

Elder Abuse Reporting

Supersedes:

Effective: 12-05-05

A. Introduction

The Massachusetts Legislature passed the Elder Abuse Reporting Law on December 31, 1982 as the Acts of 1982, ch. 604. Emergency provisions were passed to allow for statewide implementation of the program on July 1, 1983. The bill assigned the responsibilities of the Elder Protective Services Program to the Executive Office of Elder Affairs. Specifically, the Department was charged with the responsibility of: (a) establishing a mechanism to receive reports on a twenty-four hour basis; (b) designating local agencies within each geographic service area to receive reports, conduct investigations, utilize existing services to establish protective services; and (c) monitoring the assessments, evaluations, and provision of protective services by the designees.

Like other forms of abuse, elder abuse is complex and often includes multiple forms of abuse in a single case. In general, the term elder abuse encompasses abuse (including physical, sexual, and emotional), neglect, and financial exploitation. On July 1, 2004 the Massachusetts legislature added self-neglect as a reportable condition of elder abuse. Key terms regarding elder abuse under M.G.L. Chapter 19A, § 14:

1. Massachusetts law defines **ELDER ABUSE** as occurring when "an individual who is sixty years of age or over" has been subject to one or more of the following conditions:
 - 1.1. **Abuse**: an act or omission that results in serious physical or emotional injury to an elder or financial exploitation. The act or omission may include one or more of the following:
 - 1.1.1. **Physical Abuse**: the non-accidental infliction of serious physical injury to an elder or the threat of serious physical injury. Serious physical injury is to be determined by the elder's physical condition, type of physical injuries, circumstances of the injury and the potential for injury or the escalation of the abuse, and the emotional impact on the elder.
 - 1.1.2. **Sexual Abuse**: Sexual assault, rape, sexual misuse or exploitation of an elder, as well as threats of sexual abuse where the perpetrator has the intent and the capacity to carry out the threatened abuse.
 - 1.1.3. **Emotional Abuse**: the non-accidental infliction of serious emotional injury to an elder. There must be an established relationship between the abusive actions or behaviors and the resulting effect upon the elder's emotional health or functioning.
 - 1.2. **Neglect**: The failure or refusal by a caretaker to provide one or more necessities essential for physical well-being, which may include food, clothing,

shelter, personal care and medical care, and which has resulted in, or where there is a substantial belief that the failure to provide such necessities will immediately result in, serious physical harm to an elder.

- 1.3. **Self-Neglect:** The failure or refusal of an elderly person to provide for one or more of the necessities essential for his or her own physical and emotional well-being where there is reason to believe that there is the immediate risk of serious harm to the elder, and which prevents the elder from remaining safely in the community. This may include one or more of the necessities of living such as food, clothing, shelter, personal care and medical care.
- 1.4. **Financial Exploitation:** A non-accidental act or omission by another, without the elder's consent, that causes substantial monetary or property loss to the elder, or a gain that should have benefited the elder.

B. Key Features of the Massachusetts Law

1. **Mandated Reporting:** Requires reporting by specific professional or licensed groups, such as emergency medical technicians, physicians, dentists, nurses, police, or social workers. Failure to report can result in a fine of up to \$1,000. Any other person who makes a report is neither civilly nor criminally liable so long as the report was made in "good faith" and the reporter is not the perpetrator of the abuse.
 - 1.1. **Reasonable Cause Standard:** The standard for reporting is based on specific facts that were either directly observed or obtained from reliable sources that support a belief that the event took place or the conditions still exist.
 - 1.2. **Mandated Reporting Process:** A verbal report must be made through the statewide Elder Abuse Hotline at **1-800-922-2275** or to Ethos at **617-522-6700** (Monday-Friday, 09:00-17:00), the local protective services agency that covers the city of Boston. A written report must follow within 48 hours of the oral report to the department's designee. Boston EMS personnel filing a 19A report should note this on the patient care report. The written report should be sent to the EMS Headquarters where it will then be forwarded to the appropriate protective services agency.
2. **Self-Determination:** The concept of self-determination is a governing force of the elder protective services system in Massachusetts. Under this view, elders retain the same rights of decision-making they acquired entering adulthood. This includes the right to: (a) decide where and how to live; (b) choose whether to accept community or social services assistance; and (c) make choices that others might consider to be detrimental, unless they hurt others. Elders are considered to have the capacity to consent when they are able to "... understand and appreciate the nature and consequences of decisions about Protective Services, including the benefits and risks of and alternatives to any proposed services, and to reach an informed decision."

C. Reporting Protections under the Massachusetts Elder Abuse Law, M.G.L. c. 19A, § 15

1. No person required to make a report pursuant to the statute can be held civilly or criminally liable, unless they perpetrated the abuse, neglect, or exploitation.

2. No reporter may be discharged, demoted, transferred, suffer reduced pay or benefits as a result of filing a report of elder abuse.

3. Privileges related to confidential communications between a patient and therapist or client and social worker will not interfere with the professional's responsibility to report suspected cases of elder abuse under the state elder abuse statute.

D. Links to laws and regulations

M.G. L. c.19A regarding Elders Residing in a Community

Setting: (<http://www.mass.gov/legis/laws/mgl/gl-19a-toc.htm>):

651 CMR 5.00 Elder Abuse Reporting and Protective Services Regulations:

(http://www.mass.gov/Eelders/docs/reg_651cmr005.doc)

Source: Office of Attorney General Website: <http://www.ago.state.ma.us/sp.cfm?pageid=1784>