

CHAPTER 3 INVESTIGATION AND MANDATED REPORTING OF ELDER AND DEPENDENT ADULT ABUSE AND NEGLECT

I. Introduction

This chapter establishes the requirements for Long-Term Care (LTC) Ombudsman staff and volunteers as both investigators and mandated reporters of elder and dependent adult abuse and neglect, the definitions of abuse and neglect, and reporting requirements of the National Ombudsman Reporting System (NORS).

The LTC Ombudsman Program (LTCOP) receives and investigates reports of alleged and suspected abuse or neglect of elder and dependent adults occurring in LTC facilities. Complaints, referrals, and reports are received from LTC facility residents, mandated reporters, other service providers, and individuals who suspect that the safety or well-being of an elder or dependent adult is in danger.

California law is confusing, because it includes Ombudsman representatives in the definition of mandated reporters. However, under State and federal law, Ombudsman representatives must act only with the consent of the victim or the victim's representative and must not disclose confidential information or the identity of the victim or complainant unless consent to disclose is given by the victim, the victim's representative, or pursuant to court order. In situations where the victim cannot communicate informed consent and either has no representative or the representative is the alleged abuser, an Ombudsman representative can act with authorization of the State Ombudsman or following procedures developed by the Office of the State Long-Term Care Ombudsman (OSLTCO). Procedures for obtaining authorization are detailed in Chapter 5, *Confidentiality, Consent, and Disclosure*.

II. Legal Authority

FEDERAL Title 42 United States Code sections 3058d and 3058g(a)(3)(A)(ii)

Title 45 Code of Federal Regulations parts 1324.11(e)(3), 1324.13(e), and 1324.19(b)

STATE Welfare and Institutions Code sections 9725 and 15600-15650

III. Documents and Forms Referenced

- Ombudsman Jurisdiction (OSLTCO S601)
- Ombudsman Facility Presence (OSLTCO S602)

- Template MOUs with APS and local law enforcement agencies
- Mandated Reporter Flow Chart
- Report of Suspected Dependent Adult/Elder Abuse (SOC 341)
- Report of Suspected Dependent Adult/Elder Financial Abuse (SOC 342)
- Complaint from the Long-Term Care Ombudsman (OSLTCO S223)

IV. LTCOP Jurisdiction

The LTCOP investigates elder and dependent adult abuse and neglect in LTC facilities where a regular Ombudsman presence is required (Skilled Nursing Facilities (SNF), Distinct Part SNFs, Intermediate Care Facilities (ICF), and Residential Care Facilities for the Elderly (RCFE)). In addition, State law requires the LTCOP to investigate elder and dependent adult abuse occurring in Adult Residential Facilities (ARF), ICFs for the Developmentally Disabled, Congregate Living Health Facilities (CLIF), Adult Day Programs (ADP), Adult Day Health Care (ADHC) Centers, and Adult Residential Facilities for Persons with Special Health Care Needs (ARFPSHCN). Adult Protective Services (APS) agencies are responsible for investigating elder and dependent adult abuse occurring in all other facility types and outside of facilities. [See the Jurisdiction and Referral Chart (OSLTCO S601) and the Ombudsman Facility Presence Chart (OSLTCO S602) on the Coordinator Resources Webpage under Forms and Templates/Access and Jurisdiction.]

V. Receipt and Investigation of Elder and Dependent Adult Abuse Report

Upon receipt of a report of suspected abuse or neglect, an Ombudsman representative must first visit the resident and obtain consent from the resident to investigate the suspected abuse. In the event that the resident is not able to communicate informed consent, the Ombudsman representative shall seek consent from the resident's representative prior to conducting an investigation or making cross-reports. When the resident is unable to communicate informed consent and has no resident representative or when the Ombudsman representative has reasonable cause to believe that the resident representative has taken an action, inaction, or decision that may adversely affect the resident's health, safety, welfare, or rights; the Ombudsman representative can seek authorization to investigate from the State Ombudsman or through OSLTCO procedures using the process detailed in Chapter 5.

