

STATE OF WISCONSIN
Department of Health and Family Services
Division of Disability and Elder Services

DDES Info Memo Series 2006-20

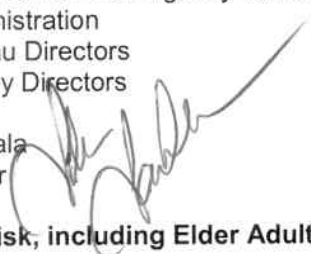
Date: 11-28-2006

**Index Title: Statutory Changes Affecting (Elder) Adult-at-Risk
Reporting Requirements when Incident Involves an Entity**

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 Director
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 Adult-at-Risk Agency Contacts
Lead Elder Adult-at-Risk Agency Contacts
DDES Administration
DDES Bureau Directors
DDES Facility Directors

From: Sinikka Santala
Administrator



Subject: Adult-at-Risk, including Elder Adult-at-Risk, Reporting Requirements

DOCUMENT SUMMARY

This memo explains the role county designated adults-at-risk and elder adult-at-risk agencies have in responding to incidents of abuse, neglect, exploitation and self-neglect occurring in entities regulated by the Department of Health and Family Service's Office of Quality Assurance (OQA). It explains the process to be used by a county designated adult-at-risk agency when referring an allegation of abuse, neglect and/or exploitation to OQA. It also explains why reports initially received by OQA may be referred to a county designated adults-at-risk agency.

New statutory requirements covering reports of abuse, financial exploitation, neglect or self-neglect of adults-at-risk, including elder adults-at-risk, take effect on December 1, 2006 due to Wisconsin Act 388. For additional information about 2005 Wisconsin Act 388, see <http://www.legis.state.wi.us/2005/data/acts/05Act388.pdf>

This memorandum focuses specifically on those new reporting requirements as they relate to clients of health care entities regulated by the Department of Health and Family Services, Office of Quality Assurance (OQA). Please also reference OQA Memo # 06-028 (November 15, 2006), issued to all regulated health care entities to ensure a full understanding of an entity's responsibility to report both allegations of caregiver misconduct and other incidents involving adults-at-risk.

DEFINITIONS

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-at-risk” will be used to refer to both populations throughout.

- *Adult-at-Risk.* An “adult-at-risk” is any adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation. [s. 55.01(1e)]
- *Elder Adult-at-Risk.* An “elder adult-at-risk” is any person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation. [s. 46.90(1)(br)]

ENTITY REPORTING OF CAREGIVER MISCONDUCT INCIDENTS

The revised reporting requirements included in 2005 Wisconsin Act 388 do not affect a regulated health care entity’s responsibility to report incidents of caregiver misconduct to the Department under s.146.40(4r)(am)1. Wis. Stats. and HFS 13.05 Wisconsin Administrative Rule. See OQA Memo # 06-028 (November, 2006) for additional information regarding caregiver misconduct reporting requirements.

LIMITED REQUIRED REPORTING BY EMPLOYEES OF ENTITIES

Wisconsin Act 388 **does** change reporting requirements for the employees of entities. State statutes at s.46.90(4)(ab)1 and s.55.043(1m)(a)1 require that **any employee of any entity report** allegations of abuse, financial exploitation, neglect or self-neglect if the (elder) adult-at-risk is seen in the course of the person’s professional duties and one of the following conditions is true:

1. The (elder) adult-at-risk has **requested the person to make the report; or**
2. There is reasonable cause to believe that the (elder) 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; **or**
3. **Other (elder) adults-at-risk are at risk** of serious bodily harm, death, sexual assault, or significant property loss inflicted by the suspected perpetrator.

See OQA Memo # 06-028 (November, 2006) for additional information regarding entity employee reporting requirements under 2005 Wisconsin Act 388. Note that entity employees are instructed in the OQA memorandum to report incidents involving (elder) adults-at-risk to the Department of Health and Family Services. This policy is intended to streamline the process and eliminate potential confusion associated with reporting to different agencies. OQA instructs that all incident reports from entity employees be submitted to OQA. OQA will then forward reports to other agencies, including the (elder) adult-at-risk agency, as appropriate.

PROTECTIONS FOR REPORTERS

As mentioned above, entities are required to report incidents of caregiver misconduct to the Department under Chapter 146 of the state statutes, as well as HFS 13. To the extent that an entity employee, following the entity’s incident response protocol, reports the necessary information concerning the allegation to one who is expected to report on behalf of the entity (e.g., Director of Nursing, Facility Administrator, etc.), and that individual does report the information to the proper authorities (i.e., Office of Quality Assurance), the employee does not also have to report to OQA.

