

AB 40 (Yamada) – Elder abuse: reporting

Introduced December 6, 2010, Amended March 21, 2011

The Elder Abuse and Dependent Adult Civil Protection Act requires certain persons, called mandated reporters, to report known or suspected instances of elder or dependent adult abuse. Existing law requires a mandated reporter to report the abuse to the local ombudsperson **or** the local law enforcement agency if the abuse occurs in a long-term care facility. Failure to report physical abuse and financial abuse of an elder or dependent adult under the act is a misdemeanor.

This bill would, instead, require the mandated reporter to report the abuse to both the local ombudsperson and the local law enforcement agency. This bill would also make various technical, nonsubstantive changes.

The Long Term Care Ombudsman (LTCO) program is administered through the California Department of Aging (CDA) and 35 local programs contracted through the network of local area agencies on aging (AAA). According to the CDA website, the primary responsibility of the program is to investigate and endeavor to resolve complaints made by, or on behalf of, individual residents in long-term care facilities. The goal of the program is to advocate for the rights of all residents of long-term care facilities.

According to the author, the LTCO program is operating under conflicting mandates. Under the Older American's Act (OAA) mandate, LTCO serve as a resident advocate and are prohibited from disclosing information on reports of abuse to anyone without the written consent of the subject of the report. However, under the state's mandated reporting laws, LTCO are required to receive and initiate investigations of reports of abuse. The author contends that the LTCO is not designed to carry-out investigative roles due to their federal prohibition from disclosing information on reports - a prohibition which precludes reporting to law enforcement and licensing agencies - even when the subject's well-being may be in jeopardy. Without the consent of the resident(s) involved, or their legal representatives, criminal activities that would otherwise be subject to swift and decisive action by law enforcement and licensing agencies, is left to the advocacy devices of volunteers.

The Welfare and Institutions Code acknowledges the conflict, yet affirms that LTCO can only cross report with the consent of the resident (§ 15640 Ýd]), further stating that; "If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until the report becomes a matter of public record." According to the author, this becomes particularly troubling in abuse cases reported to the LTCO where the victim is unable to offer consent to share information with law enforcement personnel in order to complete a thorough investigation and secure justice-it creates a loophole which allows criminal activity to go unchecked.

ASSEMBLY BILL

No. 40

Introduced by Assembly Member Yamada

December 6, 2010

An act to amend ~~Section 15630~~ *Sections 15630, 15630.1, and 15631* of the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 40, as amended, Yamada. Elder abuse: reporting.

The Elder Abuse and Dependent Adult Civil Protection Act establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires certain persons, called mandated reporters, to report known or suspected instances of elder or dependent adult abuse. The act requires a mandated reporter, *and authorizes any person who is not a mandated reporter*, to report the abuse to the local ~~ombudsperson~~ *ombudsman* or the local law enforcement agency if the abuse occurs in a long-term care facility. Failure to report physical abuse and financial abuse of an elder or dependent adult under the act is a misdemeanor.

This bill would, instead, require the mandated reporter, *and authorize any person who is not a mandated reporter*, to report the abuse to both the local ~~ombudsperson~~ *ombudsman* and the local law enforcement agency. ~~This bill would also make various technical, nonsubstantive changes.~~

Existing law requires a mandated reporter of suspected financial abuse of an elder or dependent adult, as defined, to report a known or suspected instance of financial abuse, as described, to the local ombudsman or the local law enforcement agency if the mandated

reporter knows that the elder or dependent adult resides in a long-term care facility.

This bill would, instead, require the mandated reporter to report the abuse to both the local ombudsman and the local law enforcement agency. This bill would also make various technical nonsubstantive changes.

By changing the scope of an existing crime, this bill would impose a state-mandated local program. By increasing the duties of local law enforcement agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 15630 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 15630. (a) Any person who has assumed full or intermittent
- 4 responsibility for the care or custody of an elder or dependent
- 5 adult, whether or not he or she receives compensation, including
- 6 administrators, supervisors, and any licensed staff of a public or
- 7 private facility that provides care or services for elder or dependent
- 8 adults, or any elder or dependent adult care custodian, health
- 9 practitioner, clergy member, or employee of a county adult
- 10 protective services agency or a local law enforcement agency, is
- 11 a mandated reporter.
- 12 (b) (1) Any mandated reporter who, in his or her professional
- 13 capacity, or within the scope of his or her employment, has
- 14 observed or has knowledge of an incident that reasonably appears
- 15 to be physical abuse, as defined in Section 15610.63, abandonment,
- 16 abduction, isolation, financial abuse, or neglect, or is told by an

