SafetyNetWorks

Information for Elder-Adult-at-Risk and Adult-at-Risk Agencies

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Limited Required Reporters – Best Practice Recommendations for Professionals and County Elder Adults/Adults-at-Risk Agencies

BACKGROUND

Effective December 1, 2006, Wisconsin Act 388 revised the reporting of, and responses to, abuse, neglect and exploitation of adults-at-risk (vulnerable adults age 18 and older) including elder adults-at-risk (age 60 and up). The 2005 Wisconsin Act 388 reporting requirements discussed in this document apply to both "adults-at-risk" and "elder adults-at-risk." For ease of reference, "elder adults/adults-at-risk" will be used to refer to both populations throughout. See http://www.legis.state.wi.us/2005/data/acts/05Act388.pdf.

QUESTIONS TO DETERMINE LEGAL OBLIGATION TO MAKE A REPORT

In order to determine whether you are dealing with a reportable situation, you may ask yourself four separate questions; how easy or how difficult it will be for you to answer these questions will depend on the circumstances of the situation:

1. What constitutes "reasonable cause to believe" that the elder adult/adult-at-risk is at "imminent risk?" (definition of imminent: about to happen or threatening to happen)
2. What constitutes "serious" bodily harm to the elder adult/adult-at-risk?
3. What constitutes "significant" property loss to the elder adult/adult-at-risk?
4. When/why is the elder adult/adult-at-risk unable to make an informed judgment about whether to report the risk?

Note: It is not necessary to be able to name an alleged perpetrator in order to report any incident.

Not reporting is allowed in two instances:

- If the professional believes that filing the report would not be in the best interest of the elder adult/adult-at-risk and the professional documents the reasons for this belief in the suspected victim's case file; or
- If a health care provider provides treatment by spiritual means through prayer for healing in lieu of medical care in accordance with his or her religious tradition, and his or her communications with patients are required by his or her religious denomination to be held confidential.

Question 1: What constitutes "reasonable cause to believe" that the elder adult/adult-at-risk is at "imminent risk?"

You have "reasonable cause to believe" that the elder adult/adult-at-risk is at "imminent risk" if you conclude that it is *more likely than not* that the elder adult/adult-at-risk will be subjected to serious bodily harm, death, sexual assault, or significant property loss in the immediate or near future.

The following questions illustrate some of the factors that you ought to consider when you are trying to decide whether it is more likely than not that the elder adult/adult-at-risk will be subjected to such harm or loss. The factors that you actually consider, as well as the weight that you give to each factor you do consider, should depend on the specific circumstances of the situation.

- Does the situation expose the elder adult/adult-at-risk to actual harm or does the situation expose others to the potential for actual harm?

- Could the harm or potential harm to the elder adult/adult-at-risk be identified as one or more of the following: death, serious injury or impairment, or serious harm (may include, but is not limited to, substantial harm to the person's psychological, intellectual or emotional functioning which may be evidenced by anxiety, depression, withdrawal or outward aggressive behavior)?

- Has the suspected abuser made a threat against the elder adult/adult-at-risk?

- In the past has the suspected abuser used violence, or committed a sexual assault, against the elder adult/adult-at-risk or against others?

- If the suspected abuser has not used violence, or committed a sexual assault, against the elder adult/adult-at-risk or against others in the past, have there been changes in the suspected abuser's life or relationship with the elder adult/adult-at-risk that are likely to cause the suspected abuser to use violence, or commit a sexual assault, against the elder adult/adult-at-risk in the immediate or near future?

- Has the suspected abuser stolen from the elder adult/adult-at-risk or from others or financially exploited the elder adult/adult-at-risk or others?

- If the suspected abuser has not stolen from the elder adult/adult-at-risk or from others in the past and has not financially exploited the elder adult/adult-at-risk or others, have there been changes in the suspected abuser's life that are likely to cause the individual to steal from the elder adult/adult-at-risk or financially exploit the elder adult/adult-at-risk?

- Is the suspected abuser in a position to steal from, or financially exploit, the elder adult/adult-at-risk? For example, does the suspected abuser either manage the elder adult/adult-at-risk finances or have access to the elder adult/adult-at-risk checking and savings accounts?

Question 2: What constitutes "serious" bodily harm to the elder adult/adult-at-risk?

In Wisconsin, the term "serious bodily harm" is defined as " ... bodily injury which causes or contributes to the death of a human being or which creates a substantial risk of death or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury." Wis. Stat. § 969.001 (2). [Chapter 969. Bail and Other Conditions of Release].

When answering this question, you should take into account the elder adult's/adult-at-risk's overall physical, intellectual, emotional and psychological condition. The use of physical force may have more serious consequences for an elder adult than it would for a young or middle-aged adult as many elder adults are not as physically strong or as physically resilient. A slap or a shove that might hurt a middle-aged adult but not result in serious bodily harm to him or her could cause serious bodily harm to an elder adult were it, for example, to cause the elder adult to stumble and fall.

Question 3: What constitutes "significant" property loss for the elder adult/adult-at-risk?

It is important to take into account the elder adult/adult-at-risk's overall financial condition when trying to decide what constitutes significant property loss for him or her. The significance of a financial or property loss to an elder adult/adult-at-risk does depend not so much on its absolute monetary value as it does on the impact the loss has on the elder adult/adult-at-risk financial and psychological well-being.

