

STATE OF WISCONSIN
Department of Health and Family Services
Division of Long Term Care

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**Index Title: Elder Adults/Adults-at-Risk Required
Reporters under Wisconsin Act 388**

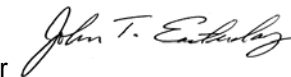
To: Listserv

For: Area Administrators/Human Services Area Coordinators
County Departments of Community Programs Directors
County Departments of Developmental Disabilities Services Directors
County Departments of Human Services Directors
County Departments of Social Services Directors
Area Agencies on Aging Executive Directors
Board on Aging and Long Term Care
County COP Coordinators
County Waiver Coordinators
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Developmental Disabilities Coordinators
Long Term Support Coordinators
Lead Elder Adults/Adults-at-Risk Agency Contacts
BMHSAS Bureau Director
DLTC Bureau Directors
DLTC Facility Directors

From: Sinikka Santala, Administrator
Division of Long Term Care



John Easterday, Administrator
Division of Mental Health and Substance Abuse Services



Subject: Elder Adults/Adults-at-Risk Required Reporters under Wisconsin Act 388

Document Summary

This memo provides direction to individuals defined as required reporters under Wisconsin Act 388. To ensure that individuals defined as required reporters under the new Act understand their responsibility to report incidents involving elder adults/adults-at-risk, this memo contains important clarification regarding required reporters, reporting guidelines, immunity provisions and the role of the elder adults/adults-at-risk agency.

Attached is an accompanying document that provides additional technical assistance on the reporting requirements and factors to consider before making a report.

INTRODUCTION

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 memorandum 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. The Department of Health and Family Services will

collaborate with the Department of Regulation and Licensing to inform professionals who are impacted by the law of their reporting requirements. See <http://www.legis.state.wi.us/2005/data/acts/05Act388.pdf>.

REQUIRED REPORTERS

State statutes at 46.90(4)(ab)1. and 55.043(1m)(a)1. require that the following persons file reports:

1. An employee of an entity regulated by DHFS, such as nursing homes and community-based residential facilities (See OQA Memo # 06-028, November, 2006 available at http://dhfs.wisconsin.gov/ri_DSL/Publications/06-028.htm for additional information regarding entity employee reporting requirements under 2005 Wisconsin Act 388). There is no specific list of covered providers, but this should include at least the direct-care entities covered by the caregiver misconduct system.
2. A health care provider as defined in s.155.01(7), which includes nurses, chiropractors, dentists, physicians, physician assistants, perfusionists, podiatrists, physical therapists, physical therapist assistants, occupational therapists, occupational therapist assistants, optometrists, and psychologists.
3. A social worker, professional counselor, or marriage and family therapist certified under Ch. 457.

These individuals must report allegations of abuse, financial exploitation, neglect or self-neglect if the elder adult/adult-at-risk is seen in the course of the person's professional duties and one of the following conditions is true:

- The elder adult/adult-at-risk has **requested the person to make the report**. Any professional must make a report if they are asked to do so.
- There is reasonable cause to believe that the elder adult/adult-at-risk is at **imminent risk of serious bodily harm, death, sexual assault, or significant property loss** and is unable to make an informed judgment about whether to report the risk. This second condition requires a concern about future serious risk; it is not applicable to situations that involve past incidents only.
- **Other elder adults/adults-at-risk at risk** of serious bodily harm, death, sexual assault, or significant property loss inflicted by the suspected perpetrator. This third condition applies to reporting past abuse perpetrated on an elder adult/adult-at-risk only if there is a possibility of harm to others. For example, say a specialized transportation van driver allegedly sexually assaults a client. Once any of the listed professionals are aware of the situation, they must report the allegation because even if the client no longer uses the transportation service, other elder adults/adults-at-risk most likely would be riding with that van driver in the future.

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.
- 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.

IMMUNITY PROVISION

Due to the increased reporting provisions, the law enhances protections for good-faith reporters of incidents involving elder adults/adults-at-risk. Immunity provisions apply to all reporters, including situations when a report is filed with an incorrect agency, if the reporter had a good-faith belief that the initial report was filed appropriately under s. 46.90(4)(c).

