additional information.

Q. Where can we find the most updated version of the SOC 341 form?

A. <http://www.dss.cahwnet.gov/cdssweb/entres/forms/English/SOC341.pdf> The Department of Social Services has not updated the form yet.

Q. If two patients are fighting and resulting in a slap in the face by the other, no injuries. Pt does not have dementia. Is that reportable?

A. Yes, the mandated reporter must report this to law enforcement and the local Ombudsman program.

Q. My understanding is that we can call ombudsman only if pt with dementia did not cause serious bodily harm; otherwise we have to contact law enforcement. So if pt with dementia gripped another elder's wrist and broke it, we need to contact law enforcement. Can law enforcement then refer the case to APS, if they feel there was no intent to harm, or ability to form an intent to harm, on the part of the participant?

A. In this scenario, because the resident's wrist was broken, the mandated reporter should call local law enforcement and report in writing to law enforcement, the local Ombudsman program and the appropriate licensing agency. Section 15610.67 of the Welfare and Institutions Code defines serious bodily injury: "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.