

# TITLE 42

## State Affairs and Government

### CHAPTER 42-66

#### Elderly Affairs Department

#### SECTION 42-66-4.1

§ 42-66-4.1 **Definitions.** – As used in this chapter:

(1) "Abuse" means physical abuse, sexual abuse, and/or emotional abuse of an elderly person by a caregiver as defined in subsection (5).

(a) "Physical Abuse" means the willful infliction of physical pain or injury (e.g. slapping, bruising or restraining) upon an elderly person.

(b) "Sexual Abuse" means the infliction of non-consensual sexual contact of any kind upon an elderly person. Sexual abuse includes, but is not limited to, sexual assault, rape, sexual misuse or exploitation of an elder, as well as threats of sexual abuse where the perpetrator has the intent and the capacity to carry out the threatened abuse.

(c) "Emotional Abuse" means a pattern of willful infliction of mental or emotional harm upon an elder by threat, intimidation, isolation or other abusive conduct.

(2) "Exploitation" means the fraudulent or otherwise illegal, unauthorized or improper act or process of an individual, including, but not limited to, a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets by use of undue influence, harassment, duress, deception, false representation or false pretenses.

(3) "Neglect" means the willful failure by a caregiver or other person with a duty of care to provide goods or services necessary to avoid physical harm, mental harm or mental illness to an elderly person, including, but not limited to, "abandonment" (withdrawal of necessary assistance) and denial of food or health related services.

(4) "Willful" means intentional, conscious and directed toward achieving a purpose.

(5) "Caregiver" means a person who has assumed the responsibility for the care of the elderly person voluntarily, by contract or by order of a court of competent jurisdiction, or who is otherwise legally responsible for the care of the elderly person.

(6) "Self-Neglect" means a pattern of behavior in an elderly person that directly, imminently and significantly threatens his/her own health and/or, safety. Self-neglect includes, but is not limited to, an inability or an incapacity to provide self with food, water, shelter, or safety to the point of establishing imminent risk of any of the harm(s) described in the immediately preceding sentence.

(7) "Protective services" means services and/or action intended to prevent and/or alleviate the abuse, neglect, exploitation or self-neglect of elderly persons. Protective services may include supervision, counseling, and assistance in securing health and supportive services, safe living accommodations and legal intervention.

(8) "Elderly person" or "elder" means any person sixty (60) years of age or older.

History of Section.

(P.L. 1979, ch. 132, § 2; P.L. 1980, ch. 287, § 1; P.L. 1981, ch. 69, § 1; P.L. 1985, ch. 305, § 1; P.L. 1992, ch. 242, § 1; P.L. 1992, ch. 406, § 1; P.L. 1998, ch. 94, § 2; P.L. 1998, ch. 287, § 2; P.L. 2007, ch. 84, § 1; P.L. 2007, ch. 209, § 1.)

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##### **SECTION 42-66-8**

**§ 42-66-8 Abuse, neglect, exploitation and self-neglect of elderly persons – Duty to report.** – Any person who has reasonable cause to believe that any person sixty (60) years of age or older has been abused, neglected, or exploited, or is self-neglecting, shall make an immediate report to the director of the department of elderly affairs or his or her designee. In cases of abuse, neglect or exploitation, any person who fails to make the report shall be punished by a fine of not more than one thousand dollars (\$1,000). Nothing in this section shall require an elder who is a victim of abuse, neglect, exploitation or who is self-neglecting to make a report regarding such abuse, neglect, exploitation or self-neglect to the director or his or her designee.

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##### **SECTION 42-66-8.1**

**§ 42-66-8.1 Abuse of elderly persons – Telephone line.** – The director shall provide, for the use of the general public, a statewide toll free, twenty-four (24) hour a day, seven (7) days a week telephone line, to report abuse, neglect, exploitation and self-neglect of the elderly.