To ensure immunity, a report must be made directly to the county elder adults/adults-at-risk agency, state or local law enforcement agency, the Board on Aging and Long-Term Care or the Department of Health and Family Services (DHFS). The new law creates a rebuttable presumption that any discharge or act of retaliation or discrimination taken against a reporter within 120 days of making the report is considered retaliatory. The penalty for retaliating against a reporter is increased to \$10,000 under s. 46.90(9)(d).

LAW ENFORCEMENT CONTACT

Immediately upon learning of an incident, a required reporter should take the necessary steps to protect the elder adult/adult-at-risk from possible further incidents of abuse, neglect and/or exploitation. The reporter is encouraged to notify local law enforcement authorities of any situation where there is a potential criminal offense.

ROLE OF THE ELDER ADULTS/ADULTS-AT-RISK AGENCY

By statute, elder adults/adults-at-risk agencies are charged with determining and addressing the protective service needs of elder adult/adult-at-risk. While external agencies may also respond and/or conduct an investigation, their primary emphasis will not be on protective service need identification and service provision.

For instance, to the extent that a crime may have been committed, state and/or local law enforcement agencies may conduct a criminal investigation of the alleged perpetrator. If the abuse involved a DHFS regulated entity, resulting DHFS investigation would be approached from a regulatory perspective, focusing on the entity's licensing requirements. To the extent that a non-credentialed or credentialed caregiver may have been involved, the Division of Quality Assurance (DQA) Office of Caregiver Quality or the Department of Regulation and Licensing may conduct a caregiver misconduct investigation of the alleged perpetrator to assess potential violations of licensure or certification requirements. Again, the elder adults/adults-at-risk agency would respond from a protective services perspective.

One or more of these different responses and/or investigations (or, these different components of the same incident) could proceed concurrently on a single case, requiring coordination and cooperation among the representatives of each agency, including the elder adults/adults-at-risk agency. Given the unique nature of its role, the appropriate local elder adults/adults-at-risk agency will be informed whenever the Department of Health and Family Services receives a report of abuse, financial exploitation, neglect and/or self-neglect (as defined in s. 46.90 and Chapter 55) concerning an adult-at-risk, including an elder adult-at-risk.

TECHNICAL ASSISTANCE

Attached is a SafetyNetWorks document that provides technical assistance on the reporting requirements and factors to consider before making a report. "SafetyNetWorks" is a Division of Long Term Care sponsored adults-at-risk information memo series, which will outline best practice and provide technical assistance. If you would like to automatically receive an electronic notification of every memo posted to the SafetyNetWorks site, please email StopAbuse@dhfs.state.wi.us and in the subject line insert "SafetyNetWorks Auto Info." Information on how to enroll will be emailed to you shortly. To learn more about the rules and regulations governing reporting incidents of caregiver misconduct, see the Division of Quality Assurance web page <http://dhfs.wisconsin.gov/caregiver/INDEX.HTM>

QUESTIONS

For issues involving caregiver misconduct or when an elder adult/adult-at-risk is a client of a DHFS regulated entity and the perpetrator is a caregiver or non-client resident, contact the Office of Caregiver Quality (OCQ) at caregiver_intake@dhfs.state.wi.us or (608) 261-8319. If you have questions concerning the appropriate role of an (elder) adults-at-risk agency in responding to reports involving an entity, contact StopAbuse@dhfs.state.wi.us.

REGIONAL OFFICE CONTACT:

Human Services Area Coordinators, DES

CENTRAL OFFICE CONTACT:

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MEMO WEB SITE: http://dhfs.wisconsin.gov/dsl_info/NumberedMemos/NMemos_index.htm

ATTACHMENT:

Attachment 1: [SafetyNetWorks](#)

cc: Certified Mental Health and AODA Programs
Community Based Residential Facilities
Facilities for the Developmentally Disabled
Home Health Agencies
Hospices
Hospitals
Licensed Adult Family Homes
Local Health Departments/Health Officers
Nurse Aide Training Programs
Nursing Homes
Residential Care Apartment Complexes
Rural Health Clinics
Division of Quality Assurance Regional Field Operation Directors
Tribal Chairperson/Human Services Facilitators
Licensing Chiefs/ Section Chiefs