



February 2010

Client Advisory

New Law Mandates Reporting of Abuse, Neglect or Exploitation of Vulnerable Adults in Community Settings

By: William P. Isele, Esq.

In the final days of the 2008-2009 legislative session, a bill was passed that amends N.J.S.A.52:27D-409 to require the reporting of suspected abuse, neglect or exploitation of a vulnerable adult. Health care professionals, law enforcement officers, firefighters, paramedics or emergency medical technicians who have reasonable cause to believe that a vulnerable adult is the subject of abuse, neglect or exploitation are all mandated reporters. Health care professionals subject to this requirement would include those employed at health care facilities, correctional facilities, developmental centers, and congregate living facilities. The report would be made to the county adult protective services provider.

Under prior law, mandatory reporting of suspected abuse, neglect and exploitation only applied to residents of licensed facilities, such as nursing homes and residential health care facilities, and reporting was to the Ombudsman for the Institutionalized Elderly (N.J.S.A. 52:27G-7.1 (the Ombudsman Statute)). This law was enacted in 1983, and applies to caretakers, social workers, physicians, RNs, LPNs, or "other professionals." Although county adult protective services agencies were charged with investigating complaints of abuse, neglect and exploitation in community settings, there was no mandate for anyone to report suspected abuse, neglect or exploitation of a vulnerable adult residing in a community setting. The new law makes such reporting mandatory for certain professionals. "Community setting" means a private residence or any non-institutional setting in which a person may reside alone or with others, but shall not include residential health care facilities, rooming houses or boarding homes or any other facility or living arrangement subject to licensure by, operated by, or under contract with, a State department or agency, as these are covered by the existing Ombudsman statute.

The new law (Public Law 2009, Chapter 276), greatly expands the responsibilities of health care professionals, and imposes new responsibilities on law enforcement, firefighters, paramedics and EMTs.

As used in this act, "Abuse" means the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation of services which are necessary to maintain a person's physical and mental health. "Neglect" means an act or failure to act by a vulnerable adult or his caretaker which results in the inadequate provision of care or services necessary to maintain the physical and mental health of the vulnerable adult, and which places the vulnerable adult in a situation which can result in serious injury or which is life threatening. "Exploitation" means the act or process of illegally or improperly using a person or his resources for another person's profit or advantage.

The term "Health care professional" as mandated reporters, includes any health care professional who is licensed or otherwise authorized, pursuant to Title 45 or Title 52 of the Revised Statutes, to practice a health care profession that is regulated by one of the professional licensing Boards within the Division of Consumer Affairs. The law specifically applies to those licensed by the Board of Medical Examiners, the Board of Nursing, the Board of Dentistry, the Board of Optometrists, the Board of Pharmacy, the Board of Chiropractic Examiners, the Acupuncture Examining Board, the Board of Physical Therapy, the Board of Respiratory Care, the Orthotics and Prosthetics Board of Examiners, the Board of Psychological Examiners, the Board of Social Work Examiners, the Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Audiology and Speech-Language Pathology Advisory Committee, the Board of Marriage and Family Therapy Examiners, the Occupational Therapy Advisory Council and the Certified Psychoanalysts Advisory Committee. The term "Health care professional" also includes a nurse aide or personal care assistant who is certified by the Department of Health and Senior Services.

A health care professional, as defined above, a law enforcement officer, firefighter, paramedic or emergency medical technician who has **reasonable cause to believe** that a vulnerable adult is the subject of abuse, neglect or exploitation shall report the information to the county adult protective services provider. "Reasonable cause to believe" is not further defined in the statute, but clearly is a lower standard than "clear and convincing evidence" or "probable cause." The report, if possible, shall contain the name and address of the vulnerable adult; the name and address of the caretaker, if any; the nature and possible extent of the vulnerable adult's injury or condition as a result of abuse, neglect or exploitation; and any other information that the person reporting believes may be helpful.

Persons who report information pursuant to this act, or provide information concerning the abuse of a vulnerable adult to the county adult protective services provider, or testifies at a grand jury, judicial or administrative proceeding resulting from the report, are immune from civil and

criminal liability arising from the report, information, or testimony, unless the person acts in bad faith or with malicious purpose.

Employers or any other persons are prohibited from taking any discriminatory or retaliatory action against an individual who reports abuse, neglect or exploitation pursuant to this act. Employers shall not discharge, demote or reduce the salary of an employee because the employee reported information in good faith pursuant to this act. A person who violates this subsection is liable for a fine of up to \$1,000.

This act was signed on January 17, 2010, and takes effect on April 19, 2010, the 90th day following enactment.

Unlike the mandatory reporting provisions in the Ombudsman statute, which can result in fines of up to \$5,000 per instance of failure to report, this law does not provide for specific monetary penalties for failure to report. It remains to be seen how the Department of Health and Senior Services and the various licensing Boards and Committees will pursue enforcement.

If you have any questions about the new mandate in reporting abuse, neglect, or exploitation of Vulnerable Adults in Community Settings or any other health care law related matters, please contact a member of Archer & Greiner's Health Care Practice Group at (856) 795-2121.

DISCLAIMER: This client advisory is for general information purposes only. It does not constitute legal advice, and may not be used and relied upon as a substitute for legal advice regarding a specific legal issue or problem. Advice should be obtained from a qualified attorney licensed to practice in the jurisdiction where that advice is sought.