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#### SECTION 42-66-8.2

**§ 42-66-8.2 Abuse, neglect, exploitation and self-neglect of elderly persons – Investigation of reports. –**

(a) The director of the department shall cause the report to be investigated immediately to determine the circumstances surrounding the alleged abuse, neglect, exploitation or self-neglect and its cause. The investigation shall include personal contact with the elder victim named in the report. Any person required to investigate reports of abuse, neglect, exploitation or self-neglect may question the subjects of those reports with or without the consent of the caretaker, guardian, conservator, person possessing a power of attorney given by the subject or other person responsible for the elderly person's welfare.

(b) In cases of reported abuse, neglect and exploitation, when deemed by the investigator or other person responsible for the investigation of the report to be in the best interests of the alleged victim, the interview of the alleged victim(s) shall take place in the absence of the caretaker, guardian, conservator, person possessing a power of attorney given by the subject or other person responsible for the elderly person's welfare, or any other person allegedly responsible for the abuse, neglect, or exploitation.

(c) In the event that any person required to investigate those reports is denied reasonable access to an elderly subject of the report by the caretaker, guardian, conservator, person possessing a power of attorney given by the subject or other person responsible for the elderly person's welfare and the investigator determines that the best interests of the elder require, the investigator with the approval of the director may request the intervention of the local law enforcement agency to secure reasonable access to the elderly subject of the report.

(d) In the event that after investigation, the department has reasonable cause to know or suspect that a person sixty (60) years of age or older has been a victim of: (1) an "assault" as defined in chapter 5 of title 11; or, (2) an "assault" as defined in chapter 37 of title 11; or, (3) an offense under chapter 10 of title 11, or has been a victim of "exploitation" as defined in this chapter, the investigator, with the approval of the director, shall immediately forward that information to the local law enforcement agency.

(e) When it is determined after investigation that protective services are necessary, the department shall develop a protective services care plan and coordinate, in conjunction with existing public and private agencies and departments, available and existing services as are needed by the person abused, neglected, exploited or self-neglecting. In developing the protective services care plan, the elderly person's rights to self-determination and lifestyle preferences commensurate with his or her needs shall be of prime consideration. If the elderly person withdraws consent or refuses to accept protective services, the services shall not be provided.

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##### **SECTION 42-66-9**

**§ 42-66-9 Obstruction of provision of services.** – (a) No person shall obstruct the provision of available and existing services to a person sixty (60) years of age or older who has been abused, neglected, exploited or who is self-neglecting. For the purposes of this section, "obstruction" shall mean threats, intimidation, assaults and/or abuse, whether physical or emotional, made with the intent to prevent or dissuade the recipient or proposed recipient from accepting, requesting, and/or receiving services available under § 42-66-8. Any person who violates the provisions of this section shall be punished by a fine of not more than five hundred dollars (\$500).

(b) However, nothing in this chapter is construed to mean a person is abused, neglected, exploited or is self-neglecting for the sole reason that person is being furnished or relies upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a church or religious denomination recognized by the laws of this state.

(c) No person shall deny access to a person sixty (60) years of age or older who is alleged to be a victim of abuse, neglect, exploitation or who is self-neglecting, while the staff person is investigating a report made under this chapter.

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##### **SECTION 42-66-10**

**§ 42-66-10 Confidentiality of records.** – Any records of the department or other agency pertaining to a person reported to be abused, neglected, exploited or self-neglecting shall be confidential. The records shall not be deemed public and shall be considered records under § 38-2-2(4)(i). The director may, however, disclose to the attorney general, any local state; or federal police officials, appropriate courts, state departments, public or private agencies, or medical personnel, pertinent information that is necessary to investigate reports of abuse, neglect, exploitation, or self-neglect, the coordination of needed services, the protection of the elderly victim or criminal prosecution.

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**SECTION 42-66-11**

**§ 42-66-11 Immunity from liability.** – Any person participating in good faith in making a report pursuant to § 42-66-8, excluding any perpetrator or conspirator of those acts, has immunity from any liability, civil or criminal, that might otherwise be incurred or imposed.