After receiving consent or authorization to investigate, the Ombudsman representative conducts an investigation to verify whether the abuse or neglect has occurred [Welf. & Inst. Code §15650(f)]. This is a much lower standard of proof than that used by licensing, law enforcement, or APS agencies. As such, the LTCOP is not the official finder of fact for abuse investigations. If, as a result of the LTCOP investigation, the suspected abuse or neglect is verified (the circumstances described in the report are generally accurate), the Ombudsman representative seeks consent from the resident or his or her representative to cross-report the

verified complaint to appropriate agencies for further action as necessary [Welf. & Inst. Code §§15640(d), 15650(f)]. When the resident is unable to communicate informed consent, the Ombudsman representative can seek authorization to disclose confidential information from the State Ombudsman or through OSLTCO procedures as detailed in Chapter 5. A licensing agency investigation does not relieve the LTCOP from the responsibility of investigating the report.

On occasion, an investigation by the LTCOP may be done cooperatively with other investigatory agencies, e.g., law enforcement, licensing agencies or APS. For example, the licensing or law enforcement agency may have simultaneously received the report of abuse or neglect and may request an Ombudsman representative's presence during the resident interview to help minimize trauma to the resident. Law enforcement agencies retain the exclusive responsibility to investigate alleged criminal acts. They may request the assistance of the LTCOP in their investigation [Penal Code §368.5(b)]. Local LTCOPs are encouraged to develop Memoranda of Understanding (MOU) with local law enforcement agencies and with county APS agencies to clarify the role of each agency in abuse investigations. Two template MOUs for this purpose are available on the Coordinator Resources Webpage.

VI. LTC Ombudsman Representatives as Mandated Reporters

State law defines LTC Ombudsman representatives as mandated reporters of suspected elder and dependent adult abuse [Welf. & Inst. Code §15610.17(s)].

A. Definition of Mandated Reporters

1. In Welfare and Institutions Code section 15630(a), a mandated reporter is defined as “any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not that person receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services (APS) agency or a local law enforcement agency.”
2. Under Welfare and Institutions Code section 15610.17(s), LTC Ombudsman representatives are labeled “care custodians” and, as such, are mandated reporters. ***However, section 15636 of the Welfare and Institutions Code clarifies the LTCOP role by requiring the Ombudsman representative to act only with the consent of the victim and to disclose confidential information only with consent or court order.***

B. Reporting Requirements for Mandated Reporters

1. General Reporting Requirements

Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse or neglect, shall report the known or suspected instance of abuse by telephone immediately or as soon as is practicably possible, and by written report sent within two working days. In addition, a mandated reporter who is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as is practicably possible, and by written report sent within two working days. [Welf. & Inst. Code §15630(b)(1)]

2. For Abuse Occurring in LTC Facilities

- a) The general requirement is that if the alleged abuse is not physical abuse and has occurred in a LTC facility, except a state mental health hospital or a state developmental center, the report shall be made to the local Ombudsman or the local law enforcement agency. [Welf. & Inst. Code §15630(b)(1)(D)]
- b) For the purpose of investigation of elder and dependent adult abuse, “Long-Term Care Facility” has a different definition than it does for traditional Ombudsman complaint investigation and regular presence visits. In addition to SNFs, ICFs, and (RCFEs), LTCs for abuse investigation include ICFs (all types), CLIFs, ARFs (including those for Persons with Special Health Care Needs), ADPs, and ADHCs.

3. Special Requirements for Reporting Physical Abuse in LTC Facilities

- a) If the physical abuse results in serious bodily injury defined as *“injury involving extreme physical pain, substantial risk of death, or protracted loss or impairment of function of a bodily member, organ, or of mental faculty, or requiring medical intervention, including, but not limited to, hospitalization, surgery, or physical rehabilitation”* (Welf. & Inst. Code §15610.67), the mandated reporter must report by telephone to the local law enforcement agency immediately, but no later than within two hours of learning of the abuse. The mandated reporter must send a written report to the local law enforcement agency, the local LTCOP, and the appropriate licensing agency within two hours of learning of the physical abuse.

- b) If the physical abuse does not result in serious bodily injury, the mandated reporter must report by telephone to the local law enforcement agency within 24 hours of learning of the abuse and must follow up with a written report to the local law enforcement agency, the local LTCOP, and the appropriate licensing agency within 24 hours of learning of the physical abuse.
- c) If the physical abuse is allegedly caused by a resident with a physician's diagnosis of dementia and does not result in serious bodily injury, the mandated reporter must report to the local LTCOP or the local law enforcement agency by telephone immediately or as soon as practicably possible, and follow with a written report within 24 hours.
- d) Abuse reporting requirements in LTC facilities are summarized in the Mandated Reporter Flow Chart, which can be found in the Forms and Templates section of the Coordinator Resources page on the CDA Website, www.aging.ca.gov.

