

Dependent Adult Abuse

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Due to time limitations and the nature of the program, please understand that printed materials contained herein and oral presentations of the speaker are not intended to be a definitive analysis of the subject discussed. Persons are cautioned that fact situations involving the behavior which may be considered resident adult abuse or dependent adult abuse vary in each individual circumstance. Material contained herein or presented by the speaker must not be considered as a substitute for sound legal advice on your own independent situations.

Older adults who can no longer live independently are particularly vulnerable to mistreatment in the form of physical assault, psychological or emotional abuse, sexual abuse, financial manipulation, or neglect. Unfortunately, the most likely perpetrators of elder abuse are the very persons well acquainted with or in continual contact with the dependent adult, including family or non-family members who become caregivers, spouses, or professional caregivers. Unfortunately elder abuse is prevalent throughout the United States, with approximately one million known cases occurring annually.¹

A. Examples of Abuse

Elder abuse can fall into several categories:

1. Caregiver neglect
 - Unethical withholding or withdrawal of nutrients
 - Failure to provide adequate hygiene
 - Inadequate social support
 - Abandonment

¹ Bourland MD. Elder Abuse. From definition to prevention. Postgrad Med 1990; 87(2):139-44.

2. Self neglect
 - Inadequate self-medication
 - Poor diet; malnutrition
 - Housing and health violations
 - Threat of danger to self
 - Inadequate prosthetic support
3. Emotional/psychological
 - Harassment, intimidation
 - Manipulation
 - Belittling
 - Isolation of patient
 - Phobia induction
 - Interference with decision making
4. Physical
 - Assault, battery
 - Chemical or physical restraint
 - Deprivation
 - Induced intoxication
5. Fiduciary
 - Misappropriation of money, property
 - Blocking access to money, property
 - Theft
 - Extortion
6. Sexual

B. Statutory and Regulatory Responses to Adult Abuse

A variety of federal and state statutes and regulations have been adopted to address the problem of dependent adult abuse, both in “domestic” and “institutional” settings.

Summary of Iowa Code Chapter 235B – Adult Abuse

"Caretaker" means a related or nonrelated person who has the responsibility for the protection, care, or custody of a dependent adult as a result of assuming the responsibility

voluntarily, by contract, through employment, or by order of the court. Iowa Code §235B.2(1)

"Dependent adult" means a person eighteen years of age or older who is unable to protect the person's own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another, or as defined by departmental rule. Iowa Code §235B.2(4)

"Dependent adult abuse" means:

(1) Any of the following as a result of the willful or negligent acts or omissions of a caretaker:

(a) Physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.

(b) The commission of a sexual offense under chapter 709 or section 726.2 with or against a dependent adult.

(c) Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources for one's own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.

(d) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or health.

(2) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.

(3) Sexual exploitation of a dependent adult who is a resident of a health care facility, as defined in §135C.1, by a caretaker providing services to or employed by the health care facility, whether within the health care facility or at a location outside of the health care facility.

"Sexual exploitation" means any consensual or nonconsensual sexual conduct with a dependent adult for the purpose of arousing or satisfying the sexual desires of the caretaker or dependent adult, which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in §702.17. Sexual exploitation does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the

dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses. Iowa Code §235B.2(5)(a)

"Dependent adult abuse" does not include any of the following:

- (1) Circumstances in which the dependent adult declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.
- (2) Circumstances in which the dependent adult's caretaker, acting in accordance with the dependent adult's stated or implied consent, declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.
- (3) The withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next of kin or guardian pursuant to the applicable procedures under chapter 125, 222, 229, or 633. Iowa Code §235B.2(5)(b)

Who is a Reporter?

a. Mandatory Reporter

All of the following persons shall report suspected dependent adult abuse to the Department of Human Services:

- a.* A social worker.
- b.* A certified psychologist.
- c.* A person who, in the course of employment, examines, attends, counsels, or treats a dependent adult and reasonably believes the dependent adult has suffered abuse, including:
 - (1) A member of the staff of a community mental health center, a member of the staff of a hospital, a member of the staff or employee of a public or private health care facility as defined in §135C.1.
 - (2) A peace officer.
 - (3) An in-home homemaker-home health aide.
 - (4) An individual employed as an outreach person.
 - (5) A health practitioner, as defined in §232.68.
 - (6) A member of the staff or an employee of a supported community living service, sheltered workshop, or work activity center.

d. A person who performs inspections of elder group homes for the department of elder affairs and a resident advocate committee member assigned to an elder group home pursuant to chapter 231B.

If a staff member or employee is required to report pursuant to this section, the person shall immediately notify the person in charge or the person's designated agent, and the person in charge or the designated agent shall make the report by the end of the next business day.

