

# State and Federal Mandated Reporting Guidelines in Skilled Nursing Facilities

Summary Prepared by WISE & Healthy Aging Long-Term Care Ombudsman Program



## State Mandatory Reporting 2013: Welfare & Institutions Code 15610.67

If a mandated reporter observes, has knowledge of, or reasonably suspects:

ABANDONMENT, ABDUCTION, ISOLATION, FINANCIAL ABUSE, or NEGLECT has occurred to a resident of a long-term care facility they must report by telephone as soon as possible to the **ombudsman program or law enforcement** and send a written report within two days.

If a mandated reporter observes, has knowledge of, or reasonably suspects:

PHYSICAL ABUSE (including assault, battery, sexual assault, unreasonable physical constraint, improper use of a physical or chemical restraint or psychotropic drugs W&I Code 15610.63) and:

**Serious bodily injury** has occurred a telephone report must be made immediately to law enforcement and a written report on an SOC 341 must be made to the ombudsman and law enforcement and licensing.

**No serious bodily injury** has occurred. A telephone report must be made within 24 hours to law enforcement and a written report on an SOC 341 must be made in 24 hours to the ombudsman, and law enforcement, and licensing.

The alleged abuse was **caused by a resident diagnosed with dementia** by a physician and no serious bodily injury resulted. A telephone report must be made immediately or as practicably possible to the ombudsman or law enforcement and a written report on an SOC 341 must be made in 24 hours to the ombudsman or law enforcement.

## Additional Facility Requirements

SNF's have an obligation under Federal Regulations F226 to report allegations of suspected abuse to the Department of Public Health.

## Federal Mandatory Reporting for SNF's Only

### Elder Justice Act

The Elder Justice Act that included the Patient Protection and Affordable Care Act of 2010 include Federal mandatory reporting requirements.

### Federal Mandated Reporters

- These requirements are only for nursing homes who receive at least \$10,000 in Federal funds

- through Medicare or Medicaid (Medi-Cal in California) programs.
- Includes all staff members, owners, contracted providers, and the facility as an entity.

### Reporting Requirement

Requires reporting suspicion of a crime to law enforcement and to the Department of Public Health.

### Federal Reporting Timelines

- If the allegation of abuse results in serious bodily injury the report must be made immediately after forming the suspicion, but not later than **two hours** after forming that suspicion.
- If the allegation of abuse did not result in serious bodily injury the report must be made not later than **24 hours** after forming the suspicion.

### Defining a Crime

- The federal law defines a crime applicable under this law as that of the jurisdiction in which the facility is located. State law would apply including but not limited to the Welfare & Institutions Codes sec/on that defines elder abuse.

### Failure to Follow Federal Mandatory Reporting

- Mandatory reporters are individually subject to civil money penalty and exclusion sanctions for failure to meet the reporting requirements.
- Facilities are subject to civil money penalty and exclusion from the Medicare and Medicaid programs if they retaliate against any employee who makes a report.

### Penalties for Failure to Report

- Not more than \$200,000 may be assessed on any individual or facility for failure to report
- Not more than \$300,000 may be assessed if the failure to report results in the increase of harm to the victim or results in the harm of others.
- Additionally, an individual may be excluded from participation in the Federal health care program for failure to report.
- While an individual is excluded, if the facility continues to employ them, then the facility will be excluded from receiving funds from the Medicare and Medicaid program.

### Retaliation Provisions

- A facility may not retaliate against an individual who reports under this sec/on.
- A facility may not discharge, demote, suspend, threaten, harass, or deny a promo/on or other benefit to an employee, or discriminate against an employee because they report.
- Civil penal/es of up to \$200,000
- May exclude a facility from participation in the Medicare and Medicaid program for 2 years

## Conclusion

The mandatory reporting system is complex and confusing. To ensure compliance the ombudsman program recommends making reports to the ombudsman program, law enforcement, and licensing in all situations. This will ensure that all mandated reporters are fulfilling their reporting responsibilities.