

SAFETYNETWORKS

Information for Elder Adults-at-Risk and Adults-at-Risk Agencies and Individuals and Agencies who Report Abuse, Neglect, Financial Exploitation and Self-Neglect AAR Information Memo #12, February 2010

IN THIS ISSUE

Disability Benefit Specialists Reporting of Abuse, Neglect, Financial Exploitation and Self-Neglect to County Elder Adults/Adults-at-Risk (EA/AAR) Agencies.

SUMMARY

Wisconsin State Statutes 55.043(1m)(b) and 46.90(4)(ab)1, require reporting of abuse, financial exploitation, neglect or self-neglect in *limited* situations by social workers, registered nurses and others if the elder adult/adult at risk is seen *in the course of the person's professional duties* (emphasis added).

However, disability benefit specialists are not among the list of professionals who are *limited required reporters*. Disability benefit specialists who are registered nurses or social workers are also not limited required reporters because they do not see clients "in the course of the person's professional duties" in their licensed capacity as a nurse or social worker. They are not employed to work as a nurse or a social worker; they are employed as a disability benefit specialist and are to fulfill those job responsibilities when seeing clients in the course of their professional duties.

In November 2008, the Family Care administrative rule [DHS 10.23 (2)(d)2.] was amended to allow permissive reporting by disability benefit specialists. Therefore, disability benefit specialists *may* report abuse, financial exploitation, neglect or self-neglect of elder adults/adults at risk under Wisconsin state statutes 55.043(1m)(br) and 46.90(4)(ar) and not be in violation of the Family Care administrative rule in DHS 10.

BACKGROUND

Prior to the Family Care rule amendment in November 2008, a disability benefit specialist could not disclose information about a client without the informed consent of the client, unless required by law. The revised rule permits reporting by disability benefit specialists without violating non-disclosure provisions.

Amending DHS 10.23 (2) (d) 2., to allow disability benefit specialists to report abuse, neglect, financial exploitation or self-neglect under s. 55.043 (1m) (br), Stats., helps to ensure that elder adults/adults at risk who may have been abused, neglected, or financially exploited are brought to the attention of the system(s) that can respond to the concerns.

WISCONSIN LAW AND ADMINISTRATIVE CODE RELATING TO REPORTS OF ABUSE, NEGLECT, FINANCIAL EXPLOITATION, AND SELF-NEGLECT BY DISABILITY BENEFIT SPECIALISTS

Under Wisconsin Statutes §55.043(1m)(br):

“Any person, including an attorney or a person working under the supervision of an attorney, may report to the county department, adult-at-risk agency, a state or local law enforcement agency, the department, or the board on aging and long-term care that he or she believes that abuse, financial exploitation, neglect, or self-neglect of an adult at risk has occurred if the person is aware of facts or circumstances that would lead a reasonable person to believe or suspect that abuse, financial exploitation, neglect, or self-neglect of an adult at risk has occurred. The person shall indicate the facts and circumstances of the situation as part of the report.”

Under Wisconsin Administrative Code HFS 10.23 (2) (d) 2:

“Notwithstanding sub. (7) (b), a disability benefit specialist may not disclose information about a client without the informed consent of the client, unless required by law. A disability benefit specialist may also disclose information about a client without the informed consent of the client as permitted under s. 55.043 (1m) (br), Stats., if there is reasonable cause to believe that the 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 if an adult at risk other than the subject of the report is at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by a suspected perpetrator.”

REPORTING BY A DISABILITY BENEFIT SPECIALIST IS PERMITTED UNDER FOUR CIRCUMSTANCES

Although client information is confidential, a disability benefit specialist may report abuse, neglect, financial exploitation or self-neglect under four circumstances.

1. Reporting is allowed with the informed consent of the client. (Either the client asks for help or the disability benefit specialist asks if the client wants help, and the client agrees that the disability benefit specialist should make a report). What constitutes “informed consent” stems from what a reasonable person would want to know before making a decision. The disability benefit specialist should tell the client that a report will be made to the county elder adults/adults-at-risk (EA/AAR) agency and that EA/AAR staff will respond to the report and likely will offer recommendations on services/programs that will address safety and related concerns.
2. Reporting may be required by law. Disability benefit specialists are not required reporters as defined in Wis. Stats. § 55.043(1m)(b) but a disability benefit specialist may be required to disclose otherwise confidential information in response to a court order. Disability benefit specialists should consult with their program attorney in the unlikely event that information is requested by the court.
3. A disability benefit specialist is allowed to report if there is reasonable cause to believe that the 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.

