Keeping Nursing Facility Residents Safe:

A Guide to Preventing and Reporting Abuse, Mistreatment and Neglect

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PROVIDING A SAFE AND SECURE ENVIRONMENT
FOR MASSACHUSETTS LONG-TERM CARE
FACILITY RESIDENTS

Everyone should feel safe and secure in their own home. For many elder and disabled citizens in Massachusetts, nursing homes and other extended care facilities are their homes. Unfortunately, such residents often lack the fundamental ability to protect themselves where they live.

Most nursing home employees are excellent caregivers who are experienced with doing physically difficult and emotionally draining jobs. It is particularly tragic, however, when defenseless victims, such as elders and individuals with disabilities, suffer at the hands of the very people who were hired to provide for their protection and daily care. Emotional and physical harm are not the only consequences of these abusive acts; they are also prosecuted by the Office of the Attorney General.

As Attorney General, protecting our most vulnerable citizens is one of my highest priorities. This includes the more than 55,000 residents of nursing facilities in Massachusetts, who have the right to be free from abuse, mistreatment and neglect. To ensure their safety, we work closely with the Department of Public Health, the Executive Office of Elder Affairs, and the Disabled Persons Protection Commission to ensure that abusive practices are identified, reported and prosecuted. In addition, we have forged a partnership with the Massachusetts Extended Care Federation and its nearly 500 member nursing facilities in a statewide initiative to prevent abuse, mistreatment and neglect in the first place. Through education and training, we have reduced the number of incidents and improved the quality of life for residents in the Commonwealth’s extended care facilities.

By working together, we can ensure the safety and basic human dignity of our elder and disabled citizens.

Thomas F. Reilly
Attorney General
NO ONE

Deserves to be Abused, Mistreated or Neglected

Nursing home work is often challenging and stressful. Along with the high level of job stress are situations in which patients are verbally or physically abusive towards nursing home staff. There is no excuse, however, for abuse, mistreatment or neglect of elders and individuals with disabilities.

Alcohol and drug use, financial troubles and domestic problems are sometimes given as explanations for committing acts of abuse or neglect. These are excuses, however, not justifications. Violence towards, or neglect of, elder and disabled citizens constitutes criminal behavior that is never justified.

THE RIGHT
to Protection Under the Law

Massachusetts General Laws Chapter 265, Section 38, provides:

Any person who knowingly and willfully abuses, mistreats or neglects a patient or resident of a licensed, extended care facility shall be punished by imprisonment for not more than two years, or by a fine of not more than $5,000, or both.

In addition to the crime of Patient Abuse, an accused may also be charged with other crimes including Assault and Battery, Indecent Assault and Battery, Indecent Assault and Battery on a Mentally Retarded Person, Assault and Battery on an Elderly or Disabled Person, Rape, Kidnapping and Larceny.


ENHANCED PROTECTION
for Elders and Individuals with Disabilities

As of March 18, 1996, assault, abuse, neglect and financial exploitation of elder and disabled citizens in the Commonwealth are felony crimes punishable with up to ten years in state prison and a $5,000 fine. M.G.L. c. 265, § 13K. This new law expands the Commonwealth’s ability to protect elders and individuals with disabilities by serving as an additional tool to punish perpetrators of violent and deceptive acts.

The law defines the term “caretaker” broadly as a person with responsibility for the physical care of an elder or person with a disability. The relationship between the victim and caregiver may arise as the result of a family tie, a duty imposed by law or by a voluntary or contractual duty.
In addition to prohibiting the unwarranted use of physical force, and including corresponding enhanced criminal penalties, the new law also punishes caregivers for acting recklessly in providing care or treatment to elders or individuals with disabilities. It also specifically prohibits stealing from members of these vulnerable populations.

**WHAT IS Abuse?**

*Abuse* is physical contact which harms or is likely to harm the resident.

Abuse includes, but is not limited to:

- striking a resident
- hitting a resident
- kicking a resident
- punching a resident
- throwing an object at a resident
- spitting at a resident
- burning a resident
- pulling on a part of a resident’s body
- any form of retaliation for a resident’s behavior
- inappropriate touching of a resident’s body, including touching that is not in the usual course of treatment or care
- appropriately kissing a resident

Unjustified physical contact involves, but is not limited to:

1. excessive force in the course of a prescribed treatment or therapy;
2. unnecessary physical contact when providing care, comfort or assistance to the resident; and
3. retaliation against the resident.

M.G.L. c. 265, § 38; M.G.L. c. 111, § 72F; 105 CMR 155.005.
EXAMPLES OF ABUSE CASES:

A resident spits at a female caregiver as a nursing assistant feeds the resident breakfast. In retaliation, the aide spits at the resident in her face and says, “Don’t you ever spit at me again!”

