

REPORTING OF ADULT ABUSE, NEGLECT OR EMERGENCY SITUATIONS

UNDER WEST VIRGINIA ADULT PROTECTIVE SERVICES (APS) LAW

CHAPTER 9, ARTICLE 6, OF THE STATE CODE

WHO IS MANDATED TO REPORT

Any medical, dental or mental health professional, christian science practitioner, religious healer, social service worker, law-enforcement officer, state or regional ombudsman, or any employee of a nursing home or other residential facility who:

has reasonable cause to believe that an incapacitated adult is neglected, abused or in an emergency situation, or

observes an incapacitated adult being subjected to conditions likely to result in abuse, neglect or an emergency situation, or

has probable cause to believe that an incapacitated adult has died as a result of abuse or neglect.

Failure to make such a report or preventing another person from making such a report is a misdemeanor and upon conviction is punishable by \$100.00 fine and/or ten days imprisonment in the county jail.

WHO ELSE MAY REPORT

1. Individuals may make reports on their own behalf.
2. Any person may report situations involving suspected abuse, neglect or the existence of an emergency situation involving an incapacitated adult or resident of a nursing home or other facility.

REPORTING PROCEDURES

In order to protect vulnerable adults, all reports of neglect, abuse or emergency situations should be made immediately, by telephone, to the local Department of Health and Human Resources (DHHR). *Reports by mandatory reporters must be made immediately to DHHR*. To make reports after business hours, call the statewide hotline number: **1-800-352-6513**. The hotline is operated on a 24-hour, seven-day-a-week basis.

All reports by mandatory reporters must be followed by a written report to the local DHHR Office within 48 hours. The "Adult Protective Service Reporting Form" (new June 2000) is to be used by all mandatory reporters for this purpose. The original copy of this reporting form is to be sent by the mandatory reporter to the *Adult Protective Services Unit, Department of Human Resources in your local area*. Additional reports are to be sent by the reporter to other applicable parties, based on the nature of the complaint.

Any person or official required by this law to make reports of suspected abuse or neglect that has probable cause to believe that an incapacitated adult has died as a result of abuse or neglect must report that fact to the appropriate medical examiner or coroner. The medical examiner or coroner will investigate the matter and report findings to the local law enforcement agencies, local prosecuting attorney, local DHHR Office, "and if the institution making a report is a hospital, nursing home or other residential facility, to the administrator of the facility, the state and regional long-term care ombudsman and the Office of Health Facilities Licensure and Certification."

It is recommended that a telephone contact be made immediately to the medical examiner or coroner and followed by a written report within 48 hours.

WHAT HAPPENS AFTER A REPORT IS MADE

DHHR will cause an investigation to be initiated upon acceptance of the report. In emergency/life-threatening situations, the investigation is to be initiated within 2 hours. Non-emergency situations are to be initiated within 72 hours or within 14 days, depending on the severity of the situation and the potential for danger.

If a report of adult abuse/neglect is substantiated by DHHR, a report will be sent immediately by DHHR to the prosecuting attorney, or in case of a death, to the appropriate medical examiner or coroner's office. Other parties may be notified in certain circumstances (e.g. Office of Health Facilities Licensure and Certification, state/regional long-term care ombudsman, Medicaid Fraud, law enforcement, etc.)

WHAT SHOULD BE INCLUDED IN AN APS REPORT

The "Adult Protective Services Reporting Form" (new June 2000) is to be used by mandatory reporters for reporting to the APS Unit of the local DHHR. To assist DHHR in protecting or assisting persons, the reporter should include as much relevant information about the situation as possible. Reporters do not have to know for certain that abuse, neglect or a medical emergency exists. If they have any reasonable or probable cause to believe such a situation exists, all information which is the basis of that belief should be reported. Information reported should, however, be as specific as possible regarding who the victim is, who the abuser is, specific date(s) when the abuse or neglect occurred, whether or not the abuse/or neglect personally observed by the reporter or other persons, etc..

CONFIDENTIALITY OF REPORTS

Persons mandated to make reports must provide their name to the Department of Health and Human Resources. However, they may request that their name remain confidential. If so, their name will be omitted from reports sent by DHHR to other parties, except the prosecuting attorney.

Persons not mandated to make reports may do so anonymously. However, reporters are encouraged to reveal their identity to DHHR in order to facilitate the investigative

process. It is often difficult to thoroughly investigate and/or verify allegations without this information for additional follow-up.

Department of Health and Human Resources records of protective service cases are confidential and information in the records may be released only in very limited circumstances. A Circuit Court or the Supreme Court of Appeals may subpoena such records, but shall, before permitting their use in connection with any court proceeding, review them for relevancy and materiality to the issues in the proceeding, and limit the examination and use of such records or any part thereof. Most protective service cases will not involve court action.

The law provides for criminal penalties against persons who abuse or neglect incapacitated adults. The confidentiality of persons who report such situations could be released in the rare situation in which criminal proceedings are brought but only to the extent necessary to safeguard the right to due process of the accused, i.e., right to cross-examine witnesses against them.

REPORTING PERSON'S IMMUNITY FROM LIABILITY

Any person who, in good faith, makes a report as permitted or required by the APS law shall be immune from any civil or criminal liability which might otherwise arise solely out of making a report.

ABROGATION OF PRIVILEGED COMMUNICATION

The "privileged" status of communication between husband and wife and any other person who is a mandatory reporter under the APS law is "abrogated" (abolished) in circumstances involving known or suspected cases of abuse, neglect or in emergency situations. The only exception is the privileged communications between an attorney and his/her client, which are exempt from abrogation.

DEFINITIONS

Abuse - infliction or threat to inflict physical pain or injury on or the imprisonment (detaining person against his/her will) of any incapacitated adult or facility resident.

- ▶ **Neglect** - failure to provide necessities of life to an incapacitated adult or facility resident with the intent to physically harm or coerce the incapacitated adult or facility resident or unlawfully use their funds or assets.
- ▶ **Emergency** - situation which presents substantial and immediate risk of death or serious injury to an incapacitated adult.
- ▶ **Incapacitated Adult** - any person age 18 or over who by reason of physical, mental or other infirmity is unable to independently carry on daily activities of life necessary to sustain life and reasonable health.

West Virginia Department of Health and Human Resources

Adult Protective Services Reporting Form

(use this form to report abuse, neglect or situations that present an immediate risk of serious injury or death)

!!(Reporter information is confidential and must be handled accordingly by all recipients of this report)!!

Reporter Information:

Name: (Preferred) Date this report completed:
Address: Telephone #:
Title/Relationship to Victim:
Are you a Mandatory Reporter? Yes No

Alleged Victim Information: (Information about person who is being abused/neglected)

Name: Address:
Age/Date of Birth:
Current Location:
Facility Name: Type of Facility:
Describe physical/cognitive/emotional functioning of the alleged victim:

Alleged Perpetrator Information: (Information about person who is doing the abusing/neglecting of the adult)

Name: Address:
Title/Relationship to Victim:
Telephone #:
Describe action(s) taken to prevent further abuse/neglect:
(Mark if additional pages attached)

Allegations: (Information about the incident of abuse, neglect, etc.)

Date of Incident: Time of Incident:
Where incident occurred:
Describe Incident/Injuries:
(Mark if additional pages attached)

Was treatment outside facility required? Yes No If yes, provider of treatment:
Why is the adult unable to protect themselves?
How long has the problem existed?
Is anyone else aware of the incident? If yes, list the name(s) & relationship to alleged victim:
Are there witnesses to the incident? If yes, list the name(s) & relationship to alleged victim:
Additional Comments:

A copy of this report must be filed with the following parties by the person completing the form (within 48 hours).

- 1. Original (top sheet) to: Adult Protective Services Unit - local Department of Health and Human Resources
2. Copy to:
Office of Health Facilities Licensure & Certification (if alleged victim is resident of a nursing home or residential facility)
State or regional Long-term care Ombudsman (if alleged victim is resident of a nursing home or residential facility)
Facility administrator (if alleged victim is resident of a nursing home or residential facility)** [see instructions on back]
Local law enforcement agency (when applicable - e.g. violent crime, domestic violence, serious injury, death)
Local prosecuting attorney (when applicable - e.g. violent crime, domestic violence, serious injury, death)
Local coroner or medical examiner (in case of a death)