4. A disability benefit specialist is also allowed to report if an adult at risk other than the disability benefit specialist's client is at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by a suspected perpetrator.

In the final three examples, the disability benefit specialist may decide to inform the client that the benefit specialist is going to make a report to the EA/AAR agency. However, the disability benefit specialist is not obligated to tell the client that a report is being made but should consider the impact on the relationship with the client if the client learns that the disability benefit specialist made the report.

FACTORS TO CONSIDER IN DECIDING WHETHER OF NOT TO REPORT

While the first two circumstances are relatively clear cut, the last two require some judgment on the part of the disability benefit specialist before a report is made to the EA/AAR agency. Time permitting, the disability benefit specialist should consult with their program attorney and their local supervisor before making a decision. However, the final decision about whether or not to report rests with the disability benefit specialist.

In order to determine whether a report should be made, questions to ask include:

1. Is the disability benefit specialist's belief about the circumstances of the client reasonable?
2. Is the risk to the client imminent?
3. Is the client at imminent risk of serious bodily harm?
4. Is the client at imminent risk of death?
5. Is the client at imminent risk of significant property loss?
6. Is the client at imminent risk of sexual assault?
7. When/why is the client unable to make an informed judgment about whether to report the risk?
8. Is someone other than the client at risk of serious bodily harm, death, sexual assault, or significant property loss?
9. Are there better ways to protect the client or 3rd person?

How easy or how difficult it is to answer these questions varies greatly case by case. For more information about how to answer these questions, see AAR Information Memo #2.

<http://dhs.wisconsin.gov/aps/Publications/snwandmemos/sn2requiredreporters.pdf>.

Although this document is written for limited required reporters, the analysis of a case is similar for permissive reporters even though they do not have the same legal reporting requirements.

DISABILITY BENEFIT SPECIALIST PERMISSIVE REPORTING OF ABUSE, NEGLECT FINANCIAL EXPLOITATION, AND SELF-NEGLECT OF ADULTS AT RISK

It is important to remember that it is not necessary to be able to name an alleged abuser in order to report any incident of abuse, neglect or financial exploitation. Wisconsin's Adults-at-Risk law focuses on the health and safety of the individual; stopping or prosecuting an abuser is only one of many responses available to Elder Adults/Adults-at-Risk staff.

A disability benefit specialist, even if licensed as a social worker or registered nurse, is not a mandatory reporter. In Wisconsin, certain professions (health care practitioners, social workers, therapists) are required reporters except if the professional believes that filing a report is not in the best interest of the adult at risk¹.

A disability benefit specialist who is licensed as a social worker or registered nurse is not a required reporter because they are not employed to work as a social worker or registered nurse. See DLTC Numbered Memo² 2009-01 for a more detailed explanation.

Finally, a disability benefit specialist who makes a report in good faith under any of the four circumstances noted on page 2 above is immune from criminal, civil and professional liability³.

If you have questions, contact us at:

Kay Lund
608-261-5990
Kay.Lund@wisconsin.gov

Jane Raymond
608-266-2568
Jane.Raymond@wisconsin.gov

¹ Wisconsin Statutes § 46.90 (4) and 55.043 (1m)

² http://dhs.wisconsin.gov/dsl_info/NumberedMemos/DLTC/CY2009/NMemo2009_01.pdf

³ Wisconsin Statutes § 46.90 (4) (c) and 55.043 (1m) (d)

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APPENDIX A

DEFINITIONS

Adult-at-Risk Agency [Wis. Stat. § 55.01(1f)]

The county board of each county is required to name an agency as the “elder adults-at-risk agency” for the county, and also to name an agency as the “adults-at-risk agency” for the county. A county may combine these functions in the same agency, or put them in separate agencies. A county may also subdivide responsibility further among multiple agencies, based on function, population served, service systems already involved with the individual, or other factors.

Adult at Risk [Wis. Stat. § 55.043(1e)]

An adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, or financial exploitation.

Elder Adult at Risk [Wis. Stat. § 46.90(br)]

An individual who (1) is age 60 or older and (2) has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.