1 elder or dependent adult that he or she has experienced behavior,
2 including an act or omission, constituting physical abuse, as defined
3 in Section 15610.63, abandonment, abduction, isolation, financial
4 abuse, or neglect, or reasonably suspects that abuse, shall report
5 the known or suspected instance of abuse by telephone immediately
6 or as soon as practicably possible, and by written report sent within
7 two working days, as follows:

8 (A) If the abuse has occurred in a long-term care facility, except
9 a state mental health hospital or a state developmental center, the
10 report shall be made to both the local ~~ombudsperson~~ *ombudsman*
11 and the local law enforcement agency.

12 The local ~~ombudsperson~~ *ombudsman* and the local law
13 enforcement agency shall, as soon as practicable, except in the
14 case of an emergency or pursuant to a report required to be made
15 pursuant to clause (v), in which case these actions shall be taken
16 immediately, do all of the following:

17 (i) Report to the State Department of Public Health any case of
18 known or suspected abuse occurring in a long-term health care
19 facility, as defined in subdivision (a) of Section 1418 of the Health
20 and Safety Code.

21 (ii) Report to the State Department of Social Services any case
22 of known or suspected abuse occurring in a residential care facility
23 for the elderly, as defined in Section 1569.2 of the Health and
24 Safety Code, or in an adult day care facility, as defined in paragraph
25 (2) of subdivision (a) of Section 1502.

26 (iii) Report to the State Department of Public Health and the
27 California Department of Aging any case of known or suspected
28 abuse occurring in an adult day health care center, as defined in
29 subdivision (b) of Section 1570.7 of the Health and Safety Code.

30 (iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse
31 any case of known or suspected criminal activity.

32 (v) Report all cases of known or suspected physical abuse and
33 financial abuse to the local district attorney's office in the county
34 where the abuse occurred.

35 (B) If the suspected or alleged abuse occurred in a state mental
36 hospital or a state developmental center, the report shall be made
37 to designated investigators of the State Department of Mental
38 Health or the State Department of Developmental Services, or to
39 the local law enforcement agency.

1 Except in an emergency, the local law enforcement agency shall,
2 as soon as practicable, report any case of known or suspected
3 criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

4 (C) If the abuse has occurred any place other than one described
5 in subparagraph (A), the report shall be made to the adult protective
6 services agency or the local law enforcement agency.

7 (2) (A) A mandated reporter who is a clergy member who
8 acquires knowledge or reasonable suspicion of elder or dependent
9 adult abuse during a penitential communication is not subject to
10 paragraph (1). For purposes of this subdivision, "penitential
11 communication" means a communication that is intended to be in
12 confidence, including, but not limited to, a sacramental confession
13 made to a clergy member who, in the course of the discipline or
14 practice of his or her church, denomination, or organization is
15 authorized or accustomed to hear those communications and under
16 the discipline tenets, customs, or practices of his or her church,
17 denomination, or organization, has a duty to keep those
18 communications secret.

19 (B) This subdivision shall not be construed to modify or limit
20 a clergy member's duty to report known or suspected elder and
21 dependent adult abuse if he or she is acting in the capacity of a
22 care custodian, health practitioner, or employee of an adult
23 protective services agency.

24 (C) Notwithstanding any other provision in this section, a clergy
25 member who is not regularly employed on either a full-time or
26 part-time basis in a long-term care facility or does not have care
27 or custody of an elder or dependent adult shall not be responsible
28 for reporting abuse or neglect that is not reasonably observable or
29 discernible to a reasonably prudent person having no specialized
30 training or experience in elder or dependent care.

31 (3) (A) A mandated reporter who is a physician and surgeon,
32 a registered nurse, or a psychotherapist, as defined in Section 1010
33 of the Evidence Code, shall not be required to report, pursuant to
34 paragraph (1), an incident if all of the following conditions exist:

35 (i) The mandated reporter has been told by an elder or dependent
36 adult that he or she has experienced behavior constituting physical
37 abuse, as defined in Section 15610.63, abandonment, abduction,
38 isolation, financial abuse, or neglect.

