

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


DDES Memo Series 2007-12

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**Index Title: Elder Adults/Adults at Risk County Agency
Response to Reports of Abuse, Neglect
and/or Exploitation**

To: Listserv

For: Area Administrators / Human Services Area Coordinators
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From: Sinikka Santala 
Administrator

Subject: Elder Adults/Adults-at-Risk County Agency Response to Reports of Abuse, Neglect
and/or Exploitation

Document Summary

New statutory requirements covering reports of abuse, neglect and financial exploitation of elder adults/adults-at-risk became effective on December 1, 2006 due to enactment of Wisconsin Act 388. The statutory changes are quite extensive and affect both WI State Statute §46.90 (see: <http://www.legis.state.wi.us/statutes/Stat0046.pdf> -- pages 77 – 82) and Chapter 55 (see: <http://www.legis.state.wi.us/statutes/Stat0055.pdf>). Counties have raised many concerns about the programmatic and fiscal implications of the new law. This memo explains the role that county designated elder adults/adults-at-risk agencies have in responding to reported incidents of abuse, neglect, financial exploitation and self-neglect. It also identifies possible methods a county elder adults/adults-at-risk agency may use to satisfy the statutory requirement to publicize the existence of the county's elder adults/adults-at-risk reporting systems as well as a telephone number that can be used by persons wishing to make a report to either system. In addition, this memo identifies many ways that statutory changes have expanded the ability of elder adults/adults-at-risk agencies to respond to reports once received. This memo will identify assistance provided by the Department.

Background

The Department of Health and Family Services is committed to providing guidance to counties on the expanded roles and responsibilities county elder adults/adults-at-risk agencies now have due to enactment of Wisconsin Act 388. The statutory changes are quite extensive and affect both WI State Statute §46.90 (see: <http://www.legis.state.wi.us/statutes/Stat0046.pdf> -- pages 77 – 82) and Chapter 55 (see: <http://www.legis.state.wi.us/statutes/Stat0055.pdf>). Prior to enactment of Wisconsin Act 388, counties responded to complaints about suspected abuse and neglect involving vulnerable adults ages 18-59 but they did so without any statutory direction or the necessary tools for response. Statutory changes to Chapter 55 provide the needed statutory authority and protection for counties to perform those functions. The new legislation allows explicit exchange of information and reports of findings among investigative agencies and service providers. It permits county workers access to needed medical and financial records when investigating allegations of abuse, neglect or exploitation. It strengthens law enforcement's involvement in addressing victim safety and holding abusers accountable, especially in cases of domestic violence and financial exploitation. It assures immunity to any individual who either reports suspected abuse or participates in the investigation of such a report.

To assist counties and interested others in learning more about the statutory changes, the Department has contracted with Roy Froemming to rewrite the manual, "Chapter 55: The Wisconsin Protective Services Law and Its Application." This manual will incorporate the changes in statutory and case law that have occurred since it was last updated in December, 1994. This manual will include the comprehensive changes to Wisconsin's adult protective services and guardianship statutes made by 2005 Wisconsin Acts 264, 387 and 388, but also earlier important changes in years after 1994, including 1995 Act 92 and 2003 Act 33. The manual will be made available electronically and posted to a Department of Health and Family Services' webpage. Many of the questions that are currently being asked by county agencies about their role and responsibilities as elder-adults/adults-at-risk agencies will be answered in the Chapter 55 manual rewrite. Since some of the questions being asked are particularly pressing for counties, we are providing those answers now.

Who is considered an adult-at-risk?

The term *adult at risk* replaces the term *vulnerable adult* in the protective services laws, restraining order provisions and criminal abuse and neglect laws. The new term is more accurate, less demeaning and covers a much broader population. The term *elder adult at risk* replaces the term *elder person* in the elder abuse reporting system. Provisions relating to adults at risk and elder adults at risk are either identical or largely parallel under the new laws. Where a provision covers both populations, they are referred to collectively as *individuals at risk*. However, the two populations differ in defining characteristics and are in many cases served by different systems with different histories, so that important distinctions remain between the elder adults-at-risk reporting and response system and the adults-at-risk reporting and response system.

The definition of an "adult at risk" is an adult (of any age) who has any physical or mental impairment that substantially restricts his or her ability to care for his or her needs, and who has experienced or is at risk of abuse or neglect. This definition is intended to be broader, in that it does not require membership in a categorical group (i.e., developmental disabilities, degenerative brain disorder, serious and persistent mental illness, or other like incapacities) and does not require impairment in ability to provide for care or custody. The definition of an "elder adult at risk" further broadens coverage for elders, as it is based on a combination of (1) being age 60 or older and (2) having an experience or risk of abuse, neglect and exploitation. No level of functional impairment of the individual is required.

How may a county structure its designated elder adults/adults-at-risk agency?

The county board of each county is required to name an agency as the "elder adult-at-risk agency" for the county and also to name an agency as the "adult-at-risk agency" for the county. A county may combine these functions in the same agency or put them in separate agencies. A county may also subdivide responsibility further among multiple agencies, based on function, population served, service systems already

involved with the individual, or other factors. An elder adult/adult-at-risk agency is not required to have the term “adult at risk” in its name.

What is the responsibility of the county elder adults/adults-at-risk agency in publicizing the existence of the reporting system and telephone number to use when reporting?