A visitor to a nursing home chases an Alzheimer’s resident down a hallway because the resident has a tendency to randomly wander into her mother’s room. When she catches up with the resident, the visitor grabs the resident’s neck, shakes her back and forth and screams at her to stay away from her mother’s room.

A mentally retarded resident refuses to get out of bed when encouraged with a gentle approach by the charge nurse to attend his daily workshop program. The nurse forcefully pulls the resident from a reclining to an upright position in his bed and pushes him out of his room as he screams to be left alone.

A male employee of a nursing home is observed kissing an elder Alzheimer’s resident on her lips and fondling her breasts.

While two nursing assistants replace a brain-injured resident’s Houdini restraint, the resident grabs the shirt of one of the aides. When the resident refuses to let go, the aide slaps the resident across his face with his open hand.

A resident complains that the water is too hot while two nursing assistants bathe her. One of the aides makes the temperature of the water even hotter and the resident screams in pain.
WHAT IS

Mistreatment?

Mistreatment includes, but is not limited to, any use of medication, isolation technique or restraint which harms, or is likely to harm, the resident.

Mistreatment includes, but is not limited to:

- exceeding a resident’s prescribed dosage of medication
- using medication, restraints or isolation as a means of retaliation
- keeping a resident confined to a closet, locked room or other enclosed area
- preventing or restricting a resident’s communication with others
- use of restraints without a doctor’s order
- forcing a resident to take medication against his or her wishes
- forcing a resident to submit to a procedure or therapy over his or her objection

Medication, isolation techniques or restraints may be administered:

1. when a resident has refused treatment and a Court authorizes the medication, isolation technique or restraint;
2. when the treatment is necessary to prevent the resident from engaging in behavior that might injure the resident or another person; and
3. when the treatment is the least restrictive available means to prevent harm and reasonable care in connection with the application of the treatment is used.

M.G.L. c. 265, § 38; M.G.L. c. 111, § 72F; 105 CMR 155.005.

EXAMPLES OF MISTREATMENT CASES:

A caregiver pushes a resident with a closed head injury into his room and ties gauze from the resident’s door handle to a side railing to confine him to his room. Fifteen minutes later, the resident is observed by a nursing assistant trying to open the door and escape to the hallway.

A phlebotomist assigned to obtain blood samples from a resident forcefully withdraws the resident’s blood after the resident repeatedly refuses the procedure.
A resident cries that she does not want to take her medication. A nurse holds the excited resident’s arms down and forces her mouth open instead of returning later when the resident has had a chance to calm down.

A nurse administers a double dosage of anti-agitation medication to a combative resident leaving the resident lethargic and non-responsive to staff and visitors.

A nursing assistant wheels a resident into a “time-out” room because the resident is taunting others in the dining room. The resident is left unsupervised and is not permitted to leave the room until four hours later.

**WHAT IS**

**Neglect?**

*Neglect* is the failure of an individual or facility to provide treatment or services necessary to maintain the health or safety of a resident.

Neglect includes, but is not limited to:

- failing to provide medical, dental, nursing, physical therapy, pharmacy, psychological, speech or other treatments or services
- failing to carry out care plans or specific treatments
- failing to provide for the dietary require-ments of a resident
- failing to provide safety measures

A resident is not considered neglected if he or she relies on, or is furnished, treatment in accordance with the teachings of a well-recognized church or denomination by a duly-accredited practitioner.

M.G.L. c. 265, § 38; M.G.L. c. 111, § 72F; 105 CMR 155.005.
EXAMPLES OF NEGLECT CASES:

A resident with a long history of wandering walks outside of the nursing home undetected because the door alarm system is malfunctioning. Despite the resident’s history of wandering, she is not adequately supervised. The resident is discovered later that day drowned in a nearby river.

A resident accidentally falls and is given Tylenol and put back to bed without an x-ray being done. His condition deteriorates over the next four days. Although a nurse advises the attending physician regarding the resident’s condition, no x-ray is ordered. The resident is not transferred to the local hospital until several days after the initial report and the resident suffers from an infection that could have been prevented had he been treated sooner.

Despite the fact that a resident’s care plan requires a two-person assist with a Hoyer lift from his bed, a nursing assistant lifts the resident from his bed on her own. The resident becomes combative, falls to the floor and fractures his head.

A nursing assistant assists a female resident to a bathroom and tells her to call when she is ready to return to her room. The resident rings the call bell for five minutes to no avail. Frustrated, the resident tries to get into her wheelchair by herself, and falls and fractures her hip.