4. Abuse Occurring Outside of LTC Facilities

- a) If the alleged abuse has occurred in a state mental hospital or a state developmental center, the report shall be made immediately, but no later than within two hours, to designated investigators of the Department of State Hospitals or the State Department of Developmental Services, or to the local law enforcement agency. Except in an emergency, the local law enforcement agency shall, as soon as practicable, report to the Bureau of Medi-Cal Fraud and Elder Abuse (BMFEA) any case of known or suspected criminal activity. [Welf. & Inst. Code §15630(b)(1)(E)]
- b) If the alleged abuse has occurred any place other than a LTC facility, a state mental hospital, or a state developmental center, the report shall be made to the county APS agency or the local law enforcement agency. [Welf. & Inst. Code §15630(b)(1)(C)]

5. Written Abuse Reports

Mandated reporters submit written abuse reports on form SOC 341, Report of Suspected Dependent Adult/Elder Abuse. Reports of suspected financial abuse of an elder or dependent adult are submitted by employees of financial institutions on form SOC 342, Report of Suspected Dependent Adult/Elder Financial Abuse. These reporting forms are located on the California Department of Social Services Website (www.cdss.ca.gov). Links to the forms are included on the Coordinator Resources Webpage.

6. Directly Observed Abuse

An Ombudsman representative who directly observes abuse occurring shall do the following:

- Make every effort to ensure that residents are safe and comfortable.
- Seek consent from the resident to disclose resident-identifying information to appropriate agencies.
- If the resident is unable to communicate informed consent, seek consent from the resident's representative or authorization using the process described in Chapter 5.

VII. Ombudsman Consent and Cross-Reporting of Complaints to Other Agencies

A. Consent

The LTCOP advocates for residents based upon the expressed wishes of the residents. Whether or not a resident wants to proceed with a complaint investigation or accept Ombudsman services is the decision of the resident. Cross-reporting and disclosure of the resident's identifying information will occur only after the complaint is verified [Welf. and Inst. Code §15650(f)] and only if the resident or the representative of a resident who cannot communicate informed consent provides consent to release the information. For more information about consent and who can provide it, see Chapter 5 – Confidentiality, Consent, and Disclosure.

B. Cross-Reporting Complaints to Other Agencies

1. According to State law [Welf. & Inst. Code §15630(b)(1)(D)], and with appropriate consent, the Ombudsman shall cross-report alleged abuse and/or neglect complaints immediately or as soon as practicable to the appropriate licensing and law enforcement agencies. Cross-reporting is accomplished by attaching the form SOC 341 to the form OSLTCO 223, Complaint from the Long-Term Care Ombudsman, found in the Forms folder on the Coordinator Resources Webpage.
2. After an Ombudsman representative receives consent to investigate, subsequently verifies the complaint, and receives consent from the resident or his or her representative or appropriate authorization to disclose information, the Ombudsman representative shall cross-report alleged abuse and/or neglect complaints as soon as practicable to the following respective agencies [Welf. & Inst. Code §15630(b)(1)(D)]:
 - A) California Department of Public Health (CDPH) - any case of known or suspected abuse or neglect occurring in a long-term

health care facility, as defined in Health and Safety Code section 1418(a) (SNF, ICF, Congregate Living Health Facility).

- B) California Department of Social Services (CDSS) - any case of known or suspected abuse or neglect occurring in an RCFE, as defined in Health and Safety Code section 1569.2, or in an adult day program, as defined in Health and Safety Code section 1502(a)(2).
- C) CDPH and the California Department of Aging (CDA) Community Based Adult Services Branch (formerly the Adult Day Health Care Branch) - any case of known or suspected abuse occurring in an adult day health care center, as defined in Health and Safety Code section 1570.7(b).
- D) California Department of Justice Bureau of Medi-Cal Fraud and Elder Abuse (BMFEA) – any case of known or suspected criminal activity [Welf. & Inst. Code § 15630(b)(1)(D)(iv)]
- E) Local District Attorney’s Office - The Ombudsman Program is required by law to report all cases of known or suspected physical abuse and financial abuse to the local district attorney's office in the county where the abuse occurred [Welf. & Inst. Code §15630 (b)(1)(D)(v)].
- F) Local Law Enforcement - The Ombudsman Program may report instances of abuse to the county APS agency or to the local law enforcement for assistance in the investigation if the victim gives his or her consent [Welf. & Inst. Code §15640(d)].