Both the elder adults-at-risk reporting and response agency and the adults-at-risk reporting and response agency are required to publicize the existence of the reporting system and to have and publicize a telephone number to which reports can be made. The systems must also have a telephone number to which reports can be made after business hours. If desired, either or both of these numbers can be shared by the agencies. *There is no requirement that the after-hours number be staffed*, and it could be the same as the business-hours number, as long as there is some method for taking reports. Some county elder abuse agencies have fulfilled the statutory requirement of receiving after-hour reports through the use of voice mail, referral to the county sheriff’s department or an automatic connection to a county crisis line. Publicizing the existence of the county’s elder abuse help line also varies by county. Some counties rely on a listing in local telephone directories, others have launched full public awareness campaigns yet others target specific professionals (e.g., hospital social workers, tellers at banks, vocational/day service providers). It is envisioned that as Aging and Disability Resource Centers (ADRC) are expanded statewide, counties may elect to have the ADRC publicize the elder adults-at-risk and adults-at-risk reporting systems as part of the Resource Center’s marketing of services.

Must an adults-at-risk agency respond to every report made concerning abuse, neglect or exploitation of an adult at risk?

The new adult-at-risk system in Ch. 55 for adults-at-risk under age 60 does not require a response by the adult-at-risk agency to every report or other indication of abuse, neglect and/or exploitation. Certain referrals are mandated to be made (e.g., an allegation of abuse of a resident by a paid caregiver employed by a long term care facility must be referred to the Division of Quality Assurance, Office of Caregiver Quality via email at Caregiver_Intake@dhfs.state.wi.us or by phone at 608-261-8319). The adult-at-risk agency is responsible for making its own determination about whether to respond to a particular report or indication of abuse. The elder adult-at-risk system requires a response or investigation or referral of every report of abuse, neglect or exploitation. However, the extent of the response is at the discretion of the local agency. Some states have screening guidelines for acceptance of cases which include the following categories: no risk/low risk – situation had a low likelihood of reoccurring; medium/intermediate risk – situation may continue or possibly escalate; and high risk – situation will very likely continue and probably escalate. The determination of risk however remains basically a qualitative process that reflects clinical judgment.

For both the elder adult-at-risk agency and the adult-at-risk agency, the statutes give a menu of responses and investigative powers on which the agency can draw, but agency staff is responsible for deciding what response to make, and what tools to use, based on professional judgment about what makes most sense under the particular circumstances. Local agencies are expected to set their own policies based on local conditions and needs. Agency staff must then decide within those policies whether to make a response, and how far to carry it.

When considering whether your county should respond to a report or other indication of abuse, neglect and/or exploitation of an adult at risk, you may wish to consider the following “risk factors” in determining your agency’s response.

1. Decide if the report of the incident is thorough enough to respond to. How detailed are the specific factors concerning the allegation: who, what, where, when.
2. Clearly identify what the expectation of the agency is in response to the allegation/question/issue/conflict.
3. Identify and weigh the risks and liability of doing or not doing something (e.g., harm to the person, agency or facility, you, others, or property).
4. Identify and weigh the benefits of doing or not doing something (e.g., benefits to the person, agency or facility, you or others).
5. Weigh chances of a challenge to the decision, and potential consequences if the challenge is upheld.

6. When feasible, share the risks by going up the “chain of command.” Involve corporation counsel if necessary.

If your agency determines that there is no need to respond to or investigate a report or other indication of abuse, neglect and/or exploitation of an adult at risk, document your rationale. It is best to provide documentation of:

1. The person(s) from whom you sought consultation;
2. The advice you received;
3. Your reasons for abiding by or rejecting that advice, and
4. The reasons for your final decisions.

Remember, that decisions do not have to be “perfect”, but do need to be well reasoned.

What tools and protections are now available to assist elder adults/adults-at-risk county agencies in responding to or investigating a report or other indication of abuse, neglect and/or exploitation?

The following is a summary of some of the legislative changes that enhance and expand the capacity of elder adults/adults-at-risk agencies.

1. The law authorizes multi-agency responses, including strengthening law enforcement involvement, and authorizes exchanging investigative information and reports with appropriate agencies. For example, if requested, a law enforcement officer shall accompany the agency staff to the residence of the adult at risk and shall provide other assistance as requested or necessary
2. The law authorizes additional investigative tools, such as the ability to: interview adults at risk with or without the consent of any court-appointed guardian or an agent under an activated power of attorney for health care; interview the guardian or agent; transport the adult at risk for medical examination; and review financial records without consent.
3. The law creates a domestic violence restraining order for adults at risk, expanding who may request the restraining order and what behavior may be restrained (e.g., financial exploitation, emotional abuse, mistreatment of an animal).
4. The law clarifies confidentiality requirements and specifies to whom (i.e., individuals and entities) reports and records can be released to.

Department of Health and Family Services Technical Assistance

The Division of Long Term Care is sponsoring the 2007 Elder Adults/Adults-at-Risk Conference to be held from October 15 through 17 at the Chula Vista Conference Center in the Wisconsin Dells. In addition to addressing topics related to statutory changes in WI State Statute §46.90 and Chapter 55, the conference will also focus on issues directly related to the new guardianship law, Chapter 54. The Division has developed two methods for simplifying communication with counties, providers and consumers concerning elder adults/adults-at-risk matters. One method is a dedicated email address (StopAbuse@dhfs.state.wi.us), which may be used to send any questions counties, providers and other constituents may have about program or policy revisions due to the statutory changes. The other method is a Division sponsored “Adults-at-Risk” information memo series titled “SafetyNetWorks”, which will outline best practice and provide technical assistance. Directions on how to automatically receive an electronic notification of every memo posted to this site will be provided shortly. The Division has recently hired Kay Lund to serve as a full-time adults-at-risk systems analyst. She is employed by the Bureau of Aging and Disability Resources.

If you have any program content or policy questions due to the statutory changes please send the query to the following email address: StopAbuse@dhfs.state.wi.us.

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MEMO WEB SITE: http://dhfs.wisconsin.gov/dsl_info/

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