A registered nurse permits a nursing assistant to feed a peanut butter sandwich to a resident with a pureed diet. The resident chokes on the sandwich and is rushed to the hospital where she is given appropriate medical care.
WHO IS Required to Report Abuse, Mistreatment and Neglect?

The following individuals are required by law to report to the Massachusetts Department of Public Health, Division of Health Care Quality, any suspected abuse, mistreatment or neglect of a resident of a nursing or extended care facility:

- Physicians
- Medical Interns
- Registered Nurses
- Licensed Practical Nurses
- Nursing Assistants
- Orderlies
- Medical Examiners
- Dentists
- Optometrists
- Opticians
- Chiropractors
- Podiatrists
- Coroners
- Police Officers
- Speech Pathologists
- Audiologists
- Social Workers
- Pharmacists
- Physical Therapists
- Occupational Therapists
- Health Officers
- Any other individual who is paid to care for a resident who has reasonable cause to believe that a resident of an extended care facility has been abused, mistreated or neglected.

M.G.L. c. 111, § 72G; 105 CMR 155.005.

Anyone who makes a report cannot be held liable in a civil or criminal action if the report was made in good faith. M.G.L. c. 111, § 72G; 105 CMR 155.008. Furthermore, the facility may not discharge, discriminate or retaliate against someone who in good faith reports or testifies about the alleged abuse, mistreatment or neglect. M.G.L. c. 111, § 72G; 105 CMR 155.008.

The identity of a mandatory or non-mandatory reporting individual will not be disclosed to any person other than authorized staff of the Department of Public Health, the Attorney General’s Office or applicable professional board without the prior consent of the reporter. 105 CMR 155.008.
The Department of Public Health is required to investigate and evaluate allegations of abuse, mistreatment or neglect and notify the Office of the Attorney General upon receipt of oral or written reports. M.G.L. c. 111, § 72H; 105 CMR 155.011. The Department of Public Health, Division of Health Care Quality, can be reached at (617) 753-8000, or 1-800-462-5540 (Patient Complaint/Abuse Hotline).

THE ROLE

of the Attorney General’s Office

The Attorney General’s Medicaid Fraud Control Unit investigates and prosecutes allegations of patient abuse, mistreatment or neglect in any Massachusetts extended care facility that receives Medicaid funds.

The vast majority of abuse, mistreatment and neglect referrals to the Attorney General’s Medicaid Fraud Control Unit are made by the Department of Public Health, Division of Health Care Quality, as the regulatory agency that licenses and oversees the state’s extended care facilities. Other sources of referrals include the Executive Office of Elder Affairs, the Disabled Persons Protection Commission, nursing home administrators, family members, friends, relatives and other concerned individuals.

Since 1991, the Medicaid Fraud Control Unit has successfully prosecuted criminal cases involving individuals ranging from maintenance workers to direct caregivers, including Certified Nursing Assistants, Licensed Practical Nurses and Registered Nurses. The Attorney General’s Office will also investigate and prosecute allegations of intimidation of witnesses.

The Office of the Attorney General, Medicaid Fraud Control Unit can be reached at (617) 727-2200, ext. 3495.

WHAT TO

Look For If You Suspect Abuse, Mistreatment or Neglect

Frequently, residents of nursing homes and other extended care facilities do not display physical signs of abuse, mistreatment or neglect. Moreover, these residents typically do not even remember being victimized. Some indicators, however, may typically signal that someone has been victimized:

- Unusual or recurring scratches or bruises on resident
- Change in resident’s attitude
- Unusual variation in resident’s routine
- Erratic behavior that is not typical of resident
WHAT TO DO

If You Suspect Abuse, Mistreatment or Neglect

To report any witnessed or suspected abuse, mistreatment or neglect of a resident of an extended care facility, you should immediately report the allegation to either a supervisor, administrator or the director of nursing services at the facility.

If you are unable to report the incident immediately, you should report it at the earliest opportunity.

If possible, try to intervene to prevent any further mistreatment to the resident. However, never do anything to jeopardize the health or safety of a resident or yourself.

The facility must immediately make an oral report of the alleged abuse, mistreatment or neglect to the Department of Public Health. M.G.L. c. 111, § 72H; 105 CMR 155.006. A written report must follow within forty-eight (48) hours after the oral communication. M.G.L. c. 111, § 72G; 105 CMR 155.006.