1 (ii) The mandated reporter is not aware of any independent
2 evidence that corroborates the statement that the abuse has
3 occurred.

4 (iii) The elder or dependent adult has been diagnosed with a
5 mental illness or dementia, or is the subject of a court-ordered
6 conservatorship because of a mental illness or dementia.

7 (iv) In the exercise of clinical judgment, the physician and
8 surgeon, the registered nurse, or the psychotherapist, as defined
9 in Section 1010 of the Evidence Code, reasonably believes that
10 the abuse did not occur.

11 (B) This paragraph shall not be construed to impose upon
12 mandated reporters a duty to investigate a known or suspected
13 incident of abuse and shall not be construed to lessen or restrict
14 any existing duty of mandated reporters.

15 (4) (A) In a long-term care facility, a mandated reporter shall
16 not be required to report as a suspected incident of abuse, as defined
17 in Section 15610.07, an incident if all of the following conditions
18 exist:

19 (i) The mandated reporter is aware that there is a proper plan
20 of care.

21 (ii) The mandated reporter is aware that the plan of care was
22 properly provided or executed.

23 (iii) A physical, mental, or medical injury occurred as a result
24 of care provided pursuant to clause (i) or (ii).

25 (iv) The mandated reporter reasonably believes that the injury
26 was not the result of abuse.

27 (B) This paragraph shall not be construed to require a mandated
28 reporter to seek, nor to preclude a mandated reporter from seeking,
29 information regarding a known or suspected incident of abuse prior
30 to reporting. This paragraph shall apply only to those categories
31 of mandated reporters that the State Department of Public Health
32 determines, upon approval by the Bureau of Medi-Cal Fraud and
33 Elder Abuse and the state long-term care ~~ombudsperson~~
34 *ombudsman*, have access to plans of care and have the training
35 and experience necessary to determine whether the conditions
36 specified in this section have been met.

37 (c) (1) Any mandated reporter who has knowledge, or
38 reasonably suspects, that types of elder or dependent adult abuse
39 for which reports are not mandated have been inflicted upon an
40 elder or dependent adult, or that his or her emotional well-being

1 is endangered in any other way, may report the known or suspected
2 instance of abuse.

3 (2) If the suspected or alleged abuse occurred in a long-term
4 care facility other than a state mental health hospital or a state
5 developmental center, the report may be made to the long-term
6 care ~~ombudsperson~~ *ombudsman* program. Except in an emergency,
7 the local ~~ombudsperson~~ *ombudsman* shall report any case of known
8 or suspected abuse to the State Department of Public Health and
9 any case of known or suspected criminal activity to the Bureau of
10 Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

11 (3) If the suspected or alleged abuse occurred in a state mental
12 health hospital or a state developmental center, the report may be
13 made to the designated investigator of the State Department of
14 Mental Health or the State Department of Developmental Services
15 or to a local law enforcement agency or to the local ~~ombudsperson~~
16 *ombudsman*. Except in an emergency, the local ~~ombudsperson~~
17 *ombudsman* and the local law enforcement agency shall report any
18 case of known or suspected criminal activity to the Bureau of
19 Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

20 (4) If the suspected or alleged abuse occurred in a place other
21 than a place described in paragraph (2) or (3), the report may be
22 made to the county adult protective services agency.

23 (5) If the conduct involves criminal activity not covered in
24 subdivision (b), it may be immediately reported to the appropriate
25 law enforcement agency.

26 (d) If two or more mandated reporters are present and jointly
27 have knowledge or reasonably suspect that types of abuse of an
28 elder or a dependent adult for which a report is or is not mandated
29 have occurred, and there is agreement among them, the telephone
30 report may be made by a member of the team selected by mutual
31 agreement, and a single report may be made and signed by the
32 selected member of the reporting team. Any member who has
33 knowledge that the member designated to report has failed to do
34 so shall thereafter make the report.

35 (e) A telephone report of a known or suspected instance of elder
36 or dependent adult abuse shall include, if known, the name of the
37 person making the report, the name and age of the elder or
38 dependent adult, the present location of the elder or dependent
39 adult, the names and addresses of family members or any other
40 adult responsible for the elder's or dependent adult's care, the

1 nature and extent of the elder's or dependent adult's condition, the
2 date of the incident, and any other information, including
3 information that led that person to suspect elder or dependent adult
4 abuse, as requested by the agency receiving the report.