If, for example, an elder adult/adult-at-risk is being threatened or tricked by an adult child into giving the adult child part of the small monthly Social Security payment that the elder adult/adult-at-risk receives and if this payment is what the elder adult/adult-at-risk needs to pay for basic necessities every month, then the loss of this portion of this payment would constitute a significant property loss for the elder adult/adult-at-risk.

Question 4: When is the elder adult/adult-at-risk unable to make an informed judgment about whether to report the risk?

There are two factors that you should consider as you answer this question.

- The first factor is whether the elder adult/adult-at-risk is intellectually capable of making an informed judgment about whether to report the risk.
- The second factor is whether the elder adult/adult-at-risk is emotionally or psychologically capable of making such an informed judgment.

If the elder adult/adult-at-risk has a guardian or if there is an activated power of attorney for him or her, this fact alone does not automatically mean that the elder adult/adult-at-risk is intellectually incapable of making an informed judgment about whether to report the risk. While you should give due weight to the fact that there is a guardian or an activated power of attorney in the picture, you should also consider any other factor, such as the degree to which the elder adult/adult-at-risk understands what is going on around him at any given moment, that could help you decide how intellectually capable the elder adult/adult-at-risk is.

In determining whether or not the elder adult/adult-at-risk is emotionally capable of making an informed judgment about whether to report the risk, you should keep in mind that the elder adult/adult-at-risk may fear retaliation from the abuser and/or may be emotionally dependent on the abuser for affection or approval. The more such factors are present in the situation, the less likely it is that the elder adult/adult-at-risk is emotionally capable of making an informed judgment about whether to report the risk.

SPECIFIC FORMS OF ABUSE AND NEGLECT:

Unreasonable Confinement/Restraint

Unreasonable confinement or restraint includes the:

- intentional and unreasonable confinement of an individual in a locked room,
- involuntary separation of an individual from his or her living area,
- use of physical restraining devices on an individual, or
- provision of unnecessary or excessive medication to an individual.

The following case examples illustrate incidents of unreasonable confinement or restraint:

- A young woman living in an adult family home is occasionally aggressive towards the staff in the home. She might bite or kick, but most often screams at the staff when she is upset. The new staff are afraid of her so they turn the lock around on her door so that when she is upset they can put her in her room and lock her in until she calms.

- An elderly gentleman with Alzheimer's disease is required to use a powered wheelchair due to ambulation difficulties. His wife occasionally needs to leave the home to shop and has no one to care for him while she is gone, so to keep him safe she unplugs the power supply to his wheelchair, rendering him functionally non-ambulant since he is unable to plug it back in.

- A man is living with his family and is restrained in bed nightly using soft restraints tied around his waist. The rationale for the use of this restraint is that he is both visually and hearing impaired, and has a tendency to get up and wander at night. The parents feel that, so long as they know where he is, they can sleep better which makes them better and more responsive caregivers.

- An elderly woman with dementia has been living in a nursing home for the past two years. Over the past few months, she had become increasingly combative with the staff and other residents of the nursing home. On a recent visit, her family noticed that she was quite sedated from a new medication.

Treatment Without Consent

Treatment without consent means the:

- administration of medication to an individual who has not provided informed consent, or
- performance of psychosurgery, electroconvulsive therapy, or experimental research on an individual who has not provided informed consent.

The following case examples illustrate incidents of treatment without consent:

- A caregiver employed by a community- based residential facility (CBRF) is directed by her supervisor to give another client's medication clonazepam (anti-convulsant and anti-anxiety agent) to a client that was acting up/exhibiting difficult behaviors. The caregiver was told the medications would calm the client down and stop the problem. Besides taking one person's meds and giving them to another without either client knowing, the caregiver was

worried about possible drug interactions as the person acting up has diabetes and other complications that require him to receive several medications on an ongoing basis.

- Adult family home (AFH) staff, without consulting legal decision makers, made an appointment for residents to see a psychiatrist. Psychiatrist assumed AFH staff had authority to bring the residents to see him and upon an evaluation, prescribed experimental anxiety/mood-altering medications for each individual as part of a medication research trial. Staff filled prescriptions and gave residents medication. Guardians visited their wards (family members) and identified flattened affect and lethargy. When trying to determine why, guardians reviewed medical records/medication and discovered that wards went to see the psychiatrist without their permission and were being given medication without their authorization.

STANDARDS OF PRACTICE IN YOUR PROFESSION OR FIELD OF WORK

You should look to the standards of practice in your profession or field of work for guidance. This means that you should:

- Be familiar with the standard of practice in your profession and keep current with these standards by attending training seminars on professional codes of conduct and reviewing the literature on professional ethics, so that you will be able to apply these standards in situations involving elder adults/adults-at-risk;

- Discuss the situation with supervisors, peers, and other professionals or workers in your field in order to find out how they would handle a particular situation, unless an immediate decision is needed based on the circumstances.

You should also use the standards of practice in your profession or field of work if you have to decide whether or not it would be appropriate for you to talk over a specific situation with an elder adult/adult-at-risk. If you conclude that it is appropriate, you should rely on the standards of practice in your profession or field to decide how extensive and how specific your discussions with the elder adult/adult-at-risk ought to be.

It is best to provide documentation of:

- the persons from whom you sought consultation,
- the advice you received,
- your reasons for abiding by or rejecting the advice, and
- the reasons for your final decisions.

QUESTIONS

If you have questions on this or other topics relating to elder adults/adults at risk, please contact Stan Shemanski at stopabuse@dhs.wisconsin.gov or 608-266-2568.

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