C. Reporting Abuse Occurring Outside of Long-Term Care Settings

When the Ombudsman representative receives a report involving suspected abuse that occurred in a setting other than a LTC facility, the local LTCOP shall not investigate the report, but instead forward the report to the county APS agency, local law enforcement agency, Department of State Hospitals, or Department of Developmental Services as appropriate.

Examples of those settings include, but are not limited to, private homes, senior housing complexes that are not licensed as LTC facilities, acute care hospitals (except Distinct Parts), clinics, pediatric SNFs, and other settings that are outside the jurisdiction of the LTCOP.

D. Other Community Roles

OSLTCO encourages local LTCOPs to help develop and participate in local interdisciplinary groups that work to prevent and investigate abuse. These organizations include local abuse coordinating councils, multi-disciplinary teams (MDT), financial abuse specialist teams (FAST), and elder death review teams. Members of these groups typically include staff from local LTCOPs, APS, the Public Guardian/Conservator, and law enforcement agencies. Many groups review difficult cases, discuss gaps and barriers in resolving problems, and work out coordinated approaches to address abuse situations. A primary focus of these groups is to define each agency's role and responsibility in the area of prevention and investigation of elder and dependent adult abuse and neglect. Contacts with these agencies can prove invaluable when making referrals or requesting assistance on cases.

Welfare and Institutions Code section 15633 and 15633.5 allow Ombudsman representatives to participate on MDTs and share confidential information about residents *when they have consent* from the resident or, for residents who cannot communicate informed consent, the resident's representative. Additionally, an Ombudsman representative must obtain consent before taking the resident's case to an MDT for consultation if the Ombudsman representative will reveal the resident's name or any identifying information about the resident.

VIII. Reporting of Elder and Dependent Adult Abuse and Neglect in the National Ombudsman Reporting System (NORS)

After an investigation is complete, the Ombudsman representative will report elder and dependent adult abuse, neglect, and exploitation through the normal complaint reporting process in the NORS. Definitions of abuse in NORS may not be the same as definitions in California Code. The term "abuse" in NORS means the 1) *willful* infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm, pain or mental anguish; or 2) deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness. (42 C.F.R. §488.301)

For abuse occurring in traditional Ombudsman facilities (SNFs, DP/SNFs, ICFs and RCFEs) report complaints in the NORS report in Section A, Abuse, Gross Neglect and Exploitation in the following categories:

- Physical abuse: includes hitting, slapping, pinching, kicking, etc. It also includes controlling behavior through corporal punishment.
- Sexual abuse: includes, but is not limited to, sexual harassment, sexual coercion, or sexual assault.

- Verbal/Psychological abuse (including punishment, seclusion): Use of oral, written or gestured language that includes disparaging and derogatory terms to residents or to their families, or within their hearing distance, to describe residents, regardless of their age, ability to comprehend or disability. Psychological or mental abuse includes, but is not limited to humiliation, harassment, and threats of punishment or deprivation. Involuntary seclusion means the separation of a resident from other residents or from his/her room against the resident's will or the will of the resident's legal representative. Emergency or short-term monitored separation is not considered involuntary seclusion if used for a limited period of time as a therapeutic intervention to reduce agitation as part of a care plan.
- Financial exploitation: the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit or gain.
- Gross neglect: the willful deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.
- Resident-to-Resident physical or sexual abuse: abuse by a resident against one or more other residents that meet the definitions of abuse provided above. This does not apply to unintentional harm or altercations between residents that can be prevented through better staff supervision.

Local LTCOPs report complaints of suspected abuse that do not meet the Section A definitions under the appropriate NORS code from Sections B-Q. To identify the complaint as suspected abuse, use the SOC 341 journal in the Ombudsman Data Integration Network (ODIN) and attach the form SOC 341 to the case record.

Abuse complaints occurring in LTC facilities that are *not* traditional Ombudsman facilities cannot be counted in NORS as nursing facility or board and care complaints. They are entered into ODIN using the Complaint Code Q-131.

Refer to Chapter 12, *Data Reporting and the National Ombudsman Reporting System*, for more information about NORS reporting requirements.