5 (f) The reporting duties under this section are individual, and
6 no supervisor or administrator shall impede or inhibit the reporting
7 duties, and no person making the report shall be subject to any
8 sanction for making the report. However, internal procedures to
9 facilitate reporting, ensure confidentiality, and apprise supervisors
10 and administrators of reports may be established, provided they
11 are not inconsistent with this chapter.

12 (g) (1) Whenever this section requires a county adult protective
13 services agency to report to a law enforcement agency, the law
14 enforcement agency shall, immediately upon request, provide a
15 copy of its investigative report concerning the reported matter to
16 that county adult protective services agency.

17 (2) Whenever this section requires a law enforcement agency
18 to report to a county adult protective services agency, the county
19 adult protective services agency shall, immediately upon request,
20 provide to that law enforcement agency a copy of its investigative
21 report concerning the reported matter.

22 (3) The requirement to disclose investigative reports pursuant
23 to this subdivision shall not include the disclosure of social services
24 records or case files that are confidential, nor shall this subdivision
25 be construed to allow disclosure of any reports or records if the
26 disclosure would be prohibited by any other provision of state or
27 federal law.

28 (h) Failure to report, or impeding or inhibiting a report of,
29 physical abuse, as defined in Section 15610.63, abandonment,
30 abduction, isolation, financial abuse, or neglect of an elder or
31 dependent adult, in violation of this section, is a misdemeanor,
32 punishable by not more than six months in the county jail, by a
33 fine of not more than one thousand dollars (\$1,000), or by both
34 that fine and imprisonment. Any mandated reporter who willfully
35 fails to report, or impedes or inhibits a report of, physical abuse,
36 as defined in Section 15610.63, abandonment, abduction, isolation,
37 financial abuse, or neglect of an elder or dependent adult, in
38 violation of this section, if that abuse results in death or great bodily
39 injury, shall be punished by not more than one year in a county
40 jail, by a fine of not more than five thousand dollars (\$5,000), or

1 by both that fine and imprisonment. If a mandated reporter
2 intentionally conceals his or her failure to report an incident known
3 by the mandated reporter to be abuse or severe neglect under this
4 section, the failure to report is a continuing offense until a law
5 enforcement agency specified in paragraph (1) of subdivision (b)
6 of Section 15630 discovers the offense.

7 (i) For purposes of this section, “dependent adult” shall have
8 the same meaning as in Section 15610.23.

9 *SEC. 2. Section 15630.1 of the Welfare and Institutions Code*
10 *is amended to read:*

11 15630.1. (a) As used in this section, “mandated reporter of
12 suspected financial abuse of an elder or dependent adult” means
13 all officers and employees of financial institutions.

14 (b) As used in this section, the term “financial institution” means
15 any of the following:

16 (1) A depository institution, as defined in Section 3(c) of the
17 Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

18 (2) An institution-affiliated party, as defined in Section 3(u) of
19 the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).

20 (3) A federal credit union or state credit union, as defined in
21 Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752),
22 including, but not limited to, an institution-affiliated party of a
23 credit union, as defined in Section 206(r) of the Federal Credit
24 Union Act (12 U.S.C. Sec. 1786(r)).

25 (c) As used in this section, “financial abuse” has the same
26 meaning as in Section 15610.30.

27 (d) (1) Any mandated reporter of suspected financial abuse of
28 an elder or dependent adult who has direct contact with the elder
29 or dependent adult or who reviews or approves the elder or
30 dependent adult’s financial documents, records, or transactions,
31 in connection with providing financial services with respect to an
32 elder or dependent adult, and who, within the scope of his or her
33 employment or professional practice, has observed or has
34 knowledge of an incident, that is directly related to the transaction
35 or matter that is within that scope of employment or professional
36 practice, that reasonably appears to be financial abuse, or who
37 reasonably suspects that abuse, based solely on the information
38 before him or her at the time of reviewing or approving the
39 document, record, or transaction in the case of mandated reporters
40 who do not have direct contact with the elder or dependent adult,

1 shall report the known or suspected instance of financial abuse by
2 telephone immediately, or as soon as practicably possible, and by
3 written report sent within two working days to the local adult
4 protective services agency or the local law enforcement agency.