However, if the entity fails to report to OQA and any of the conditions are met that trigger limited required reporting by the entity employee, the employee must make direct contact with OQA, the county department, the (elder) adults-at-risk agency, a state or local law enforcement agency, or the Board on Aging and Long Term Care. If the employee does not, reporter protections under s.46.90(4) and

s.55.043(1m) Wis. Stats. will not apply. Entity employees are, therefore, encouraged to file reports directly with OQA to ensure the application of relevant statutory protections.

(ELDER) ADULTS-AT-RISK AGENCIES: RECEIVING REPORTS

While OQA encourages entity employees to file reports with OQA, employees may, by law, file reports with any of several different agencies, including the local (elder) adult-at-risk agency. Therefore, local (elder) adult-at-risk agencies may occasionally receive reports from entity employees and must act on such reports in compliance with s.46.90(5) and s.55.043(1r) Wis. Stats.

The following requirements apply to (elder) adults-at-risk agencies, irrespective of the source of the report (e.g., entity employee, local law enforcement officer, or any other person):

(Elder) Adult-at-Risk is Client of an Entity; Perpetrator is Caregiver or Non-Client Resident

If the (elder) adult-at-risk is a “client,” as defined in s.50.065(1)(b), of an “entity,” as defined in s.50.065(1)(c), and the suspected perpetrator is a caregiver or non-client resident of the entity, the (elder) adult-at-risk agency **must refer the report within 24 hours** after the report is received (excluding Saturdays, Sundays, and legal holidays) to the Office of Quality Assurance (OQA) at:

Office of Quality Assurance
Office of Caregiver Quality
2917 International Lane, Suite 300
Madison, WI 53704
Telephone: (608) 243-2019
Fax: (608) 243-2020

The OQA may conduct an investigation of the entity to satisfy relevant regulatory concerns and will coordinate its regulatory-based investigation with other investigative agencies or authorities as appropriate. This will include coordinating with the (elder) adults-at-risk agency to assure that protective service needs are determined and addressed.

*(Elder) Adult-at-Risk is Client of an Entity; Perpetrator is **Not** Caregiver or Non-Client Resident*

If the (elder) adult-at-risk is a client of an entity, but the suspected perpetrator is someone **other than** a caregiver or non-client resident, the (elder) adult-at-risk agency may still be required to file a report with the Department within 24 hours. Under these circumstances, the agency should assess whether the incident arguably involves the entity in any way. If the incident appears to have a potential impact on licensure or certification requirements, the report should be referred to OQA within 24 hours after receipt (excluding Saturdays, Sundays, and legal holidays) at the address and telephone number above. The OQA may conduct an investigation of the entity to satisfy relevant regulatory concerns and will coordinate its regulatory-based investigation with other investigative agencies or authorities as appropriate. This will include coordinating with the (elder) adults-at-risk agency to assure that protective service needs are determined and addressed.

Reports Not Referred to the Department of Health and Family Services As Described Above

The response to any report of abuse not referred to the Department as described above must commence within 24 hours after the report is received, excluding Saturdays, Sundays, and legal holidays.

ROLE OF THE (ELDER) ADULTS-AT-RISK AGENCY

By statute, (elder) adults-at-risk agencies are charged with determining and addressing the protective service needs of (elder) adults-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, any 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 OQA 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-at risk agency would respond from a protective services perspective.

As such, on a single case, one or more of these different responses and/or investigations (or, these different components of the same incident) could proceed concurrently, requiring coordination and cooperation among the representatives of each agency, including the (elder) adults-at-risk agency. It is the operation of this "system" that must be formally documented in the memorandum of understanding required under s.46.90(3) and s.55.043(1g) Wis. State Statutes.

Given the unique nature of its role, the appropriate local (elder) adults-at-risk agency will be informed by the Department whenever it 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.

QUESTIONS

For issues involving caregiver misconduct or when an (elder) adult-at-risk is a client of an 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) 243-2019. If you have questions concerning the appropriate role of an (elder) adult-at-risk agency in responding to reports involving an entity contact Jane Raymond at StopAbuse@dhfs.state.wi.us or 608-266-2568.

CENTRAL OFFICE CONTACT: Jane Raymond
Bureau of Aging and Disability Resources
Division of Disability and Elder Services
1 W. Wilson Street, Room 450
Madison, WI 53702
(608) 266-2568
email: raymoja@dhfs.state.wi.us

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

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
Nurse Aide Training Programs
Nursing Homes
Residential Care Apartment Complexes
Rural Health Clinics
Office of Quality Assurance Regional Field Operation Directors
Tribal Chairperson/Human Services Facilitators
Licensing Chiefs / Section Chiefs