The written report to the Department of Public Health must include:

✓ resident’s name and sex;
✓ facility’s name and address;
✓ resident’s age;
✓ reporting individual’s name and address, along with how, when and where he or she may be contacted;
✓ any information relative to the nature and extent of the alleged abuse, mistreatment or neglect;
✓ circumstances under which the reporting individual became aware of the alleged incident;
✓ information about prior incident(s) of abuse, mistreatment or neglect;
✓ any protective or corrective actions taken to treat or otherwise assist the resident;
✓ any other information which the reporting individual believes might be helpful in establishing the cause of such abuse, mistreatment or neglect and the person or persons responsible; and
✓ any such other information that may be required by the Department of Public Health.

M.G.L. c. 111, § 72G; 105 CMR 155.007.

A mandated professional’s failure to report abuse, mistreatment or neglect may result in a $1,000 fine and/or suspension or revocation of one’s professional license or certification. M.G.L. c. 111, § 72G; 105 CMR 155.009.

The Department of Public Health (DPH), Division of Health Care Quality, is responsible for receiving reports of abuse, mistreatment or neglect and can be reached at (617) 753-8000, or 1-800-462-5540 (Patient Complaint/Abuse Hotline).
The Attorney General’s Office has designated a full-time staff to investigate complaints of abuse, mistreatment or neglect of residents of long-term care facilities. *The Office of the Attorney General, Medicaid Fraud Control Unit, can be reached at (617) 727-2200, ext. 3495.*

The Executive Office of Elder Affairs and the Disabled Persons Protection Commission can also take referrals. They can be reached at the following numbers:

- **Executive Office of Elder Affairs:**
  - (617) 727-7750 or 1-800-922-2275 (24-hour Abuse Hotline)

- **Disabled Persons Protection Commission:**
  - (617) 727-6465 or 1-800-426-9009 (24-hour Abuse Hotline)

Of course, if you witness abusive acts directed at anyone, you should immediately contact your local police.

**SUGGESTIONS FOR Dealing With Stressful Situations**

Dealing with verbal and physical aggression from residents and completing difficult tasks on time are some of the most challenging aspects of working in a nursing facility. Understanding and calming the situation can usually prevent abuse, mistreatment or neglect of a resident.

The first step to controlling stressful situations that may arise out of working with long-term care facility residents is acknowledging that your feelings are valid. Once you recognize that your feelings are common, there are a number of ways to control stress and anger, including:

- Take a few deep breaths, take a step backwards and reassess the situation
- Call for help at the first sign of trouble
- Take some time out and walk off your stress
- If you are sure that the resident will be safe, go outside and get some fresh air or sit down for a minute
- Organize support groups and talk about your feelings with co-workers
- Pay close attention to physical and verbal cues from the resident
- Attend in-service training sessions on stress management and residents’ rights
- Ask your supervisor for advice
- Remain calm and never argue with a resident
- Approach aggressive residents calmly
- Never force a resident to do anything against their will
- Be aware of a resident’s care plan and particular needs before beginning a task
FOR MORE Information

If you have general concerns about the way a resident of an extended care facility is being treated, one of the best resources available is the local ombudsman for your region. These individuals are specially trained to investigate complaints from the public regarding the care of elder individuals. An ombudsman attempts to develop cooperative resolutions of complaints through various dispute resolution techniques.

Approximately four hundred ombudsman volunteers address a variety of issues through the state-wide Long Term Care Ombudsman Program. Complaints range from patient care to quality of life issues, such as the lack of transportation or meaningful activities for extended care facility residents. If a particular complaint cannot be resolved locally, it is referred to the state ombudsman’s office and, if necessary, to the Attorney General’s Office and Massachusetts Department of Public Health.

To contact your local ombudsman, call the Elder Affairs Information and Referral Line of the Executive Office of Elder Affairs at (617) 727-7750.

To get up-to-date information on resources, programs and services for persons with disabilities, call the New England INDEX (Information on Disabilities Exchange) to access the Massachusetts Network of Information Providers (MNIP) at (781) 642-0248 or 1-800-642-0249.
OTHER RESOURCES:

Central Massachusetts Agency on Aging
(508) 852-5539

Commission on Affairs of the Elderly
(617) 635-4366

Commission on Mental Retardation
(617) 988-3200

Department of Mental Health
Patient and Ex-Patient Relations
(617) 626-8063

Department of Mental Retardation
Office of Human Rights
(617) 727-5608

Disability Law Center
(617) 723-8455

Massachusetts Extended Care Federation
1-800-CARE-FOR or (617) 558-0202

Massachusetts Office on Disability
(617) 727-7440

Massachusetts Rehabilitation Commission
(617) 727-2183

Or Call
The Attorney General’s Elder Hotline
1-888-AGELDER (243-5337)