5 (2) When two or more mandated reporters jointly have
6 knowledge or reasonably suspect that financial abuse of an elder
7 or a dependent adult for which the report is mandated has occurred,
8 and when there is an agreement among them, the telephone report
9 may be made by a member of the reporting team who is selected
10 by mutual agreement. A single report may be made and signed by
11 the selected member of the reporting team. Any member of the
12 team who has knowledge that the member designated to report has
13 failed to do so shall thereafter make that report.

14 (3) If the mandated reporter knows that the elder or dependent
15 adult resides in a long-term care facility, as defined in Section
16 15610.47, the report shall be made to the local ombudsman ~~or~~ and
17 local law enforcement agency.

18 (e) An allegation by the elder or dependent adult, or any other
19 person, that financial abuse has occurred is not sufficient to trigger
20 the reporting requirement under this section if both of the following
21 conditions are met:

22 (1) The mandated reporter of suspected financial abuse of an
23 elder or dependent adult is aware of no other corroborating or
24 independent evidence of the alleged financial abuse of an elder or
25 dependent adult. The mandated reporter of suspected financial
26 abuse of an elder or dependent adult is not required to investigate
27 any accusations.

28 (2) In the exercise of his or her professional judgment, the
29 mandated reporter of suspected financial abuse of an elder or
30 dependent adult reasonably believes that financial abuse of an
31 elder or dependent adult did not occur.

32 (f) Failure to report financial abuse under this section shall be
33 subject to a civil penalty not exceeding one thousand dollars
34 (\$1,000) or if the failure to report is willful, a civil penalty not
35 exceeding five thousand dollars (\$5,000), which shall be paid by
36 the financial institution that is the employer of the mandated
37 reporter to the party bringing the action. Subdivision (h) of Section
38 15630 shall not apply to violations of this section.

39 (g) (1) The civil penalty provided for in subdivision (f) shall
40 be recovered only in a civil action brought against the financial

1 institution by the Attorney General, district attorney, or county
2 counsel. No action shall be brought under this section by any
3 person other than the Attorney General, district attorney, or county
4 counsel. Multiple actions for the civil penalty may not be brought
5 for the same violation.

6 (2) Nothing in the Financial Elder Abuse Reporting Act of 2005
7 shall be construed to limit, expand, or otherwise modify any civil
8 liability or remedy that may exist under this or any other law.

9 (h) As used in this section, "suspected financial abuse of an
10 elder or dependent adult" occurs when a person who is required
11 to report under subdivision (a) observes or has knowledge of
12 behavior or unusual circumstances or transactions, or a pattern of
13 behavior or unusual circumstances or transactions, that would lead
14 an individual with like training or experience, based on the same
15 facts, to form a reasonable belief that an elder or dependent adult
16 is the victim of financial abuse as defined in Section 15610.30.

17 (i) Reports of suspected financial abuse of an elder or dependent
18 adult made by an employee or officer of a financial institution
19 pursuant to this section are covered under subdivision (b) of Section
20 47 of the Civil Code.

21 (j) This section shall remain in effect only until January 1, 2013,
22 and as of that date is repealed, unless a later enacted statute, that
23 is enacted before January 1, 2013, deletes or extends that date.

24 *SEC. 3. Section 15631 of the Welfare and Institutions Code is*
25 *amended to read:*

26 15631. (a) Any person who is not a mandated reporter under
27 Section 15630, who knows, or reasonably suspects, that an elder
28 or a dependent adult has been the victim of abuse may report that
29 abuse to a long-term care ombudsman program or local law
30 enforcement agency *or both the long-term care ombudsman*
31 *program and local law enforcement agency* when the abuse is
32 alleged to have occurred in a long-term care facility.

33 (b) Any person who is not a mandated reporter under Section
34 15630, who knows, or reasonably suspects, that an elder or a
35 dependent adult has been the victim of abuse in any place other
36 than a long-term care facility may report the abuse to the county
37 adult protective services agency or local law enforcement agency.

38 *SEC. 2.*

39 *SEC. 4.* No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution for certain

1 costs that may be incurred by a local agency or school district
2 because, in that regard, this act creates a new crime or infraction,
3 eliminates a crime or infraction, or changes the penalty for a crime
4 or infraction, within the meaning of Section 17556 of the
5 Government Code, or changes the definition of a crime within the
6 meaning of Section 6 of Article XIII B of the California
7 Constitution.

8 However, if the Commission on State Mandates determines that
9 this act contains other costs mandated by the state, reimbursement
10 to local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.

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