

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

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**Index Title: Disability Benefit Specialists: Elder Adults/
Adults-at-Risk Reporting Requirements**

To: Listserv

From: Sinikka Santala, Administrator

For: Area Administrators / Human Services Area Coordinators
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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
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Subject: Disability Benefit Specialists: Elder Adults/Adults-at-Risk Reporting Requirements

Document Summary

Wisconsin State Statutes 55.043(1m)(b) and 46.90(4)(ab)1, requires reporting of abuse, financial exploitation, neglect or self-neglect in some situations if the elder adult/adult at risk is seen *in the course of the person's professional duties* (emphasis added). This memo clarifies that Disability Benefit Specialists (DBS) *are not limited required reporters* under Wisconsin State Statutes 55.043(1m)(b) and 46.90(4)(ab)1. Disability Benefit Specialists *are not limited required reporters* because although some DBSs may hold a professional license for example as a registered nurse (RN) or social worker (SW), they do not see clients "in the course of the person's professional duties" in their licensed capacity as a RN or SW. They are not employed to work as a nurse or a social worker; they are employed as a disability benefit specialist and are to fulfill those job responsibilities when seeing clients in the course of their professional duties. While disability benefits specialists are not limited required reporters, they do qualify as *permissive reporters* of abuse, financial exploitation, neglect or self-neglect of elder adults/adults at risk under Wisconsin state statutes 55.043(1m)(br) and 46.90(4)(ar).

However, prior to November 3, 2008 the Family Care (FC) administrative rule in HFS 10.23(2)(d)2 prevented DBSs from complying with the permissive reporting clause without violating this provision of the administrative code. To allow permissive reporting by disability benefit specialists, the Department of Health Services issued an emergency rule effective November 3, 2008, which amends the Family Care rule on an emergency basis until a permanent change can take place. **Therefore, as of November 3, 2008, disability benefit specialists may report abuse, financial exploitation, neglect or self-neglect of elder adults/adults at risk under Wisconsin state statutes 55.043(1m)(br) and 46.90(4)(ar) and not be in violation of the FC administrative rule in HFS 10.**

BACKGROUND

Effective December 1, 2006, Wisconsin Act 388 revised the reporting of, and responses to, abuse, neglect and financial 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, "*adults at risk*" will be used to refer to both populations throughout this memo.

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 DHS, such as nursing homes and community-based residential facilities (See OQA Memo # 06-028, November, 2006 available at http://dhs.wisconsin.gov/rl_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 adult at risk is seen in the course of the person's licensed professional duties and one of the following conditions is true:

- The 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 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 adults at risk are 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 adult-at-risk only if there is a possibility of harm to others. For example, 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 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 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.

DISABILITY BENEFIT SPECIALISTS: ARE THEY REQUIRED REPORTERS OF ELDER ADULTS/ADULTS-AT-RISK ABUSE, NEGLECT OR EXPLOITATION?

A question has been raised as to whether Disability Benefit Specialists (DBSs) are to be considered limited required reporters under Wisconsin State Statutes 55.043(1m)(b) and 46.90(4)(ab)1 when they hold a professional license or credential either as a health care provider as defined in s.155.01(7) or a social worker, professional counselor, or marriage and family therapist certified under Ch. 457 (see above). Although some DBSs may hold for example a professional license as a registered nurse (RN) or social worker (SW), they do not see clients "in the course of the person's professional duties" in their licensed capacity as a RN or SW. They are not employed to work as a nurse or a social worker; they are employed as a disability benefit specialist and are to serve in that capacity when seeing clients.

Therefore, a disability benefit specialist is not a limited required reporter under Wisconsin State Statutes 55.043(1m)(b) and 46.90(4)(ab)1.

DISABILITY BENEFIT SPECIALISTS: ARE THEY PERMISSIVE REPORTERS OF ELDER ADULTS/ADULTS-AT-RISK ABUSE, NEGLECT OR EXPLOITATION?

The statutory language which addresses permissive reporting of adults at risk can be found at **ss.55.043(1m)(br) and 46.90(4)(ar), Stats.** The two statutes contain identical language and read as follows:

"Any person, including an attorney or a person working under the supervision of an attorney, may report to the county department, adult-at-risk agency, a state or local law enforcement agency, the department, or the board on aging and long-term care that he or she believes that abuse, financial exploitation, neglect, or self-neglect of an adult at risk has occurred if the person is aware of facts or circumstances that would lead a reasonable person to believe or suspect that abuse, financial exploitation, neglect, or self-neglect of an adult at risk has occurred. The person shall indicate the facts and circumstances of the situation as part of the report." (emphasis added)

Prior to November 3, 2008, a benefit specialist could not disclose information about a client without the informed consent of the client, *unless required by law.* (emphasis added). This meant that prior to November 3, 2008, the Family Care rule in HFS 10.23(2)(d)2 prevented DBSs from complying with the permissive reporting provision for elder adults/adults at risk contained in 55.043(1m)(br) and 46.90(4)(ar), Wis. Stats. without violating the administrative code.

As of November 3, 2008, the Department of Health Services has adopted an emergency rule to permanently amend the Family Care rule. In this emergency order the Department has revised s. HFS 10.23(2)(d)2., by adding language that would **permit disability benefit specialists to report** abuse, neglect or financial exploitation of adults-at-risk without violating that section's non-disclosure provisions.

The text of the proposed rule follows:

"HFS 10.23(2)(d)2. Notwithstanding sub. (7) (b), a benefit specialist may not disclose information about a client without the informed consent of the client, unless required by law **or as allowed in 55.043(1m)(br) or 46.90(4)(ar), Wis. Stats.**" (emphasis added)

The Department issued this amendment as an emergency rule in that this amendment is necessary to protect the health and welfare of elder adults/adults at risk, who may suffer harm if the disability benefit specialists are not able to report abuse, neglect, self-neglect or financial exploitation. Disability Benefit Specialists may now report these types of situations.

NEXT STEPS

The Department will continue the process for amending HFS 10.23(2)(d)2. as an emergency rule to be followed by a permanent rule change. A public hearing will be held on the rules on January 27, 2009. Comments may be submitted to the central office contact person that is listed below until the deadline given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> after the hearing is scheduled.

If you have questions concerning this numbered memo, please contact Jane Raymond, Advocacy and Protection Systems Developer, at DHSSStopAbuse@wisconsin.gov or by phone at 608-266-2568.

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MEMO WEB SITE: http://dhs.wisconsin.gov/dsl_info/NumberedMemos/NMemos_Index.htm

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Elder Adults/Adults-at-Risk and Adult Protective Services Systems Notification List