Abuse [Wis. Stat. § 46.90(1)(a)]

- **Physical abuse**
An action, or a failure to act, that causes bodily harm to an individual. The action or failure to act must be intentional or reckless, that is, the person must know that he or she is doing the action and that harm is a likely consequence, or must do it without paying attention to the harm that it might cause, even though the likelihood of harm should be obvious. **Bodily harm** [Wis. Stat. § 46.90(1)(aj)] includes physical pain or injury, illness, and any impairment of physical condition.
- **Emotional abuse**
Subjecting an individual to language or behavior that serves no legitimate purpose and that is intended to be intimidating, humiliating, threatening, frightening or otherwise harassing.
- **Sexual abuse**
Subjecting an individual to sexual contact of a type that would be considered a sexual assault under the criminal law. It is a crime in Wisconsin to have sexual intercourse or sexual contact with another person without consent. (Sexual contact is intentional touching, and certain other conduct, done for the purpose of sexually degrading the victim or sexually gratifying the perpetrator.) In addition, two provisions have special relevance for individuals at risk:

Any sexual contact with a person who has a mental illness or deficiency that makes him or her incapable of appraising his or her conduct is a sexual assault, even if he or she appears to consent.

It is sexual assault for any licensee or employee of certain human services programs and facilities to have sexual contact with an individual who is a patient or resident of the program or facility, regardless of whether the individual consents.

- **Treatment without consent**
Occurs when a person administers medication to an individual, or performs psychosurgery, electroconvulsive therapy, or experimental research on an individual, and does so both (1) without the informed consent of the individual, and (2) with the knowledge that no lawful authority exists for the medication or treatment.
- **Unreasonable confinement or restraint**
Occurs when a person intentionally and unreasonably does any of the following to an individual: (1) confines the individual in a locked room; (2) prevents the individual from having access to his or her living area; (3) uses a physical restraining device on the individual; or (4) provides unnecessary or excessive medication to the individual.

Neglect [Wis. Stat. § 46.90(1)(f)]

Failure by a caregiver to try to maintain adequate care, services or supervision, including food, clothing, shelter or physical or mental health care. The failure can be the result of an action, a failure to act, or a course of conduct over time.

Self-neglect [Wis. Stat. § 46.90(1)(g)]

Failure by the individual himself or herself to obtain adequate care, including food, shelter, clothing, medical or dental care. As with neglect, the failure must result in a significant danger to the individual's physical or mental health. Self-neglect can only occur with regard to care or other needs for which the individual retains responsibility. A failure does not need to be intentional to be self-neglect.

Financial Exploitation [Wis. Stat. § 46.90 (1) (ed)]

Replaces the terms material abuse, exploitation and misappropriation of property. Financial exploitation now includes any of the following acts:

- **Fraud, enticement or coercion:** It is financial exploitation to (1) obtain an individual's money or property by deceiving or enticing an individual, or (2) to force or coerce an individual to give something away against his or her will and without his or her informed consent.
- **Theft:** Intentional taking of property including embezzlement.
- **Misconduct by a fiscal agent:** Financial exploitation includes "substantial failure or neglect of a fiscal agent to fulfill his or her responsibilities."

- Identity theft: It is financial exploitation for a person to intentionally use an individual's identifying documents or identifying information, without the individual's consent, to either get something of value or to harm the individual's reputation or property.
- Unauthorized use of the identity of a company or agency: It is financial exploitation for a person to intentionally use the identifying information or documents, of an entity (such as a bank, business, or government agency) to get something of value from an individual by pretending that he or she is acting with authorization of the entity.
- Forgery: It is financial exploitation to alter legal or official documents, such as a will or title, with the intent to defraud someone, or to show an altered document to someone and pretend it is genuine, knowing that the document is forged.
- Unauthorized use of financial transaction cards including credit, debit, ATM and similar cards.

Limited Required Reporters [Wis. Stats. §§ 46.90(4)(ab)1 and 55.043(1m)(a)1]

Abuse, neglect and financial exploitation must be reported by limited required reporters defined as:

- An employee of any entity that is licensed, certified, or approved by or registered with the department.
- A health care provider, as defined in s. 155.01 (7).
- A social worker, professional counselor, or marriage and family therapist certified under Ch. 457.

Wisconsin law requires that any employee of the entities listed above report if any of the following conditions are true:

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

Limited Required Reporters are not mandatory reporters. Wisconsin law does not require reporting if the limited required reporter does not think a report would be in the best interest of the adult at risk or if religious/spiritual treatment or communications restrict reporting.