The employer or supervisor of a person who is required to or may make a report pursuant to this section shall not apply a policy, work rule, or other requirement that interferes with the person making a report of dependent adult abuse or that results in the failure of another person to make the report. Iowa Code §235B.3(2)

***b.* Permissive Reporter**

Any other person who believes that a dependent adult has suffered abuse may report the suspected abuse to the department of human services. Iowa Code §235B.3(4)

Good Faith Immunity

A person participating in good faith in reporting or cooperating with or assisting the department in evaluating a case of dependent adult abuse has immunity from liability, civil or criminal, which might otherwise be incurred or imposed based upon the act of making the report or giving the assistance. The person has the same immunity with respect to participating in good faith in a judicial proceeding resulting from the report or cooperation or assistance or relating to the subject matter of the report, cooperation, or assistance. Iowa Code §235B.3(8)

Anti-Retaliation

It shall be unlawful for any person or employer to discharge, suspend, or otherwise discipline a person required to report or voluntarily reporting an instance of suspected dependent adult abuse pursuant to subsection 2 or 4, or cooperating with, or assisting the department of human services in evaluating a case of dependent adult abuse, or participating in judicial proceedings relating to the reporting or cooperation or assistance based solely upon the person's reporting or assistance relative to the instance of dependent adult abuse. A person or employer found in violation of this subsection is guilty of a simple misdemeanor. Iowa Code §235B.3(9)

Criminal Penalties for Failure to Report by Mandatory Reporter

A person required by this section to report a suspected case of dependent adult abuse who knowingly and willfully fails to do so commits a simple misdemeanor. A person required by this section to report a suspected case of dependent adult abuse who knowingly fails to do so or who knowingly, in violation of subsection 3, interferes with the making of such a report or applies a requirement that results in such a failure is civilly liable for the damages proximately caused by the failure. Iowa Code §235B.3(10)

See also 441 I.A.C. Ch. 176

C. Prevention of Elder Abuse in Institutional Long Term Care Settings

Residential Care and Nursing Facilities, licensed under Iowa Code Chapter 135C and subject to 481 I.A.C. §57.39 and §58.43 relating to Prohibition of Resident Abuse.

The vast majority of nursing facilities are certified for participation in the Medicaid and/or Medicare program. Certified facilities are required to comply with regulations adopted in 42 C.F.R. Ch. 483.13 -- Resident Behavior and Facility Practices, which provides in part:

(b) Abuse. The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

(c) Staff treatment of residents. The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

(1) The facility must--

(i) Not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;

(ii) Not employ individuals who have been--

(A) Found guilty of abusing, neglecting, or mistreating residents by a court of law; or

(B) Have had a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property; and

(iii) Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State nurse aide registry or licensing authorities.

(2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency).

(3) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

The Centers for Medicare and Medicaid Services (CMS) [formerly the Health Care Financing Administrations (HCFA)] has adopted a survey protocol for conducting inspections known as the State Operations Manual (SOM). This document can be accessed at:

<http://www.hcfa.gov/pubforms/pub07pdf/AP-P-PP.pdf>

This manual contains authoritative interpretations and clarifications of statutory and regulatory requirements and are to be used to make determinations about a provider's compliance with requirements. The State Operations Manual provides further definitions relating to resident abuse and prevention.

1. "Abuse" is defined as the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm or pain or mental anguish, or deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. This presumes that instances of abuse of all residents, even those in a coma, cause physical harm, or pain or mental anguish. SOM PP-47.2.

2. Verbal Abuse: "Verbal Abuse" is defined as any use of oral, written or gestured language that willfully includes disparaging and derogatory terms to residents or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse include, but are not limited to: threats of harm; saying things to frighten a resident, such as telling a resident that she will never be able to see her family again. SOM PP-47.2.

3. Sexual Abuse: "Sexual Abuse" includes, but is not limited to, sexual harassment, sexual coercion, or sexual assault. SOM PP-47.2.

4. Physical Abuse: "Physical Abuse" includes hitting, slapping, pinching and kicking. it also includes controlling behavior through corporal punishment. SOM PP-47.2.

5. Mental Abuse: Mental Abuse includes humiliation, harassment, threats of punishment or deprivation. SOM PP-47.2.

6. “Convenience” is defined as any action taken by the facility to control resident behavior maintain residents with a lesser amount of effort by the facility and not in the residents’ best interest. SOM PP-44.

7. Involuntary Seclusion: “Involuntary Seclusion” is defined as separation of a resident from other residents or from his or her room or confinement to his or her room (with or without roommates) against the resident’s will, or the will of the resident’s legal representative. emergency or short term monitored separation from other residents will not be considered involuntary seclusion and may be permitted if used for a limited period of time as a therapeutic intervention to reduce agitation until professional staff can develop a plan of care to meet the resident’s needs. SOM PP-49.

8. Neglect: “Neglect” is defined as failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness. (see Older Americans Act, §302(a)(19).) neglect occurs on an individual basis when a resident does not receive a lack of [sic] care in one or more areas (e.g., absence of frequent monitoring for a resident known to be incontinent, resulting in being left to lie in urine or feces). SOM PP-51.

9. Misappropriation Of Resident Property: “Misappropriation Of Resident Property” is defined as the patterned or deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent. SOM PP-51.

D. Implications of Abuse Allegation

1. Facility Licensure/Sanctions Implications
2. Health Care Provider Licensure/Certification/Livelihood Implications (MDs, RN/LPN, Therapists, Nursing Facility Administrator)
3. Civil/Malpractice Liability